

# TERMS AND CONDITIONS FOR SALE OF SEEDS

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**Maya Seeds A/S**

CVR.nr. 43752057

Solbjerg Søvej 15

8362 Hørning

Denmark

## **1. PREAMBLE**

- 1.1. These general Terms and Conditions (hereinafter the "Terms") shall apply to all Contracts for sale and delivery of Seeds agreed between Maya Seeds A/S, company registration number 43752057, Solbjerg Søvej 15, 8362 Hørning, Denmark (hereinafter "MS") and the Customer.
- 1.2. These Terms and the Contract exhaustively stipulate the terms of agreement between the parties in relation to the sale and delivery of the Seeds. Thus, the Customer's purchase conditions or any other deviation from the Terms shall not apply unless explicitly accepted by MS in writing.
- 1.3. In case of any discrepancies between these Terms and the Contract, these Terms shall take precedence unless the parties have expressly and in writing agreed that specific provisions of the Contract shall take precedence over specific provisions of these Terms.

## **2. DEFINITIONS**

- 2.1. "Contract" shall mean the agreement (including any attachments thereto) entered into between MS and the Customer regarding the sale and delivery of seeds from MS to the Customer. The Contract will consist of (1) a purchase order sent by the Customer to MS; (2) a written order confirmation sent by MS to the Customer; and (3) and e-mail correspondence between the parties in which the sale and delivery of the Seeds has been agreed. The Contract is not binding until MS has confirmed the order in writing.
- 2.2. "Customer" shall mean the customer stated in the Contract, including the Customers' legal representatives, successors, and assigns.
- 2.3. "Seeds" shall mean the varieties of ornamental capsicum annum breed out by MS.

## **3. SHIPPING AND DELIVERY**

- 3.1. The Seeds shall be delivered by MS to the Customer on the date of delivery agreed between the parties in the Contract. MS is not liable for any delay unless explicitly agreed in the Contract.
- 3.2. The risk shall pass to the Customer on delivery.
- 3.3. The terms for delivery shall be Incoterms 2020 DAP.
- 3.4. MS retains full ownership of the Seeds and is responsible for the quality hereof until delivery has taken place, cf. clause 3.3.
- 3.5. Deliveries shall be made under the usual harvest and processing proviso. In the event of MS invoking the harvest or processing proviso, MS shall not be obliged to deliver but shall - if possible - endeavour to deliver Seeds on a pro rata basis according to the ordered quantity or comparable alternatives.
- 3.6. The customer shall not be entitled to compensation for damages in the event of MS invoking this proviso.

## **4. PRICES AND PAYMENT**

- 4.1. All prices agreed in the Contract are excluding Danish VAT.

- 4.2. MS reserves the right to adjust the prices until 2 months before scheduled delivery as the price is reliant on the forecast and changes in the weather. Such changes in the prices can only be done if MS can document the weather conditions has had a direct effect on the quantity of the Seeds.
- 4.3. Terms of payment is thirty (30) days from date of invoice.
- 4.4. If the Customer fails to pay as obligated to, cf. the Contract, MS shall be entitled to charge interest in accordance with the Danish Interest Act (in Danish: "Renteloven").

## **5. INSPECTIONS AND DISEASES**

- 5.1. MS is obligated to inspect and to carry out a quality test of the Seeds before delivery. These inspections and tests must be carried out in accordance with the applicable legal standards.
- 5.2. Upon the Customer's receipt of the Seeds and no later than 7 days hereafter the Customer is obligated to inspect and test the delivered Seeds for any diseases or other deficiencies in a certified/authorised laboratory. The Customer bears all costs associated herewith. If the test concludes that the Seeds are infected with a disease MS must reimburse the Customer for the cost of the Seeds provided (1) that the Customer has fulfilled all its payment obligations; and (2) that the infection is not the result of wrongful storage by the Customer or an infection of the Seeds after delivery has taken place
- 5.3. MS is only responsible in relation to clause 5.2 if the Customer no later than 2 days after receiving the test results assert the claims in writing to MS.
- 5.4. MS is obliged to conduct a test of purity before delivery (the "Purity Test").
- 5.5. **If the Seeds pass the Purity Test, or if the Customer refrains from testing the Seeds cf. clause 5.2, MS cannot be held liable for any diseases, infections, lack of sprouting of the seeds or other deficiencies that are identified after the time of delivery.**
- 5.6. MS is obliged to work in accordance with the International Conventions on Biodiversity (Convention on Biological Diversity, The International Treaty on Plant Genetic Resources for Food and Agriculture).

## **6. LIABILITY AND LIMITATIONS HEREOF**

- 6.1. **Further to the limitation of liability set forth in clause 5.5, under no circumstances shall MS be liable for any loss of income, profit, business or revenue, loss of production, liquidated damages or penalties owed to or claimed by a third party, including any indirect or consequential loss or damage, which may be suffered by the Customer or any third party in connection with the Contract and/or the delivery of the Seeds, except in case of gross negligence or wilful misconduct.**
- 6.2. **MS's total and accumulated liability for any damages and compensation arising from these Terms or the Contract cannot exceed an amount equal to 50 per cent of the price of the Seeds that have been paid by the Customer to MS.**

## **7. TERMINATION**

- 7.1. Either party may terminate the Contract upon occurrence of any of the following events:
- 1) the other party is in material breach of its obligations under the Contract and fails to remedy such breach within 14 days after receiving written notice to do so, or
  - 2) the other party becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee, or manager for the benefit of its creditors, or if any act is done or any event occurs, which under the applicable laws has a similar effect to any of these acts or events.

## **8. FORCE MAJEURE**

- 8.1. The Parties are not liable for any delay or non-compliance with a contractual obligation if the delay or non-compliance is caused by events, which could not have been foreseen, avoided or controlled by the Parties and which render performance impossible ("Force Majeure"), such as (but not limited to) strikes, lockouts or other labour disputes undertaken by a third party, civil unrest, disobedience and rebellion, invasion, terror attack or threat of the same, war (regardless of whether declared or not), fire, explosion, storm, flooding, earthquake, landslide, epidemic, pandemic or other natural disaster and its consequences in the form of quarantine or prohibition from the authorities and their effects on the infrastructure, whether such events concern MS or MS's suppliers or collaborators.
- 8.2. The Party which is prevented from performing its obligations due to Force Majeure must do its utmost to overcome the Force Majeure obstacles.
- 8.3. The Party claiming Force Majeure must give the other Party prompt written notice as soon as the Force Majeure occurs/ceases.
- 8.4. The Party which is not affected by the Force Majeure event may terminate this Purchase Contract if the non-compliance with the contractual obligations lasts for more than ninety (90) days.

## **9. ASSIGNMENT**

- 9.1. The Customer can only assign its rights and obligations according to a Contract or these Terms to a third party with the prior written consent from MS.

## **10. DISPUTES AND GOVERNING LAW**

- 10.1. Disputes arising out of or in connection with these Terms or the Contract shall be governed by the laws of Denmark, however excluding the Convention on International Sale of Goods (CISG) and Danish choice of law-rules.
- 10.2. Any dispute arising out of or in connection with these Terms or the Contract shall be subject to the exclusive jurisdiction by the Danish courts. The District Court of Aarhus shall be the court of first instance.

