

Terms & Conditions of Sale Europe



These terms and conditions of sale apply to all sales by Germain's Seed Technology companies whose ultimate parent company is Associated British Foods plc ("ABF"), this includes:

Germain's Seed Technology, a division of Food Investments Limited of Hansa Road, Hardwick Industrial Estate, King's Lynn, Norfolk PE30 4LG, UK

Germain's Seed Technology UK, Hansa Road, Hardwick Industrial Estate, King's Lynn, Norfolk PE30 4LG, UK

Germain's Seed Technology Nederland B.V., Dinxperlosestraatweg 122, 7122 JS Aalten, The Netherlands

Germain's Seed Technology España S.A., Av. Virgin de Montserrat 44, 08719 Castellolí, Barcelona, Spain

Germain's Seed Technology Polska Sp.zo.o, ul. Kopanina 28/36, 60-105 Poznan, Poland

Germain's Seed Technology Inc, 8333 Swanston Lane, Gilroy, California, CA 95020, United States of America

Definitions (in these terms and conditions of sale):

"Buyer" means the person who accepts Germain's' quotation for the sale of Goods or whose order for Goods is accepted by Germain's

"Contract" means the collateral contract for the sale and purchase of Goods between the Buyer and the Germain's Company listed above who supplies the Goods to Buyer

"Germain's" means Germain's Seed Technology, a division of Food Investments Limited, Hansa Road, King's Lynn or one of the associated companies listed above, who enters into a Contract with the Buyer.

"Terms" means the standard terms and conditions of sale as set out in this document and include any special terms agreed in writing between the Buyer and Germain's

"Supplying locations," means the Germain's location from which the Goods will be dispatched to the Buyer

"Goods" means goods and services to be supplied to the Buyer under the terms and conditions of a Contract

1. Prices

- a. Prices are based on the latest known costs and are subject to alteration prior to supply.
- b. All prices are ex-works from the Supplying Location.
- c. The currency in which prices applicable to a Contract are stated is the national currency of the Germain's Company entering into the Contract unless otherwise expressly detailed in the quotation, order, order confirmation or invoice.
- d. All prices are exclusive of local taxes; these are the sole responsibility of the Buyer.

2. Fluctuations in Exchange Rates

a. For Goods which are of foreign origin and covered by the Contract, Germains reserves the right to adjust the price payable by the Buyer to reflect any increase in exchange rate requiring alteration in the invoiced currency between the date of sale and the date of invoicing

3. Carriage

a. The prices are, unless otherwise stated, ExWorks (processing site) INCOTERMS 2010 and exclusive of packing.

4. Damage, Delay or Loss in Transit

a. If Goods are damaged in transit Germains must be notified immediately on arrival of the Goods. If Goods are lost in transit Germains must be notified as soon as the Buyer becomes aware that the Goods are lost. Goods must be inspected on arrival and any damage must be indicated on the delivery note, signed and endorsed. Any intention to claim for lost or damaged goods must be notified to the transport company immediately.

5. Payment Terms

- a. Payment terms are strictly 30 days from the date of invoice for approved credit account customers.
- b. Payment for non-approved credit account customers must be received in full prior to dispatch of the goods or provision of services.
- c. Interest on late payments will be payable from the point at which the debt becomes overdue and will be charged at a rate 1% point per month above the prevailing bank rate in force at that time in the country in which the contracting Germains Company is based.
- d. Payment shall be made in the national currency of the Germains Company entering into the Contract unless otherwise expressly stated in the quotation, order, order confirmation or invoice.

6. Non Payment

a. Germains reserves the right to withhold deliveries until all and any outstanding payments due from the Buyer under any contract with Germains have been received. Germains reserves a lien upon, and the right to sell or otherwise dispose of all Goods, received from Buyer which are the subject of any contract, whether appropriated to it or not, in respect of any such payments.

7. Ownership and Risk

- a. Until paid for in full, all Goods supplied by Germains remain Germains' property.
- b. Risk of loss or damage passes to the Buyer on delivery of the Goods i.e. when the Goods are loaded onto the delivery vehicle at Germains' premises. Conditions regarding ownership and risk do not affect Germains' contractual rights and all Goods supplied must be paid for in accordance with these Terms.
- c. Risk of loss or damage remains with the Buyer at all times for any seeds (or other goods or packaging) supplied free issue to Germains for coating, enhancement or any other purpose. It is the Buyer's responsibility to insure such seeds or other goods.

