

CORNWALL FARMERS CONDITIONS OF SALE

These Conditions modify and restrict certain obligations implied by law and limit the extent of liability for breach of contract and/or negligence. They should be carefully considered and any explanation necessary sought before proceeding to order.

The Seller limits its liability in this way so that Goods and Services can be supplied at a reasonable cost. If liability were not so limited then the price charged would necessarily increase to cover the cost of undertaking and insuring against unlimited liability. The Buyer in offering to buy under these Conditions acknowledges these facts and that accordingly the limitations on liability are fair and reasonable.

1. INTERPRETATION

1.1. In these Conditions:

“**Agrochemicals**” means crop treatment and protection products including herbicides, pesticides, and growth inhibitors

“**Animal Feed**” means any product used or intended for use in feed for pet animals, farmed creatures or animals living freely in the wild including silage additives/noculants and minerals and vitamin supplements

“**Animal Health Products**” means any product intended for and labelled for use in animal care and/or production

“**Buyer**” means the person who accepts a quotation of the Seller for the sale of the Goods or Services or whose order for the Goods or Services is accepted by the Seller

“**Conditions**” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

“**Contract**” means the contract for the purchase and sale of the Goods or Services

“**Fertilisers**” mean manufactured and natural manure products including lime

“**Goods**” means the goods including Agrochemicals, Animal Feed, Animal Health Products, Fertilisers, Machinery and Seeds (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Conditions

“**Machinery**” means vehicles, machinery and equipment supplied for agricultural professional or domestic use including spare parts

“**Retail Goods**” means Goods sold to the Buyer for purposes other than his trade, profession or business

“**Seeds**” means seeds for crops including grass, cereals, vegetables, flowers, forage crops and break crops and seed treatments

2. BASIS OF THE SALE

2.1. The Seller shall sell and the Buyer shall purchase the Goods or Services in accordance with any order of the Buyer which is accepted by the Seller or any written quotation of the Seller which is accepted by the Buyer subject in either case to these Conditions in conjunction with terms for discount and financial settlement mentioned in the Seller's catalogue which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer. In case of any conflict these Conditions shall prevail.

2.2. Nothing in the Seller's catalogue or in any document of which these Conditions form part shall constitute any offer to sell and the Seller reserves the right to refuse any offer constituted by an order or otherwise.

2.3. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

3. ORDERS AND SPECIFICATIONS

3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3.3. The quantity, quality and description of and any specification for the Goods or Services shall be those set out in the Buyer's order (if accepted by the Seller) or the Seller's quotation (if accepted by the Buyer).

3.4. The Seller reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable safety or other statutory requirements or, where the Goods or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.5. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and material used), damages, charges and expenses incurred by the Seller as a result of cancellation.

3.6. Notwithstanding that a sample of the Goods be exhibited to and inspected by the Buyer, such sample is so exhibited or inspected solely to enable the Buyer to judge for itself the quality of the bulk, and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample, and subject to the normal variation between the bulk and sample accepted by the trade.

4. PRICE OF GOODS

4.1. The price of the Goods or Services shall be the price listed in the Seller's published catalogue or price list current at the date of acceptance of the order unless the Seller has quoted a special price for the Goods or Services. All prices specially quoted are valid for 30 (thirty) days only or until earlier acceptance by the Buyer (except in the case of the Seller's special promotion of particular Goods or Services, when prices specially quoted shall be valid for the time stated in the promotion) after which time they may be altered by the Seller without giving notice to the Buyer.

4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of production, any change in delivery dates, quantities or specifications for the Goods or Services which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions).

4.3. Except as otherwise stated in the Seller's current published catalogue or under the terms of any quotation and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller:

4.3.1. in the case of Wholesale Goods including the cost of delivery to a single address of the Buyer within the United Kingdom; and

4.3.2. in the case of Retail goods excluding the cost of delivery.

