

## **CONDITIONS OF SALE**

(Applicable to orders placed or accepted on or after 17.02.2021)

**The Buyer's attention is particularly drawn to Conditions 3.8, 3.10, 3.11, 6 and 9, which exclude or limit the Company's liability.**

### **1. Interpretation**

<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>"Buyer"</b>	means the person(s) or company whose order for the Goods is accepted by the Company in accordance with Condition 2.3 or 2.4.
<b>"Company"</b>	means Syngenta UK Limited having its registered office at CPC4, Capital Park, Fulbourn, Cambridge, CB21 5XE United Kingdom or as otherwise confirmed in writing to the Buyer.
<b>"Conditions"</b>	means these conditions of sale.
<b>"Contract"</b>	means the contract between the Company and the Buyer for the sale and purchase of the Goods.
<b>"Goods"</b>	means any Products which the Company is to supply, or has supplied, to the Buyer.
<b>"Minimum Order Value"</b>	means (excluding VAT) for orders comprising: <u>Seed treatment</u> : £2,000.00 for each order; <u>Flowers</u> : A minimum cumulative order value of £5,000.00 per calendar year with the following minimum values/quantities applying to any part of an individual order: Seeds £75.00; Unrooted Cuttings: 4,000 cuttings and surcharge of £55.00 below this volume; Young Plants: Xtray / non Xtray 20 trays and surcharge of £55.00 for orders between 10 and 20 trays - orders below 10 trays not accepted; Quickstep YPL: 6 trays and surcharge of £55.00 for orders between 3 and 6 trays - orders below 3 trays not accepted; <u>Vegetables</u> : small seeded vegetables: £850.00; large seeded vegetables: £2,155.00; and <u>All other orders</u> : £3000.00.
<b>"CP Products"</b>	means formulated materials sold, without limitation, for crop protection purposes.
<b>"Seed Products"</b>	means seeds, cuttings or plants sold, without limitation, for multiplication and cropping purposes.
<b>"Products"</b>	together, the CP Products, the Seed Products, and any other products supplied by the Company.

Any reference to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

### **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 Minimum Order Value (but may waive this requirement, in its sole discretion, subject to the payment of an administrative fee). Except as set out in Condition 2.3 below, no order which the Company has accepted may be cancelled by the Buyer except with the written agreement of the Company. Please note that the Company does not have a process for receiving cash with orders.
- 2.3 Flowers orders may be cancelled by the Buyer only 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 seeds, if the cancellation notice is received after the shipment has been created; or (iii) for orders unrooted cuttings, if the cancellation notice is received after harvesting.
- 2.4 No order placed by the Buyer for CP Products shall be deemed to be accepted by the Company until a written delivery confirmation is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.5 No order placed by the Buyer for Seed Products shall be deemed to be accepted by the Company until written confirmation of the acceptance is issued by the Company or (if earlier) written delivery confirmation is issued by the Company or the Company delivers the Goods to the Buyer.

### **3. Delivery**

- 3.1 Goods shall be delivered by the Company to nominated delivery points previously agreed in writing by the Company. The Buyer shall (at its expense) provide at the relevant delivery point adequate and appropriate equipment, and manual labour with appropriate health and safety training, for offloading of the Goods.

