

## CONDITIONS OF SALE

Applicable to orders placed or accepted on or after 06.03.2023

The Buyer's attention is particularly drawn to **Conditions 3.10, 3.12, 3.13, 6 and 11** which exclude or limit the Company's liability.

### 1 Interpretation

<b>"10MS Bag"</b>	means a bag containing approximately ten million seed.		
<b>"Additional Conditions"</b>	means the additional Conditions applicable to Hybrid Barley Seed which are set out in the relevant Annex according to Condition 9.		
<b>"Affiliates"</b>	means any company which is controlled by Syngenta AG or one of its subsidiaries. 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.		
<b>"Annex"</b>	means an annex to the Conditions.		
<b>"As Grown"</b>	means seed in raw form (uncleaned and untreated).		
<b>"Buyer"</b>	means the person(s) or company whose order for the Goods is accepted by the Company in accordance with Condition 2.4.		
<b>"Cereal Seed"</b>	means Conventional cereal seed and Hybrid Barley Seed.		
<b>"Company"</b>	means Syngenta UK Limited, registered company number 00849037, whose registered office is at CPC4, Capital Park, Fulbourn, Cambridge, CB21 5XE United Kingdom.		
<b>"Conditions"</b>	means these conditions of sale including the Annexes.		
<b>"Contract"</b>	means the contract between the Company and the Buyer for the sale and purchase of the Goods.		
<b>"Conventional"</b>	means seed which has been bred by traditional methods.		
<b>"Events of Insolvency"</b>	has the meaning defined in Condition 12.1(xi).		
<b>"F1 Seed"</b>	means the first generation (F1) hybrid seed crop.		
<b>"Goods"</b>	means any Products, Seed Products or other products which the Company is to supply, or has supplied, to the Buyer.		
<b>"Hybrid Barley Seed"</b>	means seed of barley varieties which have been produced by cross breeding.		
<b>"Minimum Order Value" and "Surcharge"</b>	means the following minimum order values and delivery surcharges ( <b>excluding VAT</b> ) for orders of the following Goods:		
	<b><u>Cereals Seed treatments:</u></b>	Minimum order <b>£2,000.00 per order</b>	
	<b><u>Flowers:</u></b>	A minimum cumulative order value of <b>£5,000.00</b> (excluding Surcharges) <b>per calendar year</b> with the following minimum values/quantities applying to any part of an individual order:	
		<b>Young Plants:</b> Xtray / non Xtray minimum order <b>10 trays</b>	Delivery Surcharge (per address): <b>Delivery before 1 July 2023 - Surcharge is per Company's price list issued January 2023;</b> <b>Delivery from 1 July 2023 – Surcharge will be communicated to Buyer before delivery.</b>
		<b>Quickstep YPL:</b> minimum delivery order <b>6 trays</b> <b>QST:</b> orders in <b>multiples of 3 trays</b> only <b>QSL:</b> orders in <b>multiples of 2 trays</b> only	Delivery Surcharge: <b>£0.03 per Quickstep plant</b>
		<b>Unrooted Cuttings:</b> minimum order <b>10,000 cuttings per species group</b> (Solanacea, Pelargonium, other)	Delivery Surcharge: <b>£0.01 per unrooted cutting</b>
		<b>Flower Seed:</b> minimum order value <b>£250.00</b>	Delivery Surcharge: <b>£65 per delivery</b>
	<b><u>Vegetables:</u></b>	Small seeded vegetables: minimum order <b>£1,000.00</b> Large seeded vegetables: minimum order <b>£3,000.00</b>	
	<b><u>Cereals Seed:</u></b>	<b>Retail cereal seed (Conventional):</b> (pre-basic, basic, C1 or C2): minimum order <b>one half tonne.</b> <b>As Grown cereal seed (Conventional and Hybrid Barley):</b> minimum order <b>one truck load</b> (approx. 29 tonnes)	Delivery Surcharge per bag of Cereal Seed: as set out in the Company's delivery rate card and confirmed by the Company at the point of ordering.

		<b>Retail Hybrid Barley Seed:</b> minimum order <b>one 10MS Bag.</b> <b>Re Cleaned and Own Production Hybrid Barley Seed:</b> see Condition 9	
	<b>All other orders:</b>	minimum order <b>£3,000.00</b>	
<b>“Out-Turn”</b>	means to carry out activities with respect to Hybrid Barley Seed as specified in the relevant Additional Conditions and <b>“Out-Turned”</b> and <b>“Out-Turning”</b> shall be interpreted accordingly.		
<b>“Own Production”</b>	means Tech-Mix Seed suitable for cultivation by the Buyer in accordance with Condition 9.		
<b>“Paragraph”</b>	means a paragraph in an Annex.		
<b>“Party”</b>	means a party to the Contract, being the Company or the Buyer.		
<b>“Price List”</b>	means the Company’s price list or email which sets out the price of Goods.		
<b>“Products”</b>	means formulated materials sold, without limitation, for plant protection, biocontrol, seed treatment or biostimulant purposes or fertilisation purposes.		
<b>“Re Cleaned”</b>	means seed in cleaned, untreated form.		
<b>“Retail”</b>	means seed in cleaned, processed, treated (if required by Buyer), bagged and certified form suitable for sale and cultivation.		
<b>“Seed Products”</b>	means seed including, without limitation, Cereal Seed, vegetable seed, flower seed, cuttings and young plants.		
<b>“Specification”</b>	means, with respect to Goods, the labels thereon, the Company’s specifications (if any) for the Goods and any certifications (if applicable) for the Goods.		
<b>“Tech Mix Seed”</b>	means a blend of hybridised male and female seed suitable to produce F1 Seed.		
<b>“Working Day”</b>	means 9am-5pm Monday to Friday, excluding public holidays in the UK.		

