

# **ARGENTA SEEDS BV /**

## **General Sales and Delivery Terms and Conditions**

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Filed under number 27330558 by ARGENTA SEEDS B.V., having its registered office at the Zernikestraat 9 in (2665 JJ) Bleiswijk, the Netherlands, (hereinafter referred to as: "ARGENTA SEEDS"), with the Chamber of Commerce in Rotterdam on 15<sup>th</sup> of July 2013.

All previous sales and delivery terms and conditions hereby expire.

### **Article 1 Definitions**

1. For the purpose of these general terms and conditions "ARGENTA SEEDS" is understood as ., having its registered office and its place of business in Bleiswijk.
2. For the purpose of these general terms and conditions "Buyer" is understood as the natural or legal person who concluded an agreement with ARGENTA SEEDS in connection with a (prospective) purchase and/or supply of goods and/or services from and/or by ARGENTA SEEDS or who is carrying on negotiations about the same.

### **Article 2 Applicability of these general terms and conditions**

1. These terms and conditions are applicable to each and every offer and each and every agreement between ARGENTA SEEDS and a buyer (hereinafter referred to as: the "Buyer"), to the extent that the parties do not expressly deviate from one or more of these terms and conditions in writing.
2. The 'International Seed Trade Federation Rules and Usage for the Trade in Seeds for Sowing Purposes' are applicable to all agreements or offers for sale with buyers established outside of the Netherlands. In case of a discrepancy between the latter mentioned terms and conditions and ARGENTA SEEDS' terms and conditions ARGENTA SEEDS' terms and conditions shall prevail.
3. The applicability of general terms and conditions of the Buyer is expressly rejected.
4. Announcement of these terms and conditions can take place in all possible manners including, but not limited to, inclusion (overleaf) on stationery, contracts or on the internet.
5. Stipulations that deviate from or supplement these terms and conditions only have binding effect if they have been stipulated in writing and are only valid on a case by case basis.
6. All rights and claims, as stipulated for the benefit of ARGENTA SEEDS in these terms and conditions and in possible further terms and conditions, are also stipulated for intermediaries and auxiliary people relied on by ARGENTA SEEDS.
7. The possible voidability or invalidity of a part of the agreement and/or these terms and conditions shall not affect the validity of the remaining part of the agreement and/or these terms and conditions. The invalid or void part shall then be replaced by provisions that in a statutorily permitted matter best approach that which the parties would have agreed on if they would have been familiar with the voidability or invalidity.
8. If these terms and conditions have also been drawn up in a language other than Dutch then the Dutch text shall always be decisive in case of discrepancies.
9. If ARGENTA SEEDS, as the occasion arises, does not desire strict compliance with these terms and conditions then this shall not imply that these terms and conditions would not be applicable or that ARGENTA SEEDS would lose the right to desire strict compliance with these terms and conditions in future, whether or not similar, instances.

### **Article 3 Agreements with the Buyer**

1. An agreement is concluded between ARGENTA SEEDS and the Buyer when the Buyer accepts (either orally or in writing) an offer made by ARGENTA SEEDS (either orally or in

- writing).
2. Supplemental arrangements possibly agreed on later or changes of the agreement shall only be binding on ARGENTA SEEDS if it has expressly confirmed the same in writing.
  3. Arrangements agreed on with people without representative authority pursuant to the articles of association or other people of ARGENTA SEEDS shall not be binding on ARGENTA SEEDS to the extent that these arrangements have not been confirmed by the board of directors of ARGENTA SEEDS in writing.
  4. ARGENTA SEEDS shall not be liable for misunderstandings, delays or improper transmission of (order) data and communications as a result of any use of any means of communication between ARGENTA SEEDS and the Buyer or between ARGENTA SEEDS and third parties, to the extent that they are related to the relationship between ARGENTA SEEDS and the Buyer, unless there should be question of intent or gross negligence on the part of ARGENTA SEEDS.
  5. If ARGENTA SEEDS concludes an agreement with two or more natural or legal persons then each of these natural or legal persons shall (jointly and severally) be liable for compliance with the commitments on account of that agreement vis-à-vis ARGENTA SEEDS.