WHERE THE GOODS OR SERVICES ARE SOLD UNDER A CONSUMER SALE (AS DEFINED BY THE UNFAIR CONTRACT TERMS ACT 1977) THE STATUTORY RIGHTS OF THE BUYER ARE NOT AFFECTED BY THESE CONDITIONS.

Nothing in these Conditions shall operate or be construed to operate so as to exclude or restrict the liability of the Seller for death or personal injury caused by reason of the negligence of the Seller or of its servants, employees or agents.

“**Seller**” means CORNWALL FARMERS LIMITED an Industrial and Provident Society registered in England with number IP8151R and whose registered office is at Threemilestone Industrial Estate, Truro, Cornwall TR4 9LD

“**Services**” means any and all services provided by the Seller to the Buyer under this Contract including but not limited to the servicing and repair of Machinery and the provision of advice or recommendations provided always that such advice or recommendations are confirmed in Writing in accordance with the provisions of Clause 2.5

“**Shelf Life**” means the use-by date by which the Goods must have been used and applied as specified by the Seller

“**UK Feedings Stuffs Regulations**” means the Feeding Stuffs Regulations 2000 and the Feedings Stuffs (England) Regulations 2005 and any statutory modification or re-enactment thereof for the time being in force

“**UK Fertilisers Regulations**” means the Fertilisers Regulations 1991 and any statutory modification or re-enactment thereof for the time being in force

“**UK Seeds Regulations**” means the Beet Seed (England) Regulations 2002, the Cereal Seed (England) Regulations 2002, the Fodder Plant Seed (England) Regulations 2002, the Oil and Fibre Plant Seed (England) Regulations 2002, the Vegetable Seed (England) Regulations 2002 and any statutory modification or re-enactment thereof for the time being in force

“**Wholesale Goods**” means Goods sold to the Buyer for the purposes of his trade, profession or Business

“**Working Day**” means any day excluding Saturdays, Sundays and bank holidays

“**Writing**” means letter, facsimile transmission or electronic mail

1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time and references in these Conditions to the singular include the plural, and vice versa as appropriate.

1.3. The headings in these Conditions are for convenience only and shall not affect the interpretation of these Conditions.

2.4. The Seller's employees or agents are not authorised to make any representations concerning the Goods or Services unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.5. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents including as to the storage, husbandry, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk, and accordingly and subject always to Condition 12 the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.6. Any typographical, clerical or other similar error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3.7. Without prejudice to the generality of the foregoing any particular purpose for which the Buyer proposes to use the Goods shall be deemed not to be known by or have been made known to the Seller unless specifically recorded in a schedule signed by one of the Seller's directors. The Buyer hereby acknowledges that any purpose stated in such schedule shall be deemed to have been specified by the Buyer

3.8. In the event of market shortages the Seller may apportion available supplies at its discretion, and, in particular:

3.8.1. The sale of Goods is subject to availability from the Seller's usual supplier and if such Goods are not available from the Seller's usual supplier or from any other sources at a price no greater than that usually contracted for by the Seller with its usual supplier, the Seller may:

a) treat the Buyer's order as cancelled without liability to either party; or

b) substitute what in the Seller's opinion is the nearest equivalent of any variety or (in the case of Machinery) design not available unless the Buyer specifically prohibits this.

3.9. The Seller shall not be liable for any variations in the quantities or specifications of any Goods or substitution of any materials, so long as the variation or substitution does not materially affect the characteristics of the Goods or make the Goods unsuitable for any purpose the Buyer has made to the Seller and the substituted materials are of a quality equal or superior to those originally specified.

3.10. The Seller reserves the right to subcontract the fulfilment of any order or any part thereof.

4.4. The price is exclusive of any applicable value added tax or other tax or duty, which the Buyer shall be additionally liable to pay to the Seller.

4.5. Unless otherwise stated all bags used by the Seller are non-returnable and no credit will be given to the Buyer for any bags which are returned to the Seller.