- 1.1 Any reference to a statute or statutory provision shall be construed as a reference to the same as amended, consolidated, modified, extended, re-enacted or replaced from time to time.
- 1.2 Any words following the terms including, include, in particular, without limitation, for example or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and the plural shall include the singular.

## 2 **Orders**

- 2.1 No terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or similar document will form part of the Contract, whether as a result of such document being referred to by the Buyer or the Company or otherwise.
- 2.2 The Company will not accept orders which are less than the applicable Minimum Order Value for the Goods (but may waive this requirement, in its sole discretion, subject to the payment of an administrative fee). Orders may be subject to a delivery Surcharge which is payable in addition to the price for the Goods. Except as set out in Condition 2.3 or 5.3, no order which the Company has accepted may be cancelled by the Buyer except with the prior, written agreement of the Company.
- 2.3 **Flowers** orders may only be cancelled by the Buyer prior to shipment and in accordance with the following provisions. To be effective, any cancellation of a Flowers order (or part order) must be received by the Company via letter or email. A cancellation fee of fifty-per cent (50%) of the price of the Goods will apply in the following circumstances: (i) for orders of young plants, if the cancellation notice is received after commencement of production; (ii) for orders of flower seed, if the cancellation notice is received after transport has been booked for the shipment; or (iii) for orders of unrooted cuttings, if the cancellation notice is received after commencement of harvesting. Late cancellation will result in a cancellation fee of 100% of the price of the Goods.
- 2.4 No order for Goods placed by the Buyer shall be deemed to be accepted by the Company until the earlier of:
  - (i) a written confirmation of order acceptance is issued by the Company;
  - (ii) a delivery confirmation is issued by the Company; or
  - (iii) delivery of the Goods (taking place in accordance with Condition 3.2).

## 3 **Delivery, Warranty and Buyer’s Obligations**

- 3.1 Unless otherwise specified in the Company’s order acceptance (communicated in accordance with Condition 2.4), Goods shall either be:
  - (i) delivered by the Company to the Buyer’s nominated delivery point specified in the Buyer’s purchase order (**“Buyer’s Delivery Location”**); or
  - (ii) collected by the Buyer from the location specified by the Company prior to order acceptance (**“Collection Location”**).
- 3.2 Unless otherwise specified in the Company’s order acceptance (communicated in accordance with Condition 2.4), the Incoterm set out in the table below shall apply to delivery of the Goods.

Type of Goods	Delivery / Collection	Applicable Incoterm
<ul style="list-style-type: none"> <li>• Products</li> <li>• Vegetable Seed</li> <li>• Retail Cereal Seed (Hybrid or Conventional)</li> <li>• Own Production Hybrid Barley Seed</li> <li>• Re Cleaned Conventional Cereal Seed</li> <li>• Re Cleaned Hybrid Barley Seed* (<i>excluding sales to the Company’s contract tollers</i>)</li> <li>• Nozzles and other Goods</li> </ul>	Delivery by Company	DAP Buyer’s Delivery Location Incoterms 2020
<ul style="list-style-type: none"> <li>• Flowers Products (young plants, cuttings, flowers seeds)</li> </ul>	Delivery by Company	DDP Buyer’s Delivery Location Incoterms 2020

<ul style="list-style-type: none"> <li>• Products</li> <li>• As Grown Cereal Seed (Hybrid or Conventional)</li> <li>• Retail Cereal Seed (Hybrid or Conventional) Nozzles and other Goods</li> </ul>	Collection by Buyer	FCA Collection Location Incoterms 2020
<ul style="list-style-type: none"> <li>• Re Cleaned Hybrid Barley Seed* (<i>sold to the Company's contract tollers only</i>)</li> </ul>	Collection by Buyer	EXW Buyer's seed treatment facility Incoterms 2020