#### **Article 4 Offers and prices**

1. The offers issued by ARGENTA SEEDS are subject to contract. An offer subject to contract can be revoked by ARGENTA SEEDS up to three working days after receipt of the acceptance by the Buyer. The prices specified in an offer are excluding turnover tax, insurance, transport costs and other costs and duties.
2. ARGENTA SEEDS reserves the right to periodically change its prices. Each and every new pricelist renders the previous version invalid.
3. Offers shall in any case expire after five working days have lapsed.
4. The moment of delivery is decisive for the prices to be used, unless the parties deviate from the same in writing in joint consultation.
5. ARGENTA SEEDS cannot be bound by price indications that are evidently incorrect, for instance as a result of typesetting or printer's errors. Rights cannot be derived from incorrect price information.

#### **Article 5 Harvest and processing proviso**

1. Deliveries take place under the harvest and processing proviso that is common in the seeds industry. If ARGENTA SEEDS relies on this proviso then ARGENTA SEEDS shall not be held to deliver and shall, where possible, try to deliver in proportion to the quantities ordered by the Buyer or deliver a comparable alternative to the Buyer.
2. The Buyer is not entitled to compensation if ARGENTA SEEDS relies on this proviso.

#### **Article 6 Order and delivery**

1. If in an order placed by the Buyer the ordered quantity deviates from the standard quantity or a multitude thereof used by ARGENTA SEEDS then ARGENTA SEEDS shall be free to deliver the nearest higher quantity.
2. Upon the implementation of its delivery obligation ARGENTA SEEDS shall always make its best efforts. This shall not affect the right of ARGENTA SEEDS to slightly deviate from the order placed by the Buyer in terms of dimension, packaging, quantity or weight.
3. ARGENTA SEEDS is allowed to deliver the goods sold to the Buyer in instalments. If the goods are delivered in instalments then ARGENTA SEEDS shall be authorised to invoice each instalment separately.
4. All goods purchased from ARGENTA SEEDS shall be at the expense and risk of the Buyer as from the conclusion of the agreement. Goods are transported at the expense of the Buyer, unless stipulated otherwise.
5. The Incoterms applicable at the time of the conclusion of the agreement shall be applicable to the agreement concluded between ARGENTA SEEDS and the Buyer.
6. Delivery takes place ex-warehouse ARGENTA SEEDS (Incoterms 2000: EXW).

7. ARGENTA SEEDS commits to deliver within a reasonable time limit after the order confirmation in accordance with the harvest or plant season.
8. A stipulated delivery time is not a fatal deadline. In case of late delivery the Buyer must therefore give ARGENTA SEEDS written notice of default and yet grant ARGENTA SEEDS a reasonable time limit to deliver the sold goods.
9. The Buyer is held to do all that which is within reason required or appropriate to enable timely delivery by ARGENTA SEEDS. Overstepping of the delivery time shall never commit ARGENTA SEEDS to pay compensation, unless the overstepping can be blamed on gross negligence or intent on the part of ARGENTA SEEDS.
10. ARGENTA SEEDS reserves the right to refuse orders with a value of less than EUR 250.00. In case of acceptance ARGENTA SEEDS shall charge EUR 50.00 on account of administration costs.
11. When placing an order the Buyer must specify what data, specifications and documents are required as a result of regulations in the country of delivery, for instance with regard to:
  - \* invoicing;
  - \* phytosanitary matters;
  - \* international certificates; and
  - \* import documents or import provisions.ARGENTA SEEDS cannot be held liable for delay or non-implementation of the placed order if the Buyer does not comply with the foregoing.

