

General terms and conditions of sale

(Applicable to orders placed or accepted on or after 01/01/2018)

By ordering product(s) from SUBA Seeds Company S.p.A. the following terms and conditions are accepted by the Buyer.

The Buyer's attention is particularly drawn to Conditions 3.4, 3.6, 3.7, 3.8, 3.9, 4, 5.5, 5.6, 6, 8 and 9, which exclude or limit the Company's liability.

1. Definitions

- 1.1. **"Affiliates"** means any company controlling, controlled by or under common control with the Company. The term "control" shall mean in this context the direct or indirect ownership of more than fifty percent (50%) of the voting rights of a company, the power to nominate more than half of the directors, or the power otherwise to determine the policy of a company or organisation.
- 1.2. **"Buyer"** means the person(s) or company whose order for the Goods is accepted by the Company in accordance with Condition 2.3 or 2.4.
- 1.3. **"Company"** means SUBA Seeds Company S.p.A. having its registered office in Milano 20121, vicolo San Giovanni Sul Muro, 9, Italy, the operative seat in Longiano 47020 via Emilia 1810, Italy, or as otherwise confirmed in writing to the Buyer.
- 1.4. **"Conditions"** means these terms and conditions of sale.
- 1.5. **"Contract"** means the contract between the Company and the Buyer for the sale and purchase of the Goods.
- 1.6. **"Goods"** means Products which the Company is to supply, or has supplied, to the Buyer.
- 1.7. **"Minimum Order Value"** as agreed by the Parties from time to time
- 1.8. **"Products"** any seed and / or plant and / or bulb supplied by the Company. The Parties may add other products to specific contracts with their mutual consent.

2. Orders

- 2.1. No order which the Company has accepted may be cancelled by the Buyer except with the written agreement of the Company. The Company accepts cash payments up to the limit set forth by the relevant national laws in force.
- 2.2. No order placed by the Buyer for Products shall be deemed to be accepted by the Company until written confirmation of the acceptance is issued by the Company or (if earlier) written delivery confirmation is issued by the Company or the Company delivers the Goods to the Buyer.

3. Delivery

- 3.1. The Parties agree to use the rules of Incoterms 2010. Goods shall be delivered EXW of Incoterms 2010. Goods shall be delivered by transporters entrusted by the Buyer (except otherwise agreed by the Parties) Costs of delivery shall be borne by the Buyer CPT of Incoterms 2010.
- 3.2. Any dates specified by the Company for delivery of the Goods are approximate only. Time for delivery shall not be of the essence and may not be made of the essence by notice.
- 3.3. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 3.4. Any liability of the Company for non-delivery of the Goods shall be limited to either (at the Company's option) replacing the Goods within a reasonable time (not more than _60 days after the agreed delivery date) or offers alternative good(s) to replace the Goods missing.
- 3.5. The Company warrants that the Goods will be delivered in resaleable / sowing condition.
- 3.6. The Company shall not be liable for a breach of the warranty in Condition 3.54. unless:
 - 3.6.1. in the case of visible defects: the Buyer gives written notice of the damage or defect to the Company within 5 working days of the date of delivery and either the Company is given a reasonable opportunity after receiving the notice for examining such Goods or the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business (at the Company's expense) for such examination to take place there. If the Buyer does not give written notice to the Company that the Goods are rejected within 5 working days of the date of delivery, the Buyer shall be deemed to have accepted the Goods.
 - 3.6.2. In the case of non-visible defects (e.g. trueness to type, specific purity, germination rate, moisture content): the Buyer gives written notice of the damage or defect to the Company within 5 working days of from the date of discovery of such damage or defect, but in any event before harvest of the crop and no more than six months from the date of delivery.
- 3.7. If the Goods have been delivered in a damaged or defective condition, the Company shall at its option replace such Goods (or the damaged or defective part) or refund the price of such Goods at the pro-rata Contract rate. If the Company so

requests, the Buyer shall (at the Company's expense) return to the Company those Goods which are damaged or defective.