4.6. The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

4.7. The price of any variety which becomes the subject of a grant of plant breeder's rights under the Plant Varieties and Seeds Act 1964 (as amended) or other similar legislation or directives will be adjusted to include the cost of any royalty payable to the owner of the rights. If, in the case of a variety which is already the subject of plant breeder's rights, there is any change in the rate of royalty the price will be adjusted accordingly. The Seller may show the cost of the royalty separately on its invoice.

14. PROTECTION OF THE SELLER'S INTELLECTUAL PROPERTY	
14.1. The Buyer, subject as hereinafter provided, shall be responsible for keeping and procuring to be kept secret and confidential all information (hereinafter referred to as “the Know-How”) supplied by the Seller of a secret or confidential nature provided that the Seller shall first have given notice in Writing to the Buyer of the secret or confidential nature of such information before so supplying it.	14.4.3. clearly make known on sale or advertisements for sale of the Goods that commercial propagation or multiplication thereof is only allowed with the Seller's consent.
14.2. The obligations under Condition 14.1 shall cease within six months of the publication by the Seller or any third party of information comprising or being part of the Know-How to the extent of such publication, or of agreement by the Seller that such information or part thereof is in the public domain.	14.5. The Seller and his authorised representatives shall be entitled upon reasonable notice to the Buyer to enter upon the Buyer's premises or other premises where the Goods may be held to inspect the Buyer's stock of the Goods and the Buyer shall provide all assistance reasonably required by the Seller, including information concerning the Goods, which the Seller may reasonably require for verification of the Buyer's performance of his obligations contained in these Conditions provided that the Seller will keep confidential information of a confidential nature of the Buyer thereby obtained.
14.3. The Buyer shall comply in all respects with the requirements of the Plant Varieties and Seeds Act 1964 (as amended) in so far as they relate to the protection of the Seller's plant breeder's rights in Seeds sold to the Buyer by this Contract and shall indemnify the Seller against any loss, damages, costs or expenses incurred by the Seller arising from any non compliance with such requirements.	14.6. In the event that the Buyer shall be in breach of the provisions of 14.3 or 14.4 hereof, the Buyer will pay to the Seller the sum of 40 pence in respect of each individual instance of propagation carried out in breach thereof, without prejudice to the entitlement of the Seller to pursue all other remedies, including further damages or losses, expenses or costs incurred by the Seller as a result of the said breaches and any other remedies available to the Seller.
14.4. Without prejudice to the generality of 14.3 the Buyer shall:	14.7. The Buyer shall forthwith notify the Seller of any infringement of such rights mentioned in Condition 14.3 and 14.4 which shall come to the attention of the Buyer, and at the request and expense of the Seller shall render the Seller all reasonable assistance for the purpose of proceedings or negotiations with such infringer.
14.4.1. not in any way effect multiplication or propagation of Goods purchased from the Seller in contravention of the requirements of the Plant Varieties and Seeds Act 1964 as amended; and	
14.4.2. not dispose of Seeds or parts thereof in contravention thereof; and	

15. CONTRACTS FOR WORK

If the Contract is for and includes work to be done by the Seller whether of installation planting or otherwise then unless the Contract otherwise provides the following additional provisions apply thereto:	15.2.2. free and safe access to the site and to the place at which the work is to be carried out; and
15.1. The Seller shall be obliged to carry out such work only during normal working hours. If the Buyer requests that overtime be worked and the Seller agrees thereto such overtime shall be paid by the Buyer at the Seller's usual overtime rates.	15.2.3. all facilities and services necessary to enable such work to be carried out safely and expeditiously; and
15.2. If the work is to be carried out at the Buyer's premises or on the Buyer's request at the premises of any other person then the Buyer shall undertake to provide or to procure the provision of:	15.2.4. all builders' work, foundations, cutting away and making good required and the ready availability of all appropriate plant and equipment
15.2.1. proper and safe storage and protection of all Goods, tools, plant, equipment and materials on site; and	15.3. The Buyer shall pay the Seller the amount of any expense incurred by the Seller by reason of any breach by the Buyer of the Buyer's undertakings in Condition 15.2 above (but without prejudice to the Seller's rights to recover further damages therefor) and a certificate of the Seller's auditors certifying such amounts shall be conclusive and binding upon the Buyer and the Seller.

