

IRISH POTATO FEDERATION
CONDITIONS OF SALE FOR SEED
POTATOES

1. PARTIES

In these conditions of Sale the person, firm or Company selling is referred to as "the Seller" and the person, firm or Company placing the order is referred to as "the Buyer".

2. BASIS & APPLICATION

- (1) All prices quoted by the Seller are based upon these Conditions of Sale and reflect the limitations upon the Seller's liability which they contain. Should any Buyer wish to contract with the Seller otherwise than on the terms of such Conditions of Sale special arrangements can be made prior to sale.
- (2) In the absence of any such special arrangements (which shall not bind the Seller unless made in writing and signed on the Seller's behalf by a person duly authorised for that purpose) all quotations given and all contracts made by the Seller and any additions or amendments thereto shall be subject to these Conditions of Sale which supersede and shall be taken to override any terms or conditions proposed or stipulated by the Buyer.
- (3) Quotations are given subject to the goods being unsold on receipt of order.

3. CONSUMERS & NEGLIGENCE

- (1) Nothing in these Conditions shall affect any liability (to a consumer) which the Seller may incur for death or personal injury resulting from negligence. A commercial grower of seed potatoes shall not be regarded as a consumer.

4. BASIC & CERTIFIED SEED POTATOES

- (1) In the conditions of Sale "certified seed potatoes" shall mean seed potatoes from stocks for which a Certificate or Report has been issued on the growing crop, by the Department or Ministry of Agriculture or other official control or certification services of the country of origin, and shall include basic seed potatoes. In these terms and conditions, the words "Certificate" and "Report" shall be construed accordingly. In the case of sales of certified seed potatoes the Seller expressly warrants that a Certificate or Report has been issued as stated. If seed potatoes are delivered from stocks for which a Certificate or Report has been issued by the Department or Ministry of Agriculture or other official control or certification services of the country of origin such Certificate or Report shall be conclusive evidence as to the purity and health of the seed.

5. TITLE

The implied undertakings as to title, etc., set out in Section 10 of the Sale of Goods and Supply of Services Act 1980 in substitution for Section 12 of the Sale of Goods Act 1893, shall be express terms of this Contract.

6. PROTECTION

Notwithstanding the revisions of Condition 9 in relation to the passing of risk and property the Seller shall make reasonable arrangements for protecting the seed

potatoes from damage by frost at the loading point and during transport.

7. TOLERANCES FOR DEFECTS, DISEASE & SIZE

Without prejudice, to any other condition;

- (1) the tolerances in respect of disease, damage and defects specified in Parts, I, II, III of the Schedule to the European Communities (Seed Potatoes) (Amendment) Regulations 1999 (S.I. 381/1999) shall be allowed.
- (2) the tolerances in respect of the size of seed potatoes, specified in Part V1 of the Schedule to the European Communities (Seed Potatoes) (Amendment) Regulations 1994, i.e., Statutory Instrument 381 of 1999, shall be allowed.

8. DELIVERY

- (1) Delivery is complete as soon as the Seller complies with the terms of delivery stated. The Seller shall have the right to make delivery by instalments and in the event of his doing so each instalment shall stand as a separate contract and failure to make any instalment delivery shall not entitle the Buyer to repudiate the Contract.
- (2) In the event of seed potatoes being sold for delivery within a specified period, the Buyer must give the Seller loading instructions not less than three weeks before the end of the specified period, time being of the essence.
- (3) Without prejudice to Condition 16 below, for a reasonable period, loading and delivery may be postponed by the Seller and loading by the Buyer, owing to adverse weather conditions.
- (4) Any time or date for the despatch or delivery of the seed potatoes given or made by the Seller shall be taken as an estimate made by the Seller in good faith but it shall not be binding upon the Seller either as a term of the Contract or otherwise howsoever.
- (5) The Seller shall not be liable for any loss or damage, howsoever sustained, to a consignment or part of a consignment or from a package or container, or for any shortfall in the number of containers supplied, if such loss or damage is caused in transit, unless, time being of the essence:
 - (a) the Seller is notified of the Buyer's claim within three days of arrival of the seed potatoes at the destination agreed upon by the Seller and Buyer, otherwise than upon a consignment note or delivery note at the time of delivery;
 - (b) in regard to short weight, unless the Seller is notified of the Buyer's claim within fourteen days of arrival of the seed potatoes at the agreed destination, and the seed is still in the sealed containers.