- 3.8. Subject to Condition 6.2, if the Company complies with Condition 3.77, it shall have no further liability for a breach of the warranty in Condition 3.54.
- 3.9. All orders received by the Company are subject to availability and will be processed based on availability at the time of order. Subject to Condition 6.2, should at any time the order not be fully satisfied due to the unavailability in the moment or it should result for any reason exceeding the Company's supply capacity, the Goods to be supplied under the Contract shall be such quantity as the Company shall in its sole discretion allocate to be supplied under the Contract, and the Company shall not be in breach of the Contract, negligent or otherwise liable to the Buyer if such quantity is less than that ordered by the Buyer.
- 3.10. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 3.11. Each instalment shall be deemed to be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4. Property and Risk

- 4.1. Risk of damage to and loss of the Goods shall pass to the Buyer EXW of Incoterms 2010.
- 4.2. Both legal and equitable title to and ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of (i) the Goods; and (ii) all other sums which are or which become due to the Company from the Buyer on any account.
- 4.3. Until legal and equitable title to and ownership of the Goods has passed to the Buyer, the Buyer shall:
 - 4.3.1. hold the Goods on a fiduciary basis as the Company's bailee;
 - 4.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way as they remain readily identifiable as the Company's property;
 - 4.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 4.3.4. maintain the Goods safely and in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request, the Buyer shall produce the policy of such insurance to the Company.

- 4.3.5. inform the interested parties of the existence of the retention of title and immediately inform the Company, should the Goods be subject to seizure and / or forced
- 4.4. The Company shall be entitled to recover payment for the Goods notwithstanding that legal and equitable title to and ownership of any of the Goods has not passed from the Company.
- 4.5. The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them. Where the Company is unable to determine whether any particular Goods are good in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 4.6. The rights of the Company contained in this Condition 4 shall survive termination of the Contract (howsoever caused).

5. Price and payment

- 5.1. The price for the Goods shall be defined by price offer or a contract between the Parties. In lack of a price order or a contract between the Parties the actual price list of the Company shall be applied to the prices.
- 5.2. The price for the Goods is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods.
- 5.3. The Company may invoice the Buyer for the Goods at any time after despatch from the Company's warehouse to the place of delivery. In case the Parties have special contract the invoicing may differ from the method fixed here.
- 5.4. Unless otherwise agreed in writing, payment of the price for the Goods is due upon delivery except the Parties otherwise agreed. Time for payment by the Buyer shall be of the essence. The Company reserves the right to stipulate that payment is made by the Buyer using a particular method of payment and reserves the right to refuse to accept payment by cash or cheque.
- 5.5. All payments to the Company under the Contract shall become due immediately upon its termination (howsoever caused) despite the terms of any other provision.
- 5.6. The Buyer shall make all payments due under the Contract without any deduction or withholding whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

5.7. If the Buyer fails to make any payment under the Contract on the due date then (without prejudice to the Company's other rights and remedies) the Company may charge the Buyer interest (both before and after judgement) on the amount unpaid at the annual rate of 1 % per month, compounded monthly, until payment is made in. The Buyer shall also pay any reasonably incurred costs of collection in relation to such unpaid amounts. In case a national act / law fixes the rate of the delay interest applicable to the transaction between the Parties, such act / law shall prevail.

6. Limitation of liability

6.1. The following provisions and Conditions **Errore. L'origine riferimento non è stata trovata.**, 3.46, 3.6, 3.7, and 3.8 set out the entire liability of the Company (including any liability for the acts or omissions of its Affiliates, employees, agents and sub-contractors) to the Buyer in respect of:

6.1.1. any breach of these Conditions; and

(a) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(b) any representation, statement, tortious act or omission (including negligence), arising under or in connection with the Contract.

6.2. Nothing in these conditions excludes or limits liability for death or personal injury caused by negligence, for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability, or for fraud or fraudulent misrepresentation.