16. EXPORT TERMS

16.1. Where Goods are supplied for export from the United Kingdom, the provisions of this Condition 16 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.	16.3. Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered by the Seller and the Buyer shall be responsible for the cost of carriage and insurance.
16.2. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties or taxes thereon.	16.4. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
	16.5. Payment of all amounts due to the Seller shall be made before shipment from the Seller.

17. TERMINATION

17.1. This Condition applies if:	
17.1.1. the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or	17.1.5. the Seller reasonably apprehends, for example as a result of information obtained from a search at Companies House or at a credit reference agency, that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
17.1.2. an encumbrancer takes possession or a receiver, administrator receiver or administrator is appointed of any of the property or assets of the Buyer; or	17.2. If this Condition 17 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
17.1.3. the Buyer ceases or threatens to cease to carry on business; or	
17.1.4. the Buyer (being a natural person) dies; or	

18. LIEN

The Seller retains a general lien on any of the Buyer's equipment or materials in its possession for any unpaid balance the Buyer may owe to the Seller. The Seller shall be entitled to sell such equipment or materials in the event that payment is not made in full within 28 (twenty eight) days of notice given to the Buyer by the Seller of its exercise of the lien. The	proceeds of sale may be taken by the Seller for reimbursement of the expense of exercise of the lien and the sale, and payment of the said balance, and the Seller shall account for any surplus.
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19. FORCE MAJEURE

Neither party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods, if the delay or failure was due to any cause beyond its reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond a party's reasonable control:	19.4. import or export regulations or embargoes;
19.1. Act of God, explosion, flood, tempest, fire or accident;	19.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
19.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;	19.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
19.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;	19.7. power failure or breakdown in machinery.

20. GENERAL

20.1. Any notice to be served under this Agreement must be in Writing and must be sent to the intended recipient either:	20.2. The address for service of notices shall be the party's address as shown in this Agreement or as subsequently notified in Writing.
20.1.1. by prepaid first class post (when it will be deemed served at noon on the first Working Day after it was posted); or	20.3. No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
20.1.2. by facsimile or electronic mail between the hours of 9.00 a.m. and 3.00 p.m. on a Working Day, (when it will be deemed served two hours after it was transmitted); or	20.4. If any provision or any part of any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
20.1.3. by personal delivery (when it will be deemed served when it is delivered).	20.5. The Contract shall be governed by and construed in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts.

5. TERMS OF PAYMENT

5.1.	Subject to any special terms stipulated in the Seller's catalogue or agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods or performance of the Services, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the Goods or (as the case may be) notified the Buyer that the Goods are ready for collection.	5.4.1. cancel the Contract or suspend any further deliveries to the Buyer; and 5.4.2. demand payment of all outstanding balances whether or not due and/or cancel any outstanding orders from the Buyer; and
5.2.	Subject to 5.1 the Buyer shall pay the price of the Goods or Services (less any discount to which the Buyer is entitled, but without any other deduction) upon the date of receipt of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.	5.4.3. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
5.3.	Any early settlement discount offered by the Seller to the Buyer shall be conditional upon strict adherence to the terms of early settlement of the price of the Goods or Services.	5.4.4. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 2.0% (two per cent) per month or any part thereof until payment in full is made; and
5.4.	If the Buyer fails to make payment in full on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:	5.4.5. charge the Buyer a credit charge of 10% (ten per cent) of the unpaid invoiced value.