- 3.3 Where delivery is DAP Buyer's Delivery Location Incoterms 2020, the Buyer shall (at its expense) provide adequate and appropriate equipment and manual labour with appropriate health and safety training to unload the Goods.
- 3.4 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.
- 3.5 The quantity of any consignment of Goods as recorded by the Company or its contractor prior to delivery taking place (in accordance with Condition 3.2) shall be conclusive evidence of the quantity received by the Buyer unless the Buyer can provide conclusive evidence proving the contrary.
- 3.6 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's or its contractor's negligence) unless written notice is given to the carrier and the Company within 14 days of the date when the Goods would in the ordinary course of events have been delivered.
- 3.7 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 or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 3.8 A signature of qualified acceptance on a carrier's delivery note shall not be written notice to either the carrier or the Company for the purpose of these Conditions.
- 3.9 The Company warrants that, when delivered, the Goods will comply with the Specification.
- 3.10 **The Company shall not be liable for a breach of the warranty in Condition 3.9 unless:**
- (i) **In the case of visible defects: the Buyer gives written notice of the damage or defect to the Company within 5 days of the date of delivery (taking place in accordance with Condition 3.2) (or, in the case of young plants, within 48 hours of the date of delivery) and (ii) 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 days of the date of delivery (48 hours in the case of young plants), the Buyer shall be deemed to have accepted the Goods; or**
- (ii) **In the case of non-visible defects (for example, moisture content, specific purity, germination rate, trueness to type): the Buyer gives written notice of the damage or defect to the Company within 5 days of the date of discovery of such damage or defect, but in any event no more than one year from the date of delivery.**
- 3.11 If the Goods are in breach of the warranty in Condition 3.9, 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.
- 3.12 **The Company shall not be liable for a breach of the warranty in Condition 3.9 if:**
- (i) **the Goods have not been used in the ordinary course of business and/or in accordance with these Conditions (including the Specification);**
- (ii) **the Goods have been modified or repackaged;**
- (iii) **the Goods have not been stored, kept, handled, transported, used and/or cultivated (if applicable) so as to ensure they remain in a good state of conservation and in compliance with the Specification; and/or**
- (iv) **if the defects did not exist at the time of delivery (taking place in accordance with Condition 3.2).**
- 3.13 **Subject to Condition 6.3, if the Company complies with Condition 3.11, it shall have no further liability for a breach of the warranty in Condition 3.9.**
- 3.14 Subject to Condition 6.3, if at any time total demand for Goods shall for any reason exceed the Company's total available supply through its normal sourcing arrangements (including due to issues related to out-turn or because total demand exceeds supply through the Company's normal sourcing arrangements for any reason) 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.
- 3.15 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. 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.
- 3.16 The Buyer shall (and shall procure that each of its subsequent customers of the Goods shall):
- (i) maintain the Goods safely and in satisfactory condition at all times when in its possession, including ensuring the Goods are stored, kept, handled, transported, used and/or cultivated (if applicable) so as to ensure they remain in a good state of conservation and in compliance with the Specification;
- (ii) only use the Goods in the ordinary course of business;
- (iii) not modify or repackage the Goods.
- 4 Property and Risk**
- 4.1 Risk of damage to, and loss of, the Goods shall pass to the Buyer in accordance with the applicable Incoterm rule set out at Condition 3.2.
- 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 the Goods.
- 4.3 Until legal and equitable title to, and ownership of, the Goods has passed to the Buyer, the Buyer shall:
- (i) hold the Goods on a fiduciary basis as the Company's bailee;
- (ii) ensure that the Goods are clearly identifiable as belonging to the Company;
- (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (iv) maintain the Goods safely and in satisfactory condition, in accordance with the Specification, and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company and, on request, the Buyer shall produce the policy of such insurance to the Company;
  - (v) inform the Company as soon as possible if it becomes subject to any Events of Insolvency; and
  - (vi) provide the Company such information concerning the Goods as the Company may request from time to time.
- 4.4 Notwithstanding Condition 4.3, the Buyer may resell Goods which are nozzles, Products or Retail Seed Products before ownership has passed to it solely on the following conditions:
- (i) any sale shall be effected in the ordinary course of the Buyer's business at full market value;
  - (ii) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale and not as the Company's agent;
  - (iii) title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.
- 4.5 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Company, or the Company reasonably believes, that the Buyer has or is likely to become subject to any Events of Insolvency, and the Goods remain in the possession or control of the Buyer, the Company may (without limiting any of the Company's other rights and remedies):
- (i) require the Buyer, at the Buyer's expense, to redeliver the Goods to the Company; and
  - (ii) if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.
- 4.6 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.
- 4.7 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.
- 4.8 Where the Company is unable to determine whether any particular Goods are goods 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.
- 4.9 The rights of the Company contained in this Condition 4 shall survive termination of the Contract (howsoever caused).

## **5 Price and Payment**

- 5.1 Subject to Conditions 5.2 and 5.3, the price for Goods shall be the price set out in the Company's Price List current at the date of order acceptance (taking place in accordance with Condition 2.4) plus any applicable Surcharge. Buyers of Seed Products (excluding Hybrid Barley Seed) may be subject also to royalty payments in accordance with Condition 8.10. Buyers of Hybrid Barley Seed may be subject also to fees in accordance with Condition 9.
- 5.2 The price for 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 If there is an increase in the Company's costs of supplying any Goods, the Company may increase the prices of such Goods at any time by giving the Buyer not less than one week's notice in writing prior to delivery. If the Buyer does not agree with any increase in price notified in accordance with this Condition 5.3, then the Buyer may terminate the Contract, in relation to such Goods only, by giving the Company not less than three days notice, such notice to expire no later than the date on which the price increase was due to take effect, provided always that the Buyer shall accept delivery of any Goods that form part of the relevant Contract in respect of which a notice under this Condition 5.3 has not been given.
- 5.4 The Company may invoice the Buyer for Goods at any time after delivery (taking place in accordance with Condition 3.2).
- 5.5 Unless otherwise agreed in writing, payment of the price for the Goods is due in cleared funds and clear of any bank charges on the 20th of the month following the month in which the invoice is issued. 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.
- 5.6 All payments to the Company under the Contract shall become due immediately upon its termination (howsoever caused) despite the terms of any other provision.
- 5.7 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.
- 5.8 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):
- (i) the Company may charge the Buyer interest (both before and after judgement) on the amount unpaid at the annual rate of 2.5% above the base rate of the Bank of England per month, compounded monthly, until payment is made in full (a part of a month being treated as a full month for the purpose of calculating interest). The Buyer shall also pay any reasonably incurred costs of collection in relation to such unpaid amounts; and
  - (ii) the Company shall be entitled to refuse to accept any further orders for Goods and suspend all deliveries for Goods pursuant to the Contract.
- 5.9 The Company reserves the right not to carry out, or no longer carry out, orders or agreements if previous deliveries have not been paid for by the Buyer or if, in the Company's reasonable opinion, the Buyer has not fulfilled, or is at risk of not fulfilling, its obligations to the Company.

## **6 EXCLUSION & LIMITATION OF LIABILITY, SEVERABILITY AND BUYER'S INDEMNITY**

- 6.1 **The following provisions and Conditions 3.6, 3.7, 3.10, 3.11, 3.12 and 3.13 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:**
- (i) any breach of these Conditions; and**
  - (ii) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and**
  - (iii) any representation, statement, tortious act or omission (including negligence), arising under or in connection with the Contract.**