6.3. Subject to Conditions 6.1 and 6.2:

6.3.1. the Company's total liability in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract value net of VAT; and

6.3.2. the Company shall not be liable to the Buyer by reason of any representation or any implied warranty, condition or other term or any duty at law or under the express terms of the Contract for any indirect, consequential, incidental or special loss or damage, costs, expenses (whether or not the Company has been advised of the possibility of such loss, damages, costs or expenses), or any claims for consequential compensation, howsoever caused (including without limitation caused by the negligence of the Company or its employees, agents or sub-contractors), which arise out of or in connection with the Contract;

- 6.3.3. the Company shall not be liable to the Buyer for any loss of profit, loss of business, loss of business opportunity, loss of revenue, depletion of goodwill howsoever caused (including without limitation caused by the negligence of the Company or its employees, agents or sub-contractors), which arises out of or in connection with the Contract.
- 6.4. Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.
- 6.5. The Buyer holds harmless and indemnifies the Company against any and all claims of third parties for damages which have been caused by or are otherwise connected with any Goods delivered by the Company, including, without limitation, claims made against the Company in its capacity as producer of the Goods pursuant to product liability, unless such damage is caused by breach of contract, negligence or wilful misconduct on the part of the Company.

7. Packaging, use of trademarks, signs and other indication

- 7.1. All of the trademarks, service marks and logos displayed on the Goods and any referenced document or website (the "Trademarks") are registered and unregistered trademarks of the Company, or third parties who have licensed their trademarks to the Company. The Buyer shall not reproduce, display or otherwise use any Trademarks without the Company's prior written permission.
- 7.2. Unless agreed otherwise in writing, the Buyer is not permitted to use Trademarks, signs and other marks used by the Company, to distinguish its products from those of other businesses, with the exception of trading the Goods in their original packaging on which trademarks, signs and other indications have been applied by the Company (or an affiliate of the Company). If the Goods are resold, this provision shall also be imposed upon the Buyer's own buyer and to any subsequent buyers.
- 7.3. The Buyer shall not change or remove any Trademarks (including, without limitation, corporate or trade names and labels, any bag tag, or any indicia of any intellectual property right of any nature whatsoever belonging to the Company), from the packaging of the Goods, unless expressly agreed upon by the Company or otherwise permitted by law.
- 7.4. The Buyer hereby acknowledges that any marketing by it of a Good where a label, batch number, bag tag, or sell-by date has been removed, erased or altered, in contravention of clause 7.2 represents a serious breach of these Conditions. In

such a case, the Buyer shall bear all legal, financial and judicial consequences which may arise therefrom, at its sole expense and risk.

8. Force Majeure

- 8.1. The Company shall not be liable to the Buyer in any manner or be deemed to be in breach of the Contract (subject to Condition 6.2) because of any delay in performing or any failure to perform any of the Company's obligations under the Contract if the delay or failure was due or in response to Force Majeure.
- 8.2. The Parties shall not be liable for failure to perform, or delay in performing their obligations under this general Terms and Conditions due to causes beyond their reasonable control. These causes shall include, but shall not be limited to, Acts of God, wars, riots, strikes, fires, storms, floods, extraordinary weather conditions, earthquakes, natural disasters, transportation difficulties, or act of any government or agency thereof, including judicial action. The experiencing party shall notify the other party verbally and in writing about any such event or circumstance immediately upon learning of the occurrence or the impending occurrence of any such event or circumstance.

9. Termination

9.1. If:

- 9.1.1. the Buyer enters into or makes any application to court in respect of, or calls or convenes any meeting for the approval of, any composition, compromise, moratorium, scheme or other similar arrangement with its creditors or any of them, or otherwise,
- 9.1.2. the Buyer resolves, or its directors resolve, to appoint an administrator of it, or a petition or an application for an administration order is made in respect of it, or an administration order is made in respect of it, or
- 9.1.3. the Buyer enters into liquidation (whether voluntary or compulsory), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer,
- 9.1.4. any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer,
- 9.1.5. the Buyer is unable to pay its debts,
- 9.1.6. the Buyer ceases or threatens to cease to carry on trading,
- 9.1.7. any analogous event to those listed above ("Events of Insolvency") occurs in any jurisdiction,

9.1.8. the Company has at any time reasonable grounds to believe that, on the balance of probabilities, any of the Events of Insolvency is about to occur within 30 days, or

9.1.9. the Buyer encumbers or in any way charges any of the Goods prior to ownership passing to the Buyer, then:

- (a) the Buyer's right to possession of any Goods belonging to the Company will terminate immediately; and
- (b) (without prejudice to any other rights or remedies of the Company) the Company shall have the right by written notice to immediately terminate any Contract then in force.