#### **Article 7 Reservation of title**

1. The goods delivered to the Buyer by ARGENTA SEEDS remain the full and indivisible property of ARGENTA SEEDS until the Buyer has paid the purchase price in full. The Buyer is not entitled to rely on any form of compensation. Said reservation of title is also applicable to goods that were delivered to the Buyer by ARGENTA SEEDS in pursuance of different agreements.
2. Goods delivered to the Buyer by ARGENTA SEEDS, which in pursuance of paragraph 1 fall under the reservation of title, can only be used by the Buyer in the course of its normal business operations. In case of resale the Buyer is held to stipulate an identical reservation of title for the benefit of ARGENTA SEEDS with its buyers.
3. The Buyer is not allowed to pledge the goods delivered by ARGENTA SEEDS or to establish any other security right on the same as long as the reservation of title of ARGENTA SEEDS is in place.

#### **Article 8 Payment and collection**

1. Payments shall be made in EUR, unless stipulated otherwise.
2. Payment must have been received by ARGENTA SEEDS within thirty days after the date of the invoice. After expiry of this time limit the Buyer shall automatically be in default, without a further notice of default being required, and shall as from that moment be liable to pay an interest of 1% per month over the payable amount to ARGENTA SEEDS. If payment takes place after a payment reminder by ARGENTA SEEDS then the Buyer shall be liable to pay an amount of fifty Euros (EUR 50.00) on account of administration costs. If ARGENTA SEEDS outsources its claim for collection then the Buyer shall furthermore be liable for the collection costs, which shall amount to at least fifteen per cent (15%) of the outstanding amount, without prejudice to the authority of ARGENTA SEEDS to in lieu thereof claim the actually incurred extra judicially collection costs.
3. In case of liquidation, insolvency or suspension of payment of the Buyer the payment obligations of the Buyer shall immediately fall due and ARGENTA SEEDS shall be authorised to suspend the further implementation of the agreement or to proceed with dissolution of the agreement, all without prejudice to the right of ARGENTA SEEDS to claim compensation from the Buyer.
4. If payment in instalments has been stipulated then in case of late payment of one instalment the full amount or the remaining amount immediately falls due without any notice of default being required. The provisions set forth in the last sentence of article 6

paragraph 1 are equally applicable.

## **Article 9 Warranty and liability**

1. ARGENTA SEEDS shall to the best of its ability make every effort to ensure that the delivered goods comply with the specifications pertaining to the goods. Should the delivered goods not comply with the same then the Buyer shall forthwith be informed accordingly by ARGENTA SEEDS. The product specifications do, however, not provide any warranty.
2. If ARGENTA SEEDS provides data to the Buyer with regard to variety features, seed processing acts, germination, health (among other things seed transferable diseases), purity of variety and trueness of variety of the delivered goods then these data are based on tests conducted by ARGENTA SEEDS or by its suppliers or on results obtained from tests conducted by laboratories recognised for that purpose.
3. The information supplied or the quality indicated by ARGENTA SEEDS merely refers to the result at the time of the performance of the test for the seed sample used in the test and for the circumstances under which the test was conducted. The result at the Buyer shall depend on, among other things, the cultivation location, the conditions before and during the cultivation (among other things seed storage, climate, soil, feed) as well as the cultivation measures used by the Buyer (among other things the use of plant protection products). A direct relationship between the information supplied to the Buyer by ARGENTA SEEDS and the ultimate cultivation result at the Buyer cannot be assumed; ARGENTA SEEDS does not warrant that the delivered performances comply with the objective of the Buyer expected of the same.
4. In case of shortcomings, occurring within a legal relationship to which these general terms and conditions are applicable (including possible unlawful acts), ARGENTA SEEDS shall, barring intent or gross negligence, not be liable for trading loss, property damage, personal injury or any other damage whatsoever that, either directly or indirectly, occurs on the part of the Buyer.
5. Without prejudice to the provisions set forth in the previous paragraph, the liability of ARGENTA SEEDS shall be limited to the damage that was, as possible result of the damage-causing event, foreseeable up to a maximum amount of the net invoiced value associated with the performance / delivery.
6. ARGENTA SEEDS shall never be liable for damages resulting from an exchange of variety and/or disease (viral disease or bacterial contamination) in the products delivered by the same and/or too low germination rates, barring if this can be blamed on intent or intentional recklessness on the part of ARGENTA SEEDS.
7. Without prejudice to the aforementioned provisions ARGENTA SEEDS shall not be liable for goods and/or services that it purchased from third parties beyond the liability of these third parties vis-à-vis ARGENTA SEEDS and for which these third parties offer opportunity for recovery.
8. The Buyer is held to limit possible damages, with regard to the goods in respect of which the Buyer submits a complaint to ARGENTA SEEDS, as much as possible.
9. ARGENTA SEEDS shall by no means be liable for any form of consequential damages.
10. ARGENTA SEEDS shall not be liable for damages, unless a claim has been submitted in accordance with the procedure outlined in article 10. The claim must be documented such that it can be verified by ARGENTA SEEDS or by a third party.
11. ARGENTA SEEDS shall not be liable if the Buyer did not report the visible damages to ARGENTA SEEDS in writing within at the latest 5 days after the (actual) delivery.
12. ARGENTA SEEDS shall not be liable if the Buyer did not report the invisible damages to ARGENTA SEEDS in writing within at the latest 5 days after discovery.
13. ARGENTA SEEDS shall not be liable if the Buyer processes, repackages or incorrectly uses the goods or has the same be processed, repackaged or used incorrectly.
14. ARGENTA SEEDS stipulates all statutory and contractual legal remedies that are available to contest its liability vis-à-vis the Buyer, also on behalf of its subordinates and non-subordinates for whose acts it would be liable pursuant to the law.