- 6.2 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 6.3 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.
- 6.4 Subject to Condition 6.3, 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.
- 6.5 Subject to Condition 6.3, 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
- 6.6 Subject to Condition 6.3, the Company shall not be liable to the Buyers for any of the following (whether direct or indirect):
- (i) loss of profit;
  - (ii) loss of business;
  - (iii) loss of business opportunity;
  - (iv) loss of revenue; or
  - (v) 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.
- 6.7 The Buyer holds harmless and indemnifies the Company and its Affiliates against any and all liabilities, costs, expenses, damages and losses which the Company incurs as a result of 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) arising directly or indirectly from the Buyer's breach of any of its obligations under the Contract or negligence, unless such damage is caused by breach of contract, negligence or wilful misconduct on the part of the Company.
- 7 Packaging and traceability of Goods; use of trade marks, signs and other indications**
- 7.1 All of the trade marks, service marks and logos displayed on the Goods and any referenced document or website (the "Trade Marks") are registered and unregistered trade marks of the Company and its Affiliates, or third parties who have licensed their trade marks to the Company and its Affiliates. Unless agreed otherwise in writing, the Buyer is not permitted to use the Trade Marks or any other signs or indications used by the Company to distinguish the Company's products from those of other businesses, with the exception of trading the Goods in their original packaging on which Trade Marks, signs and other indications have been applied by the Company (or its Affiliates). If the Goods are resold, this provision shall also be imposed upon the Buyer's own buyer and to any subsequent buyers. The Buyer shall not reproduce, display or otherwise use any Trade Marks without the Company's prior written permission except as permitted under this Condition 7.1.
- 7.2 The Buyer shall not change or remove or alter any Trade Mark, corporate or trade name, label, bag tag, or any indicia of any intellectual property right of any nature whatsoever from the packaging of the Goods, unless expressly agreed upon by the Company in writing or otherwise permitted by law.
- 7.3 The Buyer hereby acknowledges that any marketing by it of Goods in breach of Condition 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 Special Conditions Relating to Seed Products**
- 8.1 Where the Goods comprise Seed Products, the following provisions set out in this Condition 8 shall apply and the Buyer shall impose no less stringent restrictions than those set out in this Condition 8 upon its own buyers.
- 8.2 The Buyer holds harmless and indemnifies the Company and its Affiliates against any liabilities, costs, expenses, damages and losses which the Company incurs arising directly or indirectly from the Buyer's breach of any of its obligations under Condition 8.
- 8.3 For Seed Products (excluding Cereal Seed), unless otherwise agreed in writing, the Buyer's use of such Seed Products (excluding Cereal Seed) is limited to production of a single commercial crop, whether of fresh produce, forage, fiber, grain or any other crop. In the preceding sentence, "production" shall exclude producing seeds for replanting and vegetative reproduction.
- 8.4 Restrictions on use of the Seed Products by the Buyer and subsequent buyers may be included in the product's packaging and/or labelling and/or bag-tag. The Buyer shall comply with such restrictions and agrees not to remove the bag-tag or restrictions from the Seed Products' packages and/or labelling.
- 8.5 Seed Products are exclusively intended for the growing of crops for human or animal usage and/or consumption or anaerobic digestion.
- 8.6 Seed Products and their packaging are proprietary to the Company and its Affiliates or its licensors and are protected by intellectual property rights which the Buyer shall comply with.
- 8.7 Unless expressly permitted by law, use of Seed Products, including the parental lines that may unintentionally be present therein, for research, breeding or molecular or genetic characterization is strictly prohibited. The Buyer shall acquire no rights in relation to parental lines that may be present within Seed Products.
- 8.8 The Buyer shall, if requested, give the Company access to its premises where Seed Products are located at any time to enable the Company to inspect the usage of such Seed Products. The Company shall notify the Buyer of such visits in a timely manner.

- 8.9 The Buyer shall comply with the restrictions and limitations imposed on Seed Products by the UPOV Convention and its national implementations (which are hereby incorporated by reference) and UK laws on plant breeders' rights. The Buyer shall also comply with the following obligations:
- (i) If the Buyer finds a mutant in any Seed Product, the Buyer shall notify the Company immediately by registered letter; and shall upon request, immediately make available to the Company without charge, samples and materials of the mutant for testing and other purposes, provided such requests are made by the Company within a period of two (2) years from receipt of the Buyer's notification of detection of the mutant.
  - (ii) The Buyer undertakes to cooperate fully, as desired by the Company, including cooperating with the collection of evidence, in the event that the Company is engaged in legal proceedings with regard to plant breeder's rights or other intellectual property rights in relation to Seed Products or mutants therein.
- 8.10 The Buyer shall report in a diligent and timely manner all information required by any royalty collecting agency responsible for administering rights in respect of Seed Products (for example, sales of certified seed created from multiplication of Seed Product).
- 8.11 All varieties of Seed Products currently sold by the Company in Europe, Africa and the Middle East have been created using traditional breeding methods without using genetic modification techniques leading to genetically modified organisms as defined in Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms. The methods used in the development and maintenance of those varieties are designed to achieve high purity standards and to avoid the presence of off-types or genetically modified organisms. Seed production has been carried out in accordance with existing requirements related to marketing of varieties and seed production rules including specified isolation distances. The Buyer acknowledges, that although unlikely, the risk of adventitious presence of genetically modified organisms cannot be totally excluded.

## **9 Special Conditions relating to Hybrid Barley Products**

- 9.1 The Company offers Hybrid Barley Seed for sale under different go to market models. Buyers of Hybrid Barley Seed shall be subject to the additional conditions set out in the relevant Annex, as specified in the table below.