8. Force Majeure

- a. Force majeure shall be taken to mean circumstances which prevent performance of the Contract and which are not attributable to Germains. For example, but not limited to, stoppages in companies other than Germains, unofficial strikes, political strikes at Germains, a general shortage of necessary raw materials and other goods and services required for the realisation of the Contract.
- b. In the event of force majeure circumstances Germains shall inform Buyer as quickly as possible if it is unable to deliver or is unable to deliver on time and Germains shall be excused performance of the Contract while the force majeure circumstances continue. If the force majeure circumstances continue for more than 60 days Germains shall be entitled to terminate the Contract on notice in writing to the Buyer.

9. Germains Information

- a. All information whether contained in Germains literature or given by Germains staff is for general guidance only. Variation in local or climatic conditions can render such information inaccurate. Buyers are therefore advised that any such information given to them does not constitute a representation by Germains as to these matters and should not be relied on as such.

10. Insolvency

- a. If the Buyer has a receiver or liquidator appointed to any of its property or business undertakings, or:
- i. announces that it is ceasing to trade, or
 - ii. fails to make a payment as due, suspends payment and/or notifies any of its creditors that it is unable to meet debts or that it is about to suspend payment of its debts, or
 - iii. convenes, calls or holds a meeting of creditors, or
 - iv. being an individual or a firm becomes bankrupt or makes any composition or scheme arrangements with its creditors, or
 - v. being a body corporate convenes, calls or holds a meeting for the purpose of going into liquidation (other than for the purpose of reconstruction or amalgamation) by the making of an order or the passing of a resolution or winding up or becomes subject to an administration order, then notwithstanding any previous arrangements with Germains for deferred payments, the full remaining price for any Goods delivered by Germains shall become immediately due to Germains. Germains shall have the right without prejudice to any other rights and remedies available to it, to cancel and/or suspend or to refuse to make any further deliveries and/or terminate the Contract at any time after becoming aware of any of the above circumstances providing that it exercises such rights in writing within 28 days after it becomes aware of the relevant circumstance.
- b. Whenever any of these rights are exercised by Germains, Germains will not be liable to pay any compensation to the Buyer.

11. Limitation of Liability

- a. In the event of any Goods supplied by Germains not complying with the terms of the Contract or any Goods proving defective as a result of processes carried out by Germains

(whether as regards purity or germination or otherwise), Germains will at its option replace the Goods free of charge to the Buyer or will refund all payments made to Germains by the Buyer in respect of the defective Goods and to the fullest extent permitted by law this will be the limit and sole extent of Germains' obligation. Except for personal injury or death and where it would be illegal for Germains to exclude or attempt to exclude its liability and save as is set out above, Germains hereby excludes all liability whatsoever (whether based on breach of contract or negligence by Germains, its employees, suppliers or sub contractors or agents or otherwise) for any loss, expense or damage whether direct or consequential arising in any way whatsoever in connection with any Goods supplied whether due to any failure in the performance of or any defect in any such Goods or otherwise. In accordance with the established custom of the seed and horticultural trade any express or implied condition or warranty statutory or otherwise whatsoever not expressly stated in these Terms is excluded to the fullest extent permitted by law. The price of all Goods sold by Germains is based upon the foregoing limitations upon liability and would be higher if a more extensive liability were required. In accepting the Goods upon these conditions the Buyer acknowledges that the limitation for Germains' liability is fair and reasonable.

12. Film Coating, Encrusting, Pelleting, Seed Treatments and Enhancements

a. The Buyer will indemnify Germains in respect of any claims brought against Germains for loss or damage (including direct and consequential loss) arising out of the film coating, encrusting, pelleting, seed treatment and enhancements of the Goods and/or the packaging and/or labelling thereof, howsoever such loss or damage may have been caused.

13. IP Protection

a. The Buyer agrees that the origin of the seed can be verified and if requested by AIB, BSPB, or any other industry recognized seed IP protection body, Germains provides all information regarding buyer's seed and samples to them and a specialised, independent testing organisation, e.g. Naktuinbouw in Roelofarendsveen (the Netherlands), Service Officiel de Contrôle et Certification (France) or any other OECD accredited laboratory for research into its identity. If the independent, accredited laboratory determines that the seeds belong to a variety that is not distinct from a variety for which an Intellectual Property Right has been granted or applied for by a Seed Company; AIB, BSPB or others may inform that Seed Company and provide all information and samples available.

14. Acceptance of Terms

a. The giving or sending of an order to Germains constitutes acceptance of these Terms by the Buyer who, if they do not accept these Terms must return the Goods forthwith. These Terms and the Contract form the entire agreement between Germains and the Buyer and no other express or implied terms, representations or past custom and practice apply.

15. Jurisdiction

a. These Terms and any dispute or claim arising out of or in connection with it, or its subject matter or formation, whether of a contractual or non-contractual nature, will be construed in accordance with English Law and the English Courts shall have exclusive jurisdiction.