## Article 10 Defects; time limits for lodging a complaint

1. The Buyer must inspect the goods upon delivery – or as soon as possible thereafter. In this respect the Buyer must verify as to whether:
  - the correct goods were delivered;
  - the delivered goods correspond with the placed order in terms of quantity;
  - the delivered goods comply with the stipulated quality requirements or – if these are absent – the requirements that can be imposed on normal use.
2. The Buyer must report visible shortcomings or defects in writing to ARGENTA SEEDS within five working days after delivery stating shipment details, delivery note and invoice data.
3. The Buyer must report invisible defects in writing to ARGENTA SEEDS within five working days after discovery stating shipment details, delivery note and invoice data.
4. The Buyer must describe complaints such that ARGENTA SEEDS or a third-party expert can verify this. To this end the Buyer must keep a registration with regard to the use of the goods and, in case of resale of the goods, of its buyers. If the Buyer does not report within the aforementioned time limit then its complaint shall not be processed and its rights shall expire.
5. In case of a permanent dispute between the parties about the germination power, health (among other things seed transferable diseases), purity of variety, trueness of variety and technical purity a (re-)inspection can take place at the request of either party by Naktuinbouw, established in Roelofarendsveen, the Netherlands, and such at the expense of the party put in the wrong. The (re-)inspection test is carried out on the basis of a recognised sample. The outcome of this (re-)inspection shall have binding effect on the parties, without prejudice to the right of the parties to bring disputes about the consequences of this outcome to the cognisance of the entities specified in article 15.
6. The Buyer shall by no means be authorised to return the goods delivered by ARGENTA SEEDS other than after written consent of ARGENTA SEEDS. If any complaint is considered to be justified by ARGENTA SEEDS then ARGENTA SEEDS shall, at its sole discretion, replace the products or credit the Buyer for the relevant part of the delivery. ARGENTA SEEDS shall not be liable to pay compensation.