<b>Go to market model</b>	<b>Additional Conditions</b>
Retail Hybrid Barley Seed	None
Re Cleaned Hybrid Barley Seed	Annex 1
As Grown Hybrid Barley Seed	Annex 2
Own Production Hybrid Barley Seed	Annex 3

## **10 Product Recall**

- 10.1 The Buyer shall immediately notify the Company if it becomes aware of any complaint or claim which indicates that a product supplied by the Company may be defective, faulty or unsafe in any way, including if the Buyer becomes aware of or is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any product supplied by the Company from the market. The Buyer must send to the Company:
- (i) a copy of the complaint or claim, and any correspondence exchanged with the complainant or third party; and
  - (ii) details of the product supplied, the batch and serial number of the product (or other marking to aid traceability), the date on which the product was supplied by the Company to the Buyer, and the date on which the Buyer supplied it to the complainant (or other third party).
- 10.2 The Company has the right to initiate a product recall and/or any other corrective action which it deems necessary and appropriate, without requiring agreement from the Buyer. Any decision relating to the implementation of a recall or corrective action shall be made at the Company's discretion. The Company also has the right to notify any appropriate regulatory bodies about any such recall or corrective action, identify the Buyer, and discuss the activities of the Buyer.
- 10.3 The Buyer shall provide the Company with the assistance and information that it may reasonably require in order to implement a recall or corrective action. This assistance shall include the provision of any information which may be required to allow the Company to identify third parties who purchased affected products from the Buyer, and any steps taken by the Buyer to notify those third parties and implement a recall or corrective action.
- 10.4 At the Company's request, the Buyer shall immediately cease using, delivering and distributing any products specified by the Company. The Buyer shall place these products into quarantine until the Company confirms whether they should be returned to the Company or whether they are suitable for use or onward sale.
- 10.5 The Buyer shall not implement or initiate any recall or corrective action without the Company's prior express consent, unless the Buyer is directed to do so by a relevant regulatory authority.
- 10.6 The Buyer is required to keep and maintain, for at least ten years following last supply of the product, appropriate records to enable all products supplied by the Company to be traced. These records shall include serial and batch numbers (or other marking to aid traceability), delivery dates and, in case of resale, details of the party who purchased the products from the Buyer. The records which are kept must be sufficiently thorough to allow a recall of the products or corrective action to be effectively and efficiently implemented by the Company.
- 10.7 Subject to the Company's prior agreement to such costs and provision of evidence of costs incurred which is reasonably satisfactory to the Company, the Company shall bear all reasonable costs incurred by the Buyer in relation to implementing a recall of products supplied by the Company, unless the problem which necessitated the recall was caused or contributed to by the Buyer (whether negligently or otherwise).

## **11 Force Majeure**

- 11.1 The Company shall not be liable to the Buyer in any manner or be in breach of the Contract (subject to Condition 6.3) because of any failure or delay in performance of any of the Company's obligations under the Contract arising from or attributable to a Force Majeure Event. "**Force Majeure Event**" means any acts, events, omissions, accidents or causes beyond the Company's reasonable control, including, without limitation:
- (i) any failure, omission or default on the part of any supplier or contractor of the Company;
  - (ii) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent required of or by the Company to perform the Contract or to commercially exploit the Goods;
  - (iii) a change to the business or economic environment in which the Company and/or its suppliers operate;
  - (iv) in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of Goods or any raw materials or components used by the Company to manufacture or produce the Goods;

- (v) shortage of raw materials;
- (vi) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (vii) epidemic or pandemic;
- (viii) acts of God, flood, drought, earthquake or other natural disaster;
- (ix) interruption or failure of utility services; and
- (x) any labour or trade dispute, strikes, industrial action or lockouts.

## **12 Termination**

12.1 The Buyer's right to possession of any Goods belonging to the Company will terminate immediately; and (without prejudice to any other rights or remedies of the Company) the Company shall have the right by written notice immediately to terminate any Contract then in force if any of the following circumstances arises:

- (i) 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, whether under the Insolvency Act 1986, the Companies Act 2006 or otherwise, or commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its credit;
- (ii) 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 any step under the Insolvency Act 1986 is taken to appoint an administrator of it out of court, or it enters into administration;
- (iii) the Buyer becomes subject to a:
  - a) moratorium under Part A1 of the Insolvency Act 1986;
  - b) company voluntary arrangement under the Insolvency Act 1986;
  - c) restructuring plan under Part 26A Companies Act 2006;
  - d) scheme of arrangement under Part 26 Companies Act 2006;
- (iv) the Buyer has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
- (v) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Buyer's assets and such attachment or process is not discharged within 14 days;
- (vi) the Buyer has a freezing order made against it;
- (vii) 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;
- (viii) any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;
- (ix) the Buyer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986, or if the Company reasonably believes this to be the case;
- (x) the Buyer suspends or ceases or indicates in any way that it intends to suspend or cease to carry on all of a substantial part of its business;
- (xi) any analogous or similar event to those listed in Conditions 12.1(i) to 12.1(x) above ("**Events of Insolvency**") occurs, or proceeding is taken, in any jurisdiction to which the Buyer is subject;
- (xii) 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;
- (xiii) the Buyer takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the Events of Insolvency;
- (xiv) the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy;
- (xv) the Buyer fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer; or
- (xvi) the Buyer encumbers or in any way charges any of the Goods prior to ownership passing to the Buyer.

## **13 Data Protection**

13.1 The Parties shall comply with all applicable data protection laws.

13.2 Each Party shall process personal data only to the extent relevant and necessary in relation to the Contract and obligations under applicable law.

13.3 Each Party shall implement technical and organizational measures to adequately protect and safeguard personal data which are appropriate to the risk involved in the respective processing of personal data.

## **14 General Provisions**

14.1 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.

14.2 No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or under the Contract shall prevent any future exercise of it or the exercise of any other right, power or remedy.

14.3 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

14.4 Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

14.5 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and is duly signed or executed by, or on behalf of, each party.

14.6 No announcement or other public disclosure concerning the Contract or any of the matters contained in it shall be made by, or on behalf of, a party without the prior written consent of the other party (such consent not to be unreasonably

withheld or delayed), except as required by law, any court, any governmental, regulatory or supervisory authority (including any recognised investment exchange) or any other authority of competent jurisdiction.