- 3.2 Any dates specified by the Company for delivery of the Goods are approximate only. Time for delivery shall not be of the essence and may not be made of the essence by notice.
- 3.3 The quantity of any consignment of Goods as recorded by the Company or its contractor upon despatch from the Company's or its contractor's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 3.4 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 received.
- 3.5 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.
- 3.6 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.
- 3.7 The Company warrants that the Goods will be delivered in resaleable condition.
- 3.8 **The Company shall not be liable for a breach of the warranty in Condition 3.7 unless:**  
**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 (48 hours in the case of seed trays and young plants) 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 seed trays and young plants), the Buyer shall be deemed to have accepted the Goods.**  
**In the case of non-visible defects (e.g. 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 from the date of discovery of such damage or defect, but in any event no more than one year from the date of delivery.**
- 3.9 If the Goods have been delivered in a damaged or defective condition, the Company shall at its option replace such Goods (or the damaged or defective part) or refund the price of such Goods at the pro-rata Contract rate. If the Company so requests, the Buyer shall (at the Company's expense) return to the Company those Goods which are damaged or defective.
- 3.10 **Subject to Condition 6.3, if the Company complies with Condition 3.9, it shall have no further liability for a breach of the warranty in Condition 3.7.**
- 3.11 **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 outturn) 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.**
- 3.12 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 3.13 Each instalment shall be deemed to be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
4. **Property and Risk**
- 4.1 Risk of damage to and loss of the Goods shall pass to the Buyer upon delivery.
- 4.2 Both legal and equitable title to and ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of (i) the Goods; and (ii) all other sums which are or which become due to the Company from the Buyer on any account.
- 4.3 Until legal and equitable title to and ownership of the Goods has passed to the Buyer, the Buyer shall:
- (i) hold the Goods on a fiduciary basis as the Company's bailee;
  - (ii) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way as they remain readily identifiable as the Company's property;
  - (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
  - (iv) maintain the Goods safely and in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request, the Buyer shall produce the policy of such insurance to the Company.
- 4.4 The Buyer may resell the Goods 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
  - (iii) the Buyer shall hold the proceeds of any such subsale as trustee for the Company separate from its own monies and in a separate designated bank account.
- 4.5 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.
- 4.6 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.

- 4.7 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.
- 4.8 The rights of the Company contained in this Condition 4 shall survive termination of the Contract (howsoever caused).
5. **Price and Payment**
- 5.1 The price for the Goods shall be the price set out in the Company's price list current at the date of delivery.
- 5.2 The price for the Goods is exclusive of any value added tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Goods.
- 5.3 The Company may invoice the Buyer for the Goods at any time after despatch from the Company's or its contractor's warehouse to the place of delivery.
- 5.4 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 20<sup>th</sup> 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.
- 5.5 All payments to the Company under the Contract shall become due immediately upon its termination (howsoever caused) despite the terms of any other provision.
- 5.6 The Buyer shall make all payments due under the Contract without any deduction or withholding whether by way of set-off, counterclaim or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 5.7 If the Buyer fails to make any payment under the Contract on the due date then (without prejudice to the Company's other rights and remedies) the Company may charge the Buyer interest (both before and after judgement) on the amount unpaid at the annual rate of 2.5 % 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.
6. **EXCLUSION & LIMITATION OF LIABILITY**
- 6.1 **The following provisions and Conditions 3.4, 3.5, 3.8, 3.9, 3.10, and 3.11 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 Conditions 6.2 and 6.3:**
- (i) the Company's total liability in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract value net of VAT; and
  - (ii) 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;
  - (iii) the Company shall not be liable to the Buyer for any loss of profit, loss of business, loss of business opportunity, loss of revenue, depletion of goodwill howsoever caused (including without limitation caused by the negligence of the Company or its employees, agents or sub-contractors), which arises out of or in connection with the Contract.
- 6.5 Any provision of the Contract which is held by any competent authority to be invalid, void, voidable, unenforceable or unreasonable (in whole or in part) shall to the extent of such invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the other provisions of the Contract and the remainder of such provision shall not be affected.
- 6.6 **The Buyer holds harmless and indemnifies Syngenta against any and all claims of third parties for damages which have been caused by or are otherwise connected with any Goods delivered by Syngenta, including, without limitation, claims made against Syngenta in its capacity as producer of the Goods pursuant to product liability, unless such damage is caused by breach of contract, negligence or wilful misconduct on the part of the Company.**
7. **Packaging and traceability of Goods; use of trademarks, signs and other indications**

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

## 8. **Special Conditions Relating to Seed Products**

Where the Goods comprise Seed Products:

- 8.1 A bag-tag setting forth the restrictions of use of the Seed Products by the Buyer and subsequent buyers may be included in the Products' packaging and/or labelling. By using the Seed Products, the Buyer or further buyers confirm his/their commitment(s) to comply with these restrictions. The Seed Products are exclusively intended for the growing of crops for human or animal usage and/or consumption. The Seed Products and the packaging are proprietary to Syngenta Group or its licensors and are protected by intellectual property rights. Unless expressly permitted by law, use of the seed, including the parental lines that may be unintentionally contained therein, for research, breeding or molecular or genetic characterization is strictly prohibited. Buyer shall acquire no rights in relation to parental lines that may be unintentionally contained therein. Buyer further agrees not to remove the bag-tag from the Products' packages and/or labelling. The same restrictions apply to the Buyer's buyers.
- 8.2 The Buyer shall, if requested, give Syngenta access to its premises where the Seed Products are located at any time to enable Syngenta to inspect the usage of such Seed Products. Syngenta shall notify the Buyer of its visit in a timely manner.
- 8.3 The Buyer shall comply with the restrictions and limitations imposed on the Seed Products by the UPOV Convention and its national implementations hereby incorporated by reference, and when applicable Council Regulation No 2100/94 of 27 July 1994 on Community plant variety rights, hereby incorporated by reference. Buyer shall comply with these additional obligations:
- i) If the Buyer finds a mutant in the Products, the Buyer shall report this immediately to Syngenta by registered letter, and shall immediately make available to Syngenta materials of the mutant for testing purposes and for any other purposes without charge. Furthermore, Syngenta has the right to request from the Buyer, within a further period of two (2) years after the detection of the mutant, materials of the mutant for testing purposes and for any other purposes without charge.
  - ii) The Buyer indemnifies Syngenta for any damages Syngenta incurs as a result of any violation by the Buyer of Syngenta's plant breeder's rights or other intellectual property rights.
  - iii) The Buyer undertakes to fully cooperate as desired by Syngenta, including cooperating with the collection of evidence, in the event that Syngenta is engaged in legal proceedings with regard to plant breeder's rights or other intellectual property rights.
  - iv) The Buyer shall report all sales of the Goods as may be required by relevant royalty collecting agencies administering rights in the Goods.
- 8.4 All the varieties currently sold by Syngenta 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 however be totally excluded.
9. **Force Majeure**
- 9.1 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 or a Brexit Event. “**Force Majeure Event**” means any acts, events, omissions, accidents or causes beyond the Company’s reasonable control (including, without limitation, any failure, omission or default on the part of any supplier or contractor of the Company); “**Brexit Event**” means any of the following events (a) – (d), or any discussions, proposals, negotiations or any other steps taken by the United Kingdom (UK) government or any authority or any other body or person in the UK or in any other jurisdiction, in anticipation of or related to or in preparation for or caused by Brexit: (a) a change in the Law or a new requirement to comply with any existing Law or existing Law ceasing to apply (for these purposes, “**Law**” means any legal provision a party must comply with including any law, statute, subordinate legislation, enforceable EU right, bye-law, regulation, order, mandatory guidance or code of practice, judgment of a court of law, or requirement of any regulatory body, whether in the UK or elsewhere); (b) in any jurisdiction, the loss of, a change to or the imposition of a new requirement for any licence or consent required of or by the Company to perform the Contract or to commercially exploit the Products; (c) a change to the business or economic environment in which the Company and/or its suppliers operate, including any changes or delays affecting customs, border checks and controls, storage, transportation and/ or logistics; or (d) in any jurisdiction, the imposition of, or a change to, a duty, tax or levy imposed on imports or exports of Products or any raw materials or components used by the Company to manufacture the Products. In this Condition 9.1, “**Brexit**” means the United Kingdom ceasing to be a member state of the European Union (EU), and the nature and extent of any change referred to in the definition of Brexit Event will be determined by reference to the Laws, requirements, environment and/or other relevant circumstances as they existed on 31 December 2020.

10. **Termination**

10.1 If: (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, (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 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, (iv) any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer, (v) the Buyer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, (vi) the Buyer ceases or threatens to cease to carry on trading, (vii) any analogous event to those listed above (“**Events of Insolvency**”) occurs in any jurisdiction, (viii) 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, (ix) 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 (x) the Buyer encumbers or in any way charges any of the Goods prior to ownership passing to the Buyer, then:

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

11. **Governing Law and Jurisdiction**

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

17.02.2021