## Article 11 Supply of information

1. Information supplied by ARGENTA SEEDS in any form whatsoever is free of obligation. Descriptions, recommendations and illustrations in brochures and folders are geared as accurately as possible to experiences in tests and practice. This information is supplied to support professional horticulturists and users in the course of which the varying local conditions must be taken into account. ARGENTA SEEDS does not accept any liability whatsoever on the basis of this kind of information for deviating results in the cultivated product. The Buyer must personally assess as to whether the goods are suitable for being used for the proposed cultivation and under local circumstances.
2. For the purpose of the information supplied by ARGENTA SEEDS the following terms are used:
  - 'immune'*: the variety is not susceptible to a specific disease (not susceptible is an absolute term);
  - 'resistant'*: the ability of a variety to prevent or impede the development of a specific disease or pathogen during a part of or during the full growth cycle of the plant;
  - 'tolerant'*: the ability of a variety to tolerate a specific disease or pathogen with minor adverse effects on the growth, development and production of the plant;
  - 'susceptible'*: the inability of a variety to impede the growth or development of a specific disease, pathogen or detrimental environmental factor (susceptible is the counterpart of resistant).

## **Article 12 Force majeure**

1. Force majeure is understood as circumstances that hinder compliance with the agreement that cannot be blamed on ARGENTA SEEDS. This also includes, if and to the extent that these circumstances render compliance impossible or unreasonably impede the same: industrial action at companies other than that of ARGENTA SEEDS, wildcat strikes or political strikes at the company of ARGENTA SEEDS, a general lack of required raw materials and other goods or services required for the realisation of the stipulated performance, unforeseen stagnation at suppliers or other third parties on whom ARGENTA SEEDS depends and general transport issues.
2. ARGENTA SEEDS can in any case rely on force majeure in case of exchange of variety and viruses and bacterial diseases in seeds delivered by ARGENTA SEEDS, barring if there is question of demonstrable intent or intentional recklessness.
3. ARGENTA SEEDS shall forthwith inform the Buyer if it cannot or not timely deliver due to force majeure.
4. If the force majeure continues for more than two months then either party shall be authorised to dissolve the agreement. ARGENTA SEEDS shall in case of force majeure never be liable to pay any compensation.
5. Without prejudice to the other rights allocated to the same, in case of force majeure ARGENTA SEEDS shall have the right, at its sole discretion, to suspend the implementation of the order of the Buyer or to dissolve the agreement without judicial intervention, such by informing the Buyer in writing accordingly and such without ARGENTA SEEDS being liable to pay any compensation, unless this would on the basis of the principles of reasonableness and fairness be unacceptable in the given circumstances.

## **Article 13 Use of brands and signs**

1. The Buyer is not allowed to use brands and signs that are used by ARGENTA SEEDS in order to distinguish its goods from those of other sellers or to use brands and signs that cannot clearly be distinguished from those of ARGENTA SEEDS. Barring the marketing of goods in the original packaging of ARGENTA SEEDS.

## **Article 14 Suspension**

1. If the Buyer fails to correctly or timely comply with one or more of its obligations:
  - then the obligations of ARGENTA SEEDS are automatically suspended with immediate effect until the Buyer has paid all that which the Buyer is liable to pay in full (including payment of possible extrajudicial costs);
  - then ARGENTA SEEDS can desire payment in full or sufficient security from the Buyer, e.g. in the form of a bank guarantee or a letter of credit.
2. ARGENTA SEEDS shall at all times be authorised to desire payment in full or sufficient security from the Buyer if it becomes plausible that the Buyer shall not correctly or not timely comply with its obligations.

## **Article 15 Disputes settlement**

1. In case of a dispute the parties shall initially try to reach a solution in joint consultation or by means of mediation before the parties bring such dispute to the cognisance of the civil court.
2. Each and every dispute shall be settled by the competent court in the district of Rotterdam.
3. ARGENTA SEEDS shall, however, at all times be authorised to summon the Buyer before

the competent court in the district of establishment of the Buyer.

4. ARGENTA SEEDS shall, if the parties have agreed on arbitration, at all times be authorised to summon the Buyer before the competent court for payment of outstanding invoices.

#### **Article 16 Applicable law**

1. Dutch law is applicable to each and every agreement between ARGENTA SEEDS and the Buyer with the exclusion of the 'United Nations Convention on the International Sales of Goods' (the Vienna Sales Convention).