PROVIDED THAT in the case of either (a) or (b) above if the Buyer proves that it was not reasonably possible for him to give such notice to the Seller within the said period and such notice was given within a reasonable period, the Seller shall not be entitled to rely upon the said time limit.

- (6) For the purpose of these conditions destination shall be the Buyer's premises or such other premises to which he may first direct delivery, and a working day excludes Saturdays, Sundays, Statutory and Bank Holidays. For the purposes of any time limit in these conditions, if the last day falls on a day other than a working day, the limit shall be extended until the first working day following.

9. PASSING OF RISK & PROPERTY

- (1) The risk of any loss or damage to, or deterioration of, the seed potatoes from whatever cause arising, other than by the negligence of the Seller or his servant, shall pass to the Buyer when the seed potatoes are:
 - (a) first delivered to their destination; or
 - (b) are collected by the Buyer's transport or transport arranged by the Buyer or by the Seller as the Buyer's agent; or
 - (c) upon the date when the Buyer has failed or refused to take delivery (or collect) if such be the case, and in any event whichever is earlier.
- (2) Property in the seed potatoes shall remain with the Seller until payment in full of the purchase price of the seed potatoes whereupon it shall pass to the Buyer. (The Buyer hereby irrevocably grants to the Seller a licence (exercisable in the event of any breach by the Buyer of his obligations under any contract to which these Conditions of Sale apply or on the Buyer becoming bankrupt, going into liquidation or having a receiver appointed over any of his assets) to enter upon any premises on where there are situate seed potatoes the property to which has remained with the Seller and to remove the same).

10. GERMINATION & CROP RESULT

WHEREAS IT IS IMPOSSIBLE TO ASCERTAIN THE GERMINATION AND CROP RESULT OF SEED POTATOES BEFORE SALE, THE SELLER SHALL NOT BE RESPONSIBLE FOR ANY FAILURE OF THE SEED POTATOES (WHETHER TOTAL OR PARTIAL) TO GERMINATE AND/OR TO CROP.

11. LIABILITY FOR PATENT DEFECTS - CLEARING OF GOODS

- (1) This condition is without prejudice to Conditions 7 and 10 and applies to any diseases, pest, damage or defect whatsoever that is discoverable by reasonable inspection at the time of the arrival of the seed potatoes at their destination or shortly thereafter ("Patent Defects"). THE SELLER SHALL BE DISCHARGED FROM ALL LIABILITY AND THE BUYER SHALL HAVE NO CLAIM IN RESPECT OF PATENT DEFECTS UNLESS, TIME BEING OF THE ESSENCE FOR THE PURPOSE OF THIS CONDITION, NOTIFICATION OF REJECTION, CLAIM OR COMPLAINT IS MADE TO THE SELLER GIVING A STATEMENT OF THE GROUNDS FOR SUCH REJECTION, CLAIM OR COMPLAINT IMMEDIATELY UPON DISCOVERY AND IN ANY EVENT WITHIN FOURTEEN DAYS AFTER THE ARRIVAL OF THE SEED POTATOES AT THEIR DESTINATION AND THE SELLER IS GIVEN AN OPPORTUNITY TO INSPECT THE SEED POTATOES.

PROVIDED THAT:

if the buyer proves that it was not reasonably possible for him to give such notice to the Seller within the appropriate period and notice was given within a reasonable period, the Seller shall not be entitled to rely upon the time limits stipulated in this Condition. WITHOUT PREJUDICE TO THE FOREGOING IT SHALL NOT BE COMPETENT TO THE BUYER TO REJECT, CLAIM OR COMPLAIN FOR ANY REASON UNLESS THE SEED POTATOES SHALL HAVE BEEN PROPERLY STORED DURING THE PERIOD AFTER THEIR ARRIVAL AT THEIR DESTINATION AND THE IDENTITY OF THE SEED CANNOT BE CONTESTED (E.G. THE SEALS ARE STILL INTACT).

- (2) Unless otherwise agreed, the Seller shall replace any seed potatoes properly

rejected by the Buyer in accordance with these Conditions of Sale and in particular Conditions 7 and 11 (1) above.

- (3) Without prejudice to the rights of either the Seller or the Buyer under this condition, any Buyer who wishes to reject seed potatoes shall, if requested to do so by the Seller, unload the goods and store them properly either overnight or for such longer periods as may reasonably be requested by the Seller pending resolution of the parties rights pursuant to these Conditions.