6. CREDIT

This Contract shall be subject to the provision that if at any time thereafter the Seller is advised of circumstances casting doubt on the Buyer's creditworthiness or satisfactory security for payment is not given on request, the Seller may require payment of the whole or part of the purchase price from the Buyer in advance and pending	such payment the Contract shall be suspended. In the event of such advance payment not being made within a reasonable period stipulated by the Seller, the Seller may cancel the Buyer's order without liability and the Buyer shall be responsible for any resulting loss to the Seller.
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7. DELIVERY AND PERFORMANCE

7.1. Unless otherwise agreed in Writing between the Seller and the Buyer delivery of the Goods or performance of the Services shall be made by the Seller :	7.5. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
7.1.1. in the case of Retail Goods by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection; and	
7.1.2. in the case of Wholesale Goods by the Seller delivering the Goods to the Buyer's address shown in the Buyer's order or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place; and	7.6. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions or adequate access to his premises so that the Seller is prevented from making delivery at the time stated for delivery (otherwise than by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
7.1.3. in the case of Services by the Seller performing the Services at the address shown in the Buyer's order or, if some other place for performance is agreed by the Seller, by the Seller performing the Services at that place.	7.6.1. store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of transport and storage; or
7.2. Where Goods are supplied for export Condition 16 shall apply.	7.6.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable transport insurance, storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
7.3. Any dates quoted for delivery of the Goods or performance of the Services are approximate only and Seller shall not be liable for any delay in delivery of the Goods or performance of the Services howsoever caused. Time for delivery of the Goods or performance of the Services shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered or the Services may be performed by the Seller in advance of the quoted delivery or performance date upon giving reasonable notice to the Buyer.	7.7. The Buyer shall if required give the Seller's carrier a receipt for the weight of the Goods at the time of delivery. Where the Buyer collects unweighed Goods from the Seller, it shall notify the Seller in writing of the net weight of such Goods as soon as possible after collection.
7.4. Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right:	
7.4.1. to deliver up to 10% (ten per cent) more or 10% (ten per cent) less than the quantity ordered and the quantity so delivered shall be deemed to be the quantity ordered and the price of the Goods so delivered shall be adjusted pro rata to take account of the change from the quantity ordered; or	
7.4.2. to deliver the Goods in instalments.	

8. RISK

Risk of damage to or loss of the Goods shall pass to the Buyer:	
8.1. in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods;	8.2. in the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection.

9. TITLE RETENTION

9.1. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and of all other sums then due and payable by the Buyer to the Seller.	9.3. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up to the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods, at the Buyer's expense.
9.2. Until the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time (or, if earlier, up to the time that an event occurs which causes Condition 17 to apply) the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business.	9.4. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owed by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

10. TITLE RETENTION (SCOTLAND)

In the case of sales of Goods in Scotland the words "and of all other sums then due and payable by the Buyer to the Seller" in Condition 9.1 shall be deleted.
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11. INSTRUCTIONS

The Buyer shall only use the Goods in accordance with any instructions supplied with the Goods by the Seller and/or the manufacturer of the Goods and in particular but without prejudice to the generality of the foregoing shall:	11.3. if the application or use of the Goods is delayed beyond the last time or growth stage listed on the Seller's and/or the manufacturer's instructions, not use or apply the Goods unless or until the Buyer has confirmed with the Seller that it is safe to do so;
11.1. always read the label before using the Goods;	11.4. always use or apply the Goods only under the optimum conditions specified in the Seller's and/or manufacturer's instructions; and
11.2. if there is any conflict between the instructions supplied by the Seller and those supplied by the manufacturer of the Goods, not use the Goods until such conflict has been resolved;	11.5. if any adverse reaction occurs shall immediately inform the Seller and shall carefully preserve any unused Goods or other evidence.