16. Confidentiality

- a. The content of these Terms and a Contract is confidential to the parties involved and shall not be disclosed to a third party without the written consent of the other party.
- b. Each party undertakes to the other that it will keep secret and will not without the prior written consent of the other party disclose to any third party (except to its legal and professional advisors) any confidential information learned by the recipient party or disclosed to the recipient party by such other party pursuant to or otherwise in connection with these Terms or a Contract.
- c. The obligations of confidentiality in this clause 15 shall not extend to any information or matter which either party can show:
 - (i) is in, or has become part of, the public domain other than as a result of a breach of the obligations of confidentiality under these Terms;
 - (ii) was in its written records prior to the commencement of these Terms;
 - (iii) was independently disclosed to it by a third party entitled to disclose the same;
 - (iv) is required to be disclosed under any applicable law or any regulatory authority, or by order of a court or governmental body or other authority of competent jurisdiction; or
 - (v) is required to be disclosed to enable Germains to verify that the information being provided by the Buyer or the Goods that the Buyer is requesting that Germains supplies, do not infringe the intellectual property rights of a third party.

17. Third Parties

- a. Neither this agreement, nor any Contract is intended to create any rights for third parties.

18. UK Bribery Act 2010 & ABF Code of Conduct

- a. The Buyer is and will remain in compliance with the laws of the UK and the host country applicable to the services it will perform under this Agreement and will comply with the ABF Code of Conduct attached in Annex 1 hereto.
- b. The Buyer will not, and nor will any of its officers, employees, shareholders, representatives or agents, directly or indirectly, either in private business dealings or in dealings with the public sector, offer, give or agree to offer or give (either itself or in agreement with others) any payment, gift or other advantage with respect to any matters which are the subject of this Agreement which (i) would violate any anti-corruption laws or regulations applicable to the Buyer (or which would apply if for these purposes the buyer was assumed to be a UK person or incorporated company) or Germains; (ii) is intended to, or does, influence or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or which it would otherwise be improper for the recipient to accept; (iii) is made to or for a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business; or (iv) which a reasonable person would otherwise consider to be unethical, illegal or improper.
- c. Without prejudice to clause 10, in the event Germains reasonably suspects there to have been a breach of this clause, Germains may terminate this Agreement immediately upon written notice to the buyer.

Effective from 1st September 2011.

These terms and conditions cancel and supersede all that have gone before.

ANNEX 1

**Associated British Foods plc
Our Code of Conduct**

Germains is a subsidiary of Associated British Foods plc.

- **The core values by which ABF plc and subsidiaries operates are: -**

Taking care of our people, being good neighbours, fostering ethical business relationships and managing our environment.

As an international business with suppliers and representatives the world over, we accept that we have a duty to trade responsibly.

We therefore want to ensure that those people with whom we deal and in particular our suppliers and our representatives live up to our values and standards and share that responsibility.

Accordingly, suppliers and representatives should comply with and seek to develop relationships with their own supply chains consistent with the principles set out below and should be compliant with all local laws and the following principles as a minimum

- **Employment is freely chosen**

There is no forced, bonded or involuntary prison labour. Workers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice.

- **Freedom of association and the right to collective bargaining are respected**

Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively. The employer adopts an open attitude towards the activities of trade unions and their organisational activities. Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.

Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

- **Working conditions are safe and hygienic**

A safe and hygienic working environment shall be provided, bearing in mind the prevailing knowledge of the industry and of any specific hazards. Adequate steps shall be taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so

far as is reasonably practicable, the causes of hazards inherent in the working environment.

Workers shall receive regular and recorded health and safety training and such training shall be repeated for new or reassigned workers.

Access to clean toilet facilities and to potable water, and, if appropriate, sanitary facilities for food storage shall be provided. Accommodation, where provided, shall be clean, safe, and meet the basic needs of the workers.

The company observing the code shall assign responsibility for health and safety to a senior management representative.

- **Child labour shall not be used**

Companies shall develop or participate in and contribute to policies and programmes which provide for the transition of any child found to be performing child labour to enable her or him to attend and remain in quality education until no longer a child. There shall be no further recruitment of child labour.

Children and young persons under 18 shall not be employed at night or in hazardous conditions. Policies and procedures shall conform to the provisions of the relevant ILO standards.

A Child is defined as any person less than 15 years of age, unless local minimum age law stipulates a higher age for work or mandatory schooling, in which case the higher age would apply. If, however, local minimum age law is set at 14 years of age in accordance with developing country exceptions under ILO Convention 138, the lower age will apply.

A Young Person or Young Worker is defined as any work over the age of a child as defined above and under the age of 18.