12. LATENT DEFECTS

This Condition applies to any disease, pest, damage or defect whatsoever which is not discoverable by reasonable inspection at time of the arrival of the seed potatoes at their destination, or within the fourteen day period referred to in Condition 11.

WHEREAS

- (a) The Seller by Condition 4 expressly warrants that a certificate or Report has been issued as stated and;
 - (b) The Seller has relied on such Certificate or Report in entering into this Contract and;
 - (c) This Contract is based on such Certificate or Report and the relevant control or certification system.
- (2) The Seller's prices are based upon and reflect Inter Alia the limitation of liability contained in this Condition.

IT IS SPECIALLY PROVIDED AND AGREED THAT IN NO CASE WHATSOEVER SHALL THE SELLER BE LIABLE FOR LATENT DEFECTS.

13. EXCLUSION OF LIABILITY

Save as aforesaid all express or implied conditions and warranties statutory or otherwise are hereby expressly excluded.

14. COMPENSATION & DAMAGES

- (1) It is specially provided and agreed that compensation and damages payable under any claim or claims arising out of this Contract under whatsoever pretext shall not in any circumstances amount in aggregate to more than this Contract price of the seed potatoes forming the subject of the claim or claims.
- (2) Without prejudice to Condition 14(1) above the Seller shall not be liable in any manner whatsoever for any consequential loss, or expense (including loss of profit), damage or injury howsoever caused which may arise out of or in conjunction with the sale of seed potatoes under this Contract.

15. PAYMENT

The Seller reserves the right to require payment at any time before or after delivery, and to raise interest on overdue accounts.

16. FORCE MAJEURE

The Seller and the Buyer shall be relieved of all or any of his obligations under this Contract to the extent that performance of such obligations is prevented, frustrated, impeded or delayed in consequence of any statute, regulation rule, order of instruction of any Government, or other authority or any strike, lockout

or trade dispute (whether involving the Seller's employees or other parties) or civil commotion or any other cause, whether or not of a like or similar nature beyond the Seller's and Buyer's control.

17. INSOLVENCY OF THE BUYER

- (1) This condition applies if;
 - (a) the Buyer makes any voluntary arrangement with its creditors or being an individual or firm becomes bankrupt or being a company becomes subject to an examinership or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or;
 - (b) an encumbrancer takes possession, or a receiver is appointed of any property or assets of the Buyer or;
 - (c) the Buyer ceases or threatens to cease to carry on business or;
 - (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- (2) If this Condition 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 liability to the Buyer and if the Seed Potatoes have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

18. CONSTRUCTION

- (1) These Conditions and this contract shall be subject to and construed in accordance with Irish Law.
- (2) Invalidity of any of the terms of this contract shall not affect the validity of the remainder. Invalid terms shall be amended or replaced (by express agreement or by implication of law) to maintain the purpose and continuity of the contract.

19. ARBITRATION

- (1) Disputes - All disputes or differences whatsoever, which shall at any time hereinafter arise between parties hereto, touching or concerning this contract or its construction or effect or as to the rights, duties or liabilities of the parties hereto or any of them under or by virtue of this contract, or as to any other matter in any way connected with or arising out of in relation to the subject matter (including any disputes or questions regarding its existence, validity or termination) of this contract shall be referred to a single arbitrator, to be agreed by the parties hereto. For the foregoing purposes, this clause 18 shall constitute a collateral contract between the parties and an arbitration agreement within the meaning of the Arbitration Acts 1954 and 1980 and any statutory modification or re-enactment thereof for the time being in force.
- (2) In the event that the parties can not agree on a single arbitrator then one shall be nominated jointly by the President or in the event of a vacancy of that office the Secretary for the time being of the Irish Potato Federation and the Chairman or in the event of a vacancy of that office, the Secretary for the time being of the Irish Farmers Association Potato Committee.
- (3) In the event that Agreement cannot be reached either by the parties hereto or under clause 18(2) on a single arbitrator, then the arbitrator shall be nominated by the President for the time being of the Dublin Chamber of Commerce, in

accordance with and subject to the provisions of the Arbitration Act 1954 and 1980 and any statutory modification or re-enactment thereof for the time being in force and the award of such arbitrator shall be final and binding on the parties.

I hereby acknowledge that I have read and accept the Irish Potato Federation Conditions of Sale for Seed Potatoes, as outlined.

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Signed _____

Date: _____