12. WARRANTIES AND LIABILITY

12.1. Subject to Condition 3.8 the Seller warrants that the Goods:	12.1.4. in the case of other Goods shall at the time of delivery be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
12.1.1. in the case of Fertilisers shall comply at the time of delivery with the UK Fertilisers Regulations so far as they are applicable and so far as they are not inconsistent with any express terms of these Conditions;	12.2. The Seller warrants that the Services shall be performed with reasonable care and skill.
12.1.2. in the case of Animal Feed shall comply at the time of delivery with the UK Feeding Stuffs Regulations so far as they are applicable and so far as they are not inconsistent with any express terms of these Conditions; and	12.3. The Seller guarantees to the Buyer that where any valid claim in respect of any of the Goods or Services performed by the Seller (subject to Condition 2.5 above) which is based on:
12.1.3. in the case of Seeds shall comply at the time of delivery with the UK Seeds Regulations so far as they are applicable and so far as they are not inconsistent with any express terms of these Conditions; and	12.3.1. any defect in the quality or condition of the Goods; or
	12.3.2. the failure of the Goods to meet specification; or

12.3.3. incomplete or non-delivery of the Goods; or	12.3.3. incomplete or non-delivery of the Goods; or
12.3.4. incomplete or non-performance of the Services; or	12.3.4. incomplete or non-performance of the Services; or
12.3.5. negligent performance of the Services	12.3.5. negligent performance of the Services
is notified to the Seller in accordance with these Conditions, the Seller shall:	is notified to the Seller in accordance with these Conditions, the Seller shall:
12.3.6. in the case of Goods, at its option either	12.3.6. in the case of Goods, at its option either
a) replace or where possible repair the Goods or the part thereof in question free of charge; or	a) replace or where possible repair the Goods or the part thereof in question free of charge; or
b) refund to the Buyer the price of the Goods or the part thereof in question, and	b) refund to the Buyer the price of the Goods or the part thereof in question, and
12.3.7. in the case of Services at its option:	12.3.7. in the case of Services at its option:
a) make resources available to investigate the error or defect and endeavour to rectify the defect; or	a) make resources available to investigate the error or defect and endeavour to rectify the defect; or
b) refund to the Buyer the price of the Services or the part thereof in question; or	b) refund to the Buyer the price of the Services or the part thereof in question; or
c) in the case of negligent advice, and subject always to the provisions of clause 12.6, indemnify the Buyer against the direct loss or damage incurred by the Buyer arising out of such negligent advice, provided always that the total liability of the Seller under this clause 12.3.7(c) shall be limited to a maximum amount of £250,000 in respect of any one incident or series of related incidents,	c) in the case of negligent advice, and subject always to the provisions of clause 12.6, indemnify the Buyer against the direct loss or damage incurred by the Buyer arising out of such negligent advice, provided always that the total liability of the Seller under this clause 12.3.7(c) shall be limited to a maximum amount of £250,000 in respect of any one incident or series of related incidents,

but subject to the rest of Condition 12 the Seller shall have no further liability to the Buyer

12.4. The above guarantee is given by the Seller subject to the following conditions:	12.4. The above guarantee is given by the Seller subject to the following conditions:
12.4.1. the Seller shall be under no liability in respect of any defect arising from adverse weather conditions, fair wear and tear, wilful damage, negligence of the Buyer or his servants or agents, abnormal working conditions, poor storage, poor husbandry, failure to follow the Seller's and/or the manufacturer's instructions (whether oral or in Writing), use or application of the Goods after expiry of the Shelf Life, accident, repair or alteration of the Goods not effected by the Seller (including the attachment or connection to the Goods or any devices or accessories other than those distributed or officially recommended by the Seller) or the use in the operation of the Goods of incorrect electricity supply voltage, contaminated water supply or unsuitable chemicals or the misuse or mistreatment of the Goods without the Seller's approval;	12.4.1. the Seller shall be under no liability in respect of any defect arising from adverse weather conditions, fair wear and tear, wilful damage, negligence of the Buyer or his servants or agents, abnormal working conditions, poor storage, poor husbandry, failure to follow the Seller's and/or the manufacturer's instructions (whether oral or in Writing), use or application of the Goods after expiry of the Shelf Life, accident, repair or alteration of the Goods not effected by the Seller (including the attachment or connection to the Goods or any devices or accessories other than those distributed or officially recommended by the Seller) or the use in the operation of the Goods of incorrect electricity supply voltage, contaminated water supply or unsuitable chemicals or the misuse or mistreatment of the Goods without the Seller's approval;