- 14.7 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 14.8 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract, except in the case of fraudulent misrepresentation. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 14.9 A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract, provided that any Affiliate of the Company shall be entitled to enforce any of the provisions of the Contract.
- 14.10 The Buyer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Company's prior written consent.
- 14.11 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 English law and the Company and the Buyer hereby irrevocably submit to the exclusive jurisdiction of the English courts in respect of any such issues and disputes.

### **Annex 1 - Re Cleaned Hybrid Barley Seed Additional Conditions ("Re Cleaned Additional Conditions")**

In this Annex 1, all references to a Paragraph are to the relevant paragraph of these Re Cleaned Additional Conditions.

- I. **Minimum Order Value:** The Minimum Order Value for Re Cleaned Hybrid Barley Seed is 1 tonne per variety.
- II. **Buyer's Obligation to Out-Turn:** The Buyer agrees to carry out the following Out-Turn activities with respect to the Re Cleaned Hybrid Barley Seed, with reasonable skill and care and in accordance with applicable laws:
  - (a) treat with the Buyer's choice of seed treatment, pack into 10MS Bags and certify.  
The Buyer shall use its best endeavours to complete the Out-Turn activities within 10 Working Days of delivery of the Re Cleaned Hybrid Barley Seed (taking place in accordance with Condition 3.2).
- III. **Price:** The price payable by the Buyer for Re Cleaned Hybrid Barley Seed per variety is the price per 10MS Bag Out-Turned by the Buyer, as set out in the Price List, subject to Paragraphs IV, VI, VIII and XI.
- IV. **Reporting of Out-Turn quantities:** Condition 3.5 of the Conditions shall not apply and shall be replaced by the following:

"3.5(i) The Buyer shall promptly (and in any event within ten Working Days of delivery of Re Cleaned Hybrid Barley Seed (taking place in accordance with Condition 3.2)) provide the Company with the following information: number of 10MS Bags Out-Turned from the Re Cleaned Hybrid Barley Seed ("**Out-Turn Information**").

3.5(ii) In the event of disagreement over Out-Turn Information, the Company shall have the right to audit the Buyer in accordance with Paragraph VIII. The Company's audit determination shall be final and binding."
- V. **Cost and Risk:** Out-Turning and any other activities undertaken by the Buyer's in relation to the Re Cleaned Hybrid Barley Seed shall be at the Buyer's sole cost and risk.
- VI. **Invoicing:** Condition 5.4 shall not apply and shall be replaced by the following:

"5.4 The Company may invoice the Buyer after receipt of the Out-Turn Information in accordance with Condition 3.5(i). In the event that the Buyer does not Out-Turn for any reason, fails to provide the Out-Turn Information in accordance with Condition 3.5(i) for any reason, or the Company exercises its right to audit, the Company shall be entitled to invoice (and the Buyer shall be liable to pay) based on the Company's estimates of a what a reasonable Out-Turn should have been."
- VII. **Payment:** The first sentence only of Condition 5.5 shall not apply and shall be replaced by:

"Payment of invoices is due in cleared funds and clear of any bank charges on or before 15 November of the year of delivery of Re Cleaned Hybrid Barley Seed (taking place in accordance with Condition 3.2)."
- VIII. **Audit:** The Company shall have the right, upon reasonable notice and during normal business hours to enter the Buyer's premises in order to inspect, audit and take copies of relevant records and other documents. The purposes of such auditing are to verify Out-Turn Information and for quality control purposes. The Buyer shall provide comprehensive auditing information within Company's required timelines including, without limitation, production records for each batch of Out-Turned Re Cleaned Hybrid Barley Seed produced annually which shall include, for each batch: (i) dates and times; (ii) batch numbers and quantities of inputs and outputs; (iii) %germination; (iv) %moisture; (v) thousand seed weight (TSW); (vi) Screening results through 2.2mm and 2.5mm sieve; and (vii) a copy of the Cert 10 seed document.
- IX. **Quality Control:** The Buyer shall retain for two years and, upon request, give the Company access, at no cost, to a 500g sample of each production batch of Re Cleaned Hybrid Barley for seed quality auditing purposes. The rights of the Company contained in this Additional Condition IX shall survive termination of the Contract (howsoever caused).
- X. **No dealing without consent:** All Re Cleaned Hybrid Barley Seed delivered to the Buyer is exclusively for Out-Turn by the Buyer in accordance with these Re Cleaned Additional Conditions. For avoidance of doubt, Re Cleaned Hybrid Barley Seed may not be used or processed in any manner other than as specified in these Re Cleaned Additional Conditions and may not be sold, offered for sale or otherwise transferred by the Buyer to any third party prior to completion of Out-Turn in accordance with these Re Cleaned Additional Conditions without the Company's prior, written consent.
- XI. **Return for Failure to Out-Turn:** Without prejudice to the Company's rights under Condition 5.4 (as set out in Paragraph VI), if the Company reasonably believes that the Buyer is unable or unwilling to Out-Turn any Re Cleaned Hybrid Barley Seed within 10 Working Days of delivery (taking place in accordance with Condition 3.2) for any reason, and if the Company believes that it may be able to sell the Re Cleaned Hybrid Barley Seed to another customer, then Company shall have the exclusive option, at the Company's discretion, to require immediate return of the Re Cleaned Hybrid Barley Seed. In such case, the Buyer shall, upon request, promptly reimburse the Company's reasonable delivery and return costs. If the returned Goods are in resaleable condition and the Company is successful in selling them to another buyer, then it shall reduce the invoiced amounts which it charges the Buyer under Condition 5.4 (as set out in Paragraph VI) accordingly, making reasonable allowance for any costs which the Company incurs in undertaking such return and resale.

## **Annex 2 - As Grown Hybrid Barley Seed Additional Conditions ("As Grown Additional Conditions")**

In this Annex 2, all references to a Paragraph are to the relevant paragraph of these As Grown Additional Conditions.