- **Living wages are paid**

Wages and benefits paid for a standard working week meet, at a minimum, national legal standards or industry benchmark standards, whichever is higher. In any event wages should always be enough to meet basic needs and to provide some discretionary income.

All workers shall be provided with written and understandable Information about their employment conditions in respect to wages before they enter employment and about the particulars of their wages for the pay period concerned each time that they are paid. Deductions from wages as a disciplinary measure shall not be permitted nor shall any deductions from wages not provided for by national law be permitted without the expressed permission of the worker concerned. All disciplinary measures should be recorded.

- **Working hours are not excessive**

Working hours comply with national laws and benchmark industry standards, whichever affords greater protection.

In any event, workers shall not on a regular basis be required to work in excess of 48 hours per week and shall be provided with at least one day off for every 7 day period on average.

Overtime shall be voluntary, shall not exceed 12 hours per week, shall not be demanded on a regular basis and shall always be compensated at a premium rate.

- **No discrimination is practised**

There is no discrimination in hiring, compensation, access to training, promotion, termination or retirement based on race, caste, national origin, religion, age, disability, gender, marital status, sexual orientation, union membership or political affiliation.

- **Regular employment is provided**

To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.

Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, subcontracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.

- **No harsh or inhumane treatment is allowed**

Physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation shall be prohibited.

- **Confidentiality**

The confidentiality of information exchanged in the course of business must be respected and never be used for illegal purposes or for individual gain. False information must not be given in the course of commercial negotiations.

- **No bribery or corruption will be tolerated**

The offering, paying, soliciting or accepting of bribes or kick-backs, including facilitation payments, is strictly prohibited.

A bribe may involve giving or offering any form of gift, consideration, reward or advantage to someone in business or government in order to obtain or retain a commercial advantage or to induce or reward the recipient for acting improperly or where it would be improper for the recipient to accept the benefit. Bribery can also take place where the offer or giving of a bribe is made by or through a third party, e.g. an agent, representative or intermediary.

Some examples of bribes are as follows. This is not an exhaustive list: lavish gifts, meals, entertainment or travel expenses, particularly where they are disproportionate, frequent or provided in the context of on-going business negotiations; the uncompensated use of company services, facilities or property; cash payments; loans, loan guarantees or other credit; the provision of a benefit, such as an educational scholarship or healthcare, to a member of the family of a potential customer/public or government official; providing a sub-contract to a person connected to someone involved in awarding the main contract; and engaging a local company owned by a member of the family of a potential customer/public or government official.

Facilitation payments are small payments or fees requested by government officials to speed up or facilitate the performance of routine government action (such as the provision of a visa or customs clearance). Such payments are strictly prohibited.

Suppliers, representatives and their employees must comply with all applicable anti-bribery and corruption laws. If no such anti-bribery or corruption laws apply or are of a lesser standard to that prescribed in the UK Bribery Act 2010, suppliers, representatives and their employees must adhere to the UK Bribery Act 2010.

Suppliers and representatives shall have in place anti-corruption and bribery procedures designed to prevent employees or persons associated with its business from committing offences of bribery or corruption. Suppliers and representatives will properly implement these procedures into their business and review them regularly to ensure that they are operating effectively.

- **Environmental Management**

We support and encourage operating practices, farming practices and agricultural production systems that are sustainable. The Supplier and representatives will continually strive towards improving efficiency and sustainability of their operations which will include water conservation programmes

The following aspects of environmental management will be included in the supplier assessment:
There should be a company environment representative.

The company should be aware of and able to demonstrate compliance with all current legislation that may affect their activities.

The company should conduct an environmental review and consider all aspects of their products & services.

Any enforcement, improvement or prohibition notices served on the site within the last 3 years.

- **Quality**

Any goods supplied shall be without fault and of the best available design, quality, material and workmanship, be fit for any purpose held out by the Supplier and representatives or made known to the Supplier and representatives or for which they are commonly used and shall conform in all respects with any order and specification and/or patterns or samples supplied or advised by the Supplier and representatives

Any services, supplied shall be provided by appropriately qualified and trained personnel, with due care and diligence, to such high standard of quality as is reasonable for us to expect in all the circumstances and shall conform in all respects with any order.

- **Audit and Termination of Agreements**

Associated British Foods reserves the rights to verify the Supplier's and representatives compliance with the Code.

Where supplier and representative reviews or audits demonstrate shortcomings in any of these areas, the supplier and representative should strive to implement a time bound programme of improvement (remediation) leading to conformance.

In the event that we become aware of any actions or conditions not in compliance with the Code, we reserve the right to request corrective actions. Associated British Foods reserves the right to terminate an agreement with any supplier and representatives who does not comply to the Code.