12.4.2. the Seller shall not be liable for any loss arising from allegedly defective Seeds unless clear proof can be given that the product grown and alleged to have performed unsatisfactorily was in fact the product Seeds supplied by the Seller and that it was grown in suitably prepared conditions, treated carefully and correctly throughout and subject only to such conditions as were likely to produce a favourable crop;

12.4.3. diseases of plants can be transmitted by the wind, by insects, animals or by human agencies and may be seed borne or soil borne. The Seller believes the Seeds to be free from latent defect but it is not a term of the Contract nor does the Seller represent that any Seeds sold by the Seller shall be free from such defects and as the Buyer is given the opportunity to test the Seeds prior to purchase the Seller will not be responsible in any way for the resultant crop;

12.4.4. although every care is taken in the selection and testing of Seeds it is not a term of the Contract nor does the Seller represent that any Seeds sold by the Seller shall be free of loose smut and the Seller will not accept any liability whatsoever for any damage direct or consequential which the Buyer might suffer as a result of a presence of loose smut in the Seeds sold;

12.4.5. where any treatment (chemical or other and including pelleting) is applied to Seeds by the Seller at the Buyer's request the Seller warrants only that the treatment to the specification quoted has been carried out but and shall not be liable for such treatment where carried out in accordance with the instructions given by the Buyer or by the manufacturer of the means of treatment. If so desired by the Seller the purity and germination percentages of such Seeds shall be deemed to be based on tests made before any such treatment;

12.4.6. any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the terms of the Contract shall (whether or not delivery is refused by the Buyer) be notified to the Seller within the following time limits, which the Buyer and the Seller agree afford the Buyer a reasonable opportunity for examining the Goods (time for notification in each of the following Conditions being of the essence of the Contract):

Type of Goods	Notification period where the or failure was not apparent defect or failure was apparent on reasonable inspection	Notification period where the defect on reasonable inspection
Agrochemicals	as soon as possible and in any event within 5 (five) Working Days after use on the intended crop	as soon as possible and in any event within 7 (seven) Working Days after discovery of the defect or failure provided that such notice shall be given not later than 1 (one) not later than 1 (one) month after use on the intended crop or 6 (six) months after delivery whichever shall be the earlier
Animal Feeds	as soon as possible and in any event within 5 (five) Working Days after use	as soon as possible and in any event within 7 (seven) Working Days after discovery of the defect or failure provided that such notice shall be given not later than 3 (three) months after use or 3 (three) months after delivery whichever shall be the earlier

13. INTELLECTUAL PROPERTY INDEMNITY

If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark, plant breeder's rights or other industrial or intellectual property rights of any other person, the Seller shall not be liable to indemnify or compensate the Buyer against any loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, unless:

13.1. such claim arises solely as a result of the Buyer's proper use in accordance with all applicable statute and other law of such rights where they were expressly granted to the Buyer by the Seller by this Contract;	13.1. such claim arises solely as a result of the Buyer's proper use in accordance with all applicable statute and other law of such rights where they were expressly granted to the Buyer by the Seller by this Contract;
13.2. the Seller is given full control of any proceedings or negotiations in connection with any such claim;	13.2. the Seller is given full control of any proceedings or negotiations in connection with any such claim;
13.3. the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;	13.3. the Buyer shall give the Seller all reasonable assistance for the purpose of any such proceedings or negotiations;
13.4. except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);	13.4. except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld);

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Registered in England No. 8151 R Vat Reg. No. 131 6017 15