- I. **Minimum Order Value:** The Minimum Order Value for As Grown Hybrid Barley Seed is as set out in Condition 1.
- II. **Buyer's Obligation to Out-Turn:** The Buyer agrees to carry out the following Out-Turn activities with respect to the As Grown Hybrid Barley Seed, with reasonable skill and care and in accordance with applicable laws:
  - (a) Clean, treat with the Buyer's choice of seed treatment, pack into 10MS Bags and certify.  
The Buyer shall use its best endeavours to complete the Out-Turn activities within 10 Working Days of delivery of the As Grown Hybrid Barley Seed (taking place in accordance with Condition 3.2).
- III. **Price:** The price payable by the Buyer for As Grown Hybrid Barley Seed per variety is set out in the Price List and consists of two elements:
  - (a) Price per tonne of As Grown Hybrid Barley Seed; and
  - (b) Technical fee per 10MS Bag Out-Turned ("**Tech Fee**"), subject to Paragraphs IV, VI and VIII and XI.
- IV. **Reporting of quantities:** Condition 3.5 of the Conditions shall not apply and shall be replaced by the following:

"3.5(i) Upon delivery of As Grown Hybrid Barley Seed (taking place in accordance with Condition 3.2), the Buyer shall promptly (and in any event within two Working Days of delivery) provide the Company with the following consignment information: (a) collection date; (b) weight of As Grown Hybrid Barley Seed delivered; and (c) a copy of the weighbridge ticket.

3.5(ii) The Buyer shall promptly (and in any event within ten Working Days of delivery of As Grown Hybrid Barley Seed (taking place in accordance with Condition 3.2)) inform the Company of the number of 10MS Bags Out-Turned from the As Grown Hybrid Barley Seed ("**Out-Turn Information**")."

"3.5(iii) In the event of disagreement over Out-Turn Information, the Company shall have the right to audit the Buyer in accordance with Paragraph VIII. The Company's audit determination shall be final and binding."
- V. **Cost and Risk:** Out-Turning and any other activities undertaken by the Buyer's in relation to the As Grown Hybrid Barley Seed shall be at the Buyer's sole cost and risk.
- VI. **Invoicing:** Condition 5.4 shall not apply and shall be replaced by the following:

"5.4 The Company may invoice the Buyer for: (i) the price per tonne of As Grown Hybrid Barley Seed at any time after receipt of the consignment information in accordance with Condition 3.5(i); and (ii) the Tech Fee after receipt of the 10MS Bag Out-Turn Information in accordance with Condition 3.5(ii). In the event that the Buyer does not Out-Turn for any reason, fails to provide the required information in accordance with Condition 3.5(i) or 3.5(ii) for any reason, or the Company exercises its right to audit, the Company shall be entitled to invoice (and the Buyer shall be liable to pay) the price based on the Company's estimates for: the amount of As Grown Hybrid Barley Seed delivered; and the Tech Fee based on a what a reasonable Out-Turn should have been."
- VII. **Payment:** The first sentence only of Condition 5.5 shall not apply and shall be replaced by:

"Payment of invoices is due in cleared funds and clear of any bank charges on or before 15 November of the year of delivery of As Grown Hybrid Barley Seed (taking place in accordance with Condition 3.2)."
- VIII. **Audit:** The Company shall have the right, upon reasonable notice and during normal business hours to enter the Buyer's premises in order to inspect, audit and take copies of relevant records and other documents. The purposes of such auditing are to verify As Grown Hybrid Barley Seed weighbridge information, Out-Turn Information and for quality control purposes. The Buyer shall provide comprehensive auditing information within Company's required timelines including, without limitation:
  - (a) Original weighbridge tickets for As Grown Hybrid Barley Seed;
  - (b) Production records for each batch of Out-Turned As Grown Hybrid Barley Seed produced annually which shall include, for each batch: (i) dates and times; (ii) batch numbers and quantities of inputs and outputs; (iii) %germination; (iv) %moisture; (v) thousand seed weight (TSW); (vi) Screening results through 2.2mm and 2.5mm sieve; and (vii) a copy of the Cert 10 seed document.
- IX. **Quality Control:** The Buyer shall retain for two years and, upon request, give the Company access, at no cost, to a 500g sample of each production batch of As Grown Hybrid Barley Seed for seed quality auditing purposes. The rights of the Company contained in this Additional Condition IX shall survive termination of the Contract (howsoever caused).
- X. **No dealing without consent:** All As Grown Hybrid Barley Seed delivered to the Buyer is exclusively for Out-Turn by the Buyer in accordance with these As Grown Additional Conditions. For avoidance of doubt, As Grown Hybrid Barley Seed may not be used or processed in any manner other than as specified in these As Grown Hybrid Barley Additional Conditions and may not be sold, offered for sale or otherwise transferred by the Buyer to any third party prior to completion of Out-Turn in accordance with these As Grown Additional Conditions without the Company's prior, written consent.
- XI. **Return for Failure to Out-Turn:** Without prejudice to the Company's rights under Condition 5.4 (as set out in Paragraph VI), if the Company reasonably believes that the Buyer is unable or unwilling to Out-Turn any As Grown Hybrid Barley Seed within 10 Working Days of delivery (taking place in accordance with Condition 3.2) for any reason, and if the Company believes that it may be able to sell the As Grown Hybrid Barley Seed to another customer, then Company shall have the exclusive option, at the Company's discretion, to require immediate return of the As Grown Hybrid Barley Seed. In such case, the Buyer shall, upon request, promptly reimburse the Company's reasonable delivery and return costs. If the returned Goods are in resaleable condition and the Company is successful in selling them to another buyer, then it shall reduce the invoiced amounts which it charges the Buyer under Condition 5.4 (as set out in Paragraph VI) accordingly, making reasonable allowance for any costs which the Company incurs in undertaking such return and resale.

### **Annex 3 - Own Production Hybrid Barley Seed Additional Conditions (“Own Production Additional Conditions”)**

In this Annex 3, all references to a Paragraph are to the relevant paragraph of these Own Production Additional Conditions.