10. Privacy

10.1. 10.1 Pursuant to art. 13 of Italian Legislative Decree 30 June 2003 n. 196 and, if applicable, to the Regulation(EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 the personal data provided by the Buyer will be processed by Suba Seeds Company S.p.A , adopting the appropriate measures to ensure security and confidentiality, in compliance with the aforementioned legislation. The personal and commercial data relating to this Contract will be collected and stored at Suba Seeds Company S.p.A. The data will be used: a) for purposes strictly connected to the management of the contractual relationship and to propose new commercial offers by Suba Seeds S.p.A.; b) for purposes related to the protection of credit risk, to the identification of the Buyer, also in the course of the relationship, for this purpose the data may be disclosed to specialized third-party companies; c) statistical purposes and sending of advertising material, including through the use of electronic mail.

10.2. The granting of personal data is mandatory for purposes strictly related to the management of the contractual relationship therefore, in case of refusal to provide personal and fiscal data, the Company will be unable to process orders received; however for the point c) above the granting of personal is optional. The processing of personal data will be carried out either manually or with the aid of electronic means, or in any case automated and will include, in compliance with the limits and conditions laid down by art. 11 of Legislative Decree. n. 196/03 , if applicable, by the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016, all operations, or complex of operations, provided for by the same decree under the term "treatment". The data controller is Suba Seeds Company S.p.A., with registered office in Milan (MI), vicolo San Giovanni Sul Muro n. 9 and operational headquarters in Longiano (FC), Via Emilia n. 1810.

10.3. The personal data submitted to Suba Seeds Company S.p.A. will be known only by person expressly appointed by the data controller and entitled within the corporate structure to the completion of the activities necessary for the proper

management of the relationship with the user in the context of the purposes indicated.

10.4. The subjects to whom the personal data refer may, at any time, exercise the rights referred to in art. 7 of Legislative Decree 196/2003 or in the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 and in particular the right to obtain confirmation of the existence of data, request correction, integration and cancellation, by sending a written request addressed to Suba Seeds Company S.p.A. with registered office in Milan (MI), vicolo San Giovanni Sul Muro n. 9 and operational headquarters in Longiano (FC), Via Emilia n. 1810.

10.4.1. Failure to comply with these commitments by the Buyer constitutes a serious breach of this Contract and entitles the Company to terminate the Contract with immediate effect, pursuant to and by effect of art.1456 of the Civil Code, without prejudice to the right to compensation for damages deriving from such breach, including, but not limited to, those deriving from the application of the sanctions provided for by Legislative Decree 231/01.

11. Governing Law and Jurisdiction

11.1. The formation, existence, construction, performance, validity and all aspects of the Contract and these Conditions and any issues or disputes arising out of or in connection with the Contract or these Conditions (including, without limitation, any claims in tort and for breach of statute or regulation), shall be governed by Italian law.

11.2. The Company is a member of ISF (International Seeds Federation). In case the Buyer is also a member of ISF the Parties agree that in the event of any dispute, controversy or claim arising out of or related to this contract and transaction set forth above, or the breach, termination, or invalidity thereof, the Standard Court of Arbitration attached to ISF shall have exclusive jurisdiction.

11.2.1. The Court of Arbitration shall operate according to its own rules of procedure. The language of the arbitration shall be Italian.

11.2.2. The number of arbitrators shall be three, with one selected by the Company, one selected by the Buyer, and the third selected by the two arbitrators selected by the Company and the Buyer.

11.3. Should the arbitration procedure be not possible for any reason the Parties hereby irrevocably submit the case to the exclusive jurisdiction of the Court of Forlì, with exclusion of any other Court.

12. Miscellaneous provisions

- 12.1. Except as herein otherwise provided to the contrary, this contract shall be binding upon and endure to the benefit of the Parties hereto and their respective successors and assigns. No Party may assign its rights hereunder or transfer its obligations, unless the Parties otherwise agree in writing.
- 12.2. No waiver, whether by conduct or otherwise, of any of the provisions of this contract shall be deemed to constitute a waiver of any other provisions (whether or not similar) nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in an instrument duly executed by the Parties to be bound thereby.
- 12.3. These general terms and conditions shall be effective until its withdrawal or amendment.