Animal Health Products	as soon as possible and in any event within 5 (five) Working Days of purchase	as soon as possible and in any event within 7 (seven) Working Days after discovery of the defect or failure provided that such notice shall be given not later than 3 (three) months after use or 3 (three) months after purchase whichever shall be the earlier
Fertilisers	as soon as possible and in any event within 5 (five) Working Days after use on the intended crop	as soon as possible and in any event within 7 (seven) Working Days after discovery of the defect or failure provided that such notice shall be given not later than 1 (one) month after use on the intended crop or 6 (six) months after delivery whichever shall be the earlier
Machinery	as soon as possible and in any event within 3 (three) Working Days after delivery	as soon as possible and in any event within 3 (three) Working Days after discovery of the defect or failure provided that such notice shall be given within the shorter of any reasonable period specified in the manufacturer's warranty provided that such warranty period has been brought to the Buyer's attention and 12 (twelve) months after delivery
Seeds	as soon as possible and in any event within 5 (five) Working Days after delivery	as soon as possible and in any event before the end of the next Working Day after discovery of the defect or failure provided that such notice shall be given not later than 1 (one) month after sowing or 3 (three) months after delivery whichever shall be the earlier
Other Goods	as soon as possible and in any event within 5 (five) Working Days after delivery	as soon as possible and in any event within 7 (seven) Working Days after discovery of the defect or failure provided that such notice shall be given not later than 3 (three) months after delivery

12.4.7. any claim by the Buyer that any Goods have been delivered damaged or are not of the correct quantity shall be notified by the Buyer to the Seller as soon as possible and in any event not later than the end of the next Working day after their delivery.

12.4.8. any claim by the Buyer which is based on incomplete performance, non-performance or negligent performance of the Services shall be notified to the Seller as soon as possible and in any event within the earlier of 3 (three) months of the date the Buyer became aware of the circumstances giving rise to the claim or the date when the Buyer ought reasonably to have become so aware.

12.4.9. in the Buyer shall pay to the Seller the reasonable cost (as certified by the Seller) of any examination of such Goods as a result of which the Seller shall not be liable under the terms hereof.

12.4.10. in the event that the Buyer shall agree with the Seller that the Buyer will provide the labour necessary to carry out such repair replacement or renewal, then the Buyer shall be entitled to be paid for the said rate at a rate not exceeding the Seller's current labour rate.

12.4.11. the provisions of 16.4 shall apply in the case of export sales.

12.4.12. notwithstanding Condition 20.1 notice under this Condition may be made by telephone but shall in any event be confirmed in Writing within 7 (seven) days.

12.5. If delivery is not refused, and the Buyer does not notify the Seller in accordance with these Conditions, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.

12.6. Except where the Buyer deals as a consumer, the Seller's liability under this Condition 12 shall be to the exclusion of all other liability to the Buyer whether contractual, tortious or otherwise for defects in the Goods or in the performance of the Services or for any loss or damage to or caused by the Goods or arising out of the performance of the Services, and except in each case where the Buyer deals as a Consumer:

12.6.1. all other conditions, warranties, stipulations, representations or other statements whatsoever concerning the Goods or Services, whether express or implied, by statute, at common law or otherwise howsoever, are hereby excluded to the fullest extent permitted by law; in particular (but without limitation of the foregoing) the Seller grants no warranties or conditions regarding the fitness for purpose, performance, use, nature or merchantable or satisfactory quality of the Goods, whether express or implied, by statute, at common law or otherwise howsoever; and

12.6.2. save in respect of death or personal injury resulting from the negligence of the Seller in no circumstances shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, (i) for any loss of profit, business, contracts, revenue, or anticipated savings, or (ii) for any special indirect or consequential damage of any nature whatsoever, including in the case of Seeds, loss of resultant crop or any effect of pest or disease.

12.7. The Buyer shall employ all due care and diligence in the handling, storage and sale of the Goods sold by this Contract and shall indemnify the Seller against any damages, loss, expense or costs suffered by the Seller arising from a claim made against the Seller by any third party in connection with such Goods.

13.5. the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);

13.6. the Seller shall be entitled to the benefit of, and the Buyer shall accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim; and

13.7. without prejudice to any duty of the Buyer at common law, the Seller shall be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this Condition.