- I. **Minimum Order Value:** The Minimum Order Value for Own Production Hybrid Barley Seed is one 0.5 tonne bag of Tech Mix Seed per variety.
- II. **Buyer’s Obligation to Out-Turn:** The Buyer agrees to carry out the following activities with respect to the Own-Production Hybrid Barley Seed, with reasonable skill and care and in accordance with applicable laws:
  - (a) plant and cultivate the Tech-Mix Seed in the calendar year of delivery (taking place in accordance with Condition 3.2) (“**Delivery Year**”) in order to produce and Out-Turn F1 Seed the following cropping year;
  - (b) seek to maximise the harvest of good quality F1 Seed;
  - (c) clean, treat with the Buyer’s choice of seed treatment, pack into 10MS Bags and certify the harvested F1 Seed (Out Turn activities).The Buyer shall use its best endeavours to complete the Out-Turn activities as soon as reasonably possible after harvesting the F1 Seed.
- III. **Cultivation advice:** Any cultivation advice given by the Company is provided without any guarantee that the desired agricultural results shall be achieved and should not be used as the sole basis for making agronomic decisions. The Buyer shall be responsible for exercising its own professional judgment and for implementing agronomic practices in accordance with good agricultural practice, stewardship guidance and any applicable local laws and regulations. Under no circumstances shall the Company be liable for the results achieved from cultivation of the Tech-Seed Mix on the grounds of any cultivation advice given. The Buyer explicitly acknowledges that the growth and yield of F1 Seed resulting from the Tech-Mix Seed, even if of the highest quality, depends to a decisive extent on the cultivation method, weather, soil conditions, pest pressure and the Buyer’s knowledge and actions.
- IV. **Cost and Risk:** Cultivation, Out-Turning and all other activities in relation to the Tech-Mix Seed and the F1 Seed shall be at the Buyer’s sole cost and risk.
- V. **Price:** The price payable by the Buyer for Own Production Hybrid Barley Seed per variety consists of two elements:
  - (a) Price per tonne of Tech Mix Seed as set out in the Company’s Price List; and
  - (b) A technical fee per 10MS Bag Out-Turned (“**Tech Fee**”), subject to Paragraphs VI, VII, IX and **Error! Reference source not found.**
- VI. **Reporting of quantities:** Condition 3.5 of the Conditions shall not apply and shall be replaced by the following:

“3.5(i) After harvest of the F1 Seed, the Buyer shall as soon as reasonably possible (and in any event by 31<sup>st</sup> October of the year following the Delivery Year) provide the Company with the following information: number of 10MS Bags of F1 Seed produced (“**Out-Turn Information**”).

3.5(ii) In the event of disagreement over Out-Turn Information, the Company shall have the right to audit the Buyer in accordance with Paragraph IX. The Company’s audit determination shall be final and binding.”
- VII. **Invoicing:** Condition 5.4 shall not apply and shall be replaced by the following:

“5.4 The Company may invoice the Buyer for: (i) the Tech Mix Seed during the Delivery Year at any time after delivery (taking place in accordance with Condition 3.2); and (ii) the Tech Fee after receipt of the Out-Turn Information in accordance with Condition 3.5(i). In the event that the Buyer: suffers a poor yield of F1 Seed; does not Out-Turn for any reason; fails to provide the required information in accordance with Condition 3.5(i) for any reason, or the Company exercises its right to audit, the Company shall be entitled to invoice (and the Buyer shall be liable to pay) the Tech Fee based on the Company’s estimates of a what a reasonable F1 Seed yield and Out-Turn should have been.
- VIII. **Payment:** The first sentence only of Condition 5.5 shall not apply and shall be replaced by:

“Payment of invoices for Own Production Hybrid Barley Seed is due in cleared funds and clear of any bank charges as follows: (i) Tech-Mix Seed on or before 15 November of the Delivery Year; and (ii) Tech Fee on or before 15 November of the year following the Delivery Year.”
- IX. **Audit:** The Company shall have the right, upon reasonable notice and during normal business hours to enter the Buyer’s premises in order to inspect, audit and take copies of relevant records and other documents. The purposes of such auditing are to verify Out-Turn Information and for quality control purposes. The Buyer shall provide comprehensive auditing information within Company’s required timelines including, without limitation, production records for each batch of Out-Turned F1 Seed produced, which shall include, for each batch: (i) dates and times; (ii) batch numbers and quantities of inputs and outputs; (iii) %germination; (iv) %moisture; (v) thousand seed weight (TSW); (vi) Screening results through 2.2mm and 2.5mm sieve; and (vii) a copy of the Cert 10 seed document.
- X. **Quality Control:** The Buyer shall retain for two years and, upon request, give the Company access, at no cost, to a 500g sample of each production batch of each production batch of F1 Seed for seed quality auditing purposes. The rights of the Company contained in this Additional Condition IX shall survive termination of the Contract (howsoever caused).
- XI. **No dealing without consent:** All Own Production Hybrid Barley Seed delivered to the Buyer is exclusively for Out-Turn by the Buyer in accordance with these Own Production Additional Conditions. For avoidance of doubt, Own Production Hybrid Barley Seed may not be used or processed in any manner other than as specified in these Own Production Additional Conditions and the Own Production Hybrid Barley Seed and F1 Seed produced therefrom may not be sold, offered for sale or otherwise transferred by the Buyer to any third party prior to completion of Out-Turn in accordance with these Own Production Additional Conditions without the Company’s prior, written consent EXCEPT that the Buyer shall be permitted to transfer Own Production Hybrid Barley Seed to growers under a “buy-back contract” under which the Buyer engages the grower to produce and harvest raw F1 Seed for purchase by the Buyer to Out-Turn in accordance with these Own Production Additional Conditions.