

NORAM SEED RULES

Rules and Usages for the Trade in Seeds for Sowing Purposes

Effective March 1, 2007

NORAM SEED RULES & USAGES FOR THE TRADE IN SEEDS FOR SOWING PURPOSES

GENERAL RULES

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GENERAL RULES

Part A. General Provisions

Section I. Validity

1. The NORAM Seed Rules shall be applicable to the trade in all categories of seeds for sowing purposes and, where appropriate, in reproductive plant material.

The present Rules consist of General Rules for the trade in seeds.

2. When the code letters NORAM have been embodied in a contract pertaining to seeds, the present Rules shall apply in full. Any exceptions to these Rules or particular and/or additional provisions shall be specified in the contract. The latter shall then prevail over the present Rules

3. If the application of national laws renders one or several dispositions of the present rules null and void, the validity of all other dispositions contained in the present rules will not be affected by it.

Section II. Definition of terms of time and communication

4. When the word "hour" is used, hours on Saturdays, Sundays and legal holidays are excluded.

5. When the word "day" is used, Saturdays, Sundays and legal holidays are included.

6. When the words "working day" are used, Saturdays, Sundays and legal holidays are excluded.

7. "Telecommunication" means all kinds of teletypes, telegrams, facsimile, e-mails and cables, with the exception of verbal communications by telephone.

8. Messages and offers (by letter or telecommunication) that arrive on a Saturday, a Sunday or legal holiday shall be considered having arrived on the following working day.

9. When statutory holidays in Canada, US or Mexico do not fall on the same day, the holidays of the party concerned shall be considered valid.

Part B. Conclusion of a Contract

Section III. Conclusion and confirmation of a contract

10. a) Offers to buy or sell made by letter shall not be considered binding.
- b) Offers to buy or sell made by telecommunication shall be considered binding for reply by telecommunication within 24 hours after the hour of their receipt.
- c) A description of the conditions shall be given in the offer, the order, the contract, and the confirmation of purchase or sale.

The description shall include the following:

- the date;
- the quantity;
- the species and variety;
- the description of the quality (see article 24);
- the price per unit (i.e. according to Incoterms);
- the type of packaging;
- the shipment period;
- the payment conditions;
- all particular provisions not forming part of the present Rules or which modify the procedures specified therein.

11. If a contract is concluded, the buyer and the seller shall, within 3 working days unless justified delay can be established, mail or telecommunicate to each other a confirmation of the said contract. If neither of the contracting parties sends a written contract, the contract shall be considered confirmed on the basis of the verbal agreement, the telecommunication or the letter exchange.

12. A contract established by a broker based on an order or an acceptance shall be confirmed by the broker and shall be binding on both parties unless one of the parties has a valid reason to refuse the other. In such a case, the refusal shall be declared by telecommunication within maximum 24 hours after the name of the other contracting party is known.

13. Any variation, error or omission detected in the confirmation or the contract of the seller, the buyer or the broker shall be corrected and confirmed by telecommunication within 24 hours after receipt of notice.

Section IV. Contract subject to import or export authorization

14. If a contract is concluded "subject to an import or export authorization", the party subject to authorization shall, without delay, ask the qualified authorities to grant said authorization.

The notification of the granting, the restrictive conditions or the refusal of an authorization shall be passed on to the other party by telecommunication within 24 hours after its receipt.

15. a) If an authorization has not been granted or has been granted but cancelled within 30 days prior to the agreed date of shipment, either party shall have the right to cancel the contract without indemnification.

b) If an authorization has not been granted, the party concerned must be able to prove that everything necessary had been undertaken to obtain the authorization.

Section V. Contract subject to crop and multiplication contract

16. If a contract is concluded "subject to crop", the seller shall convey to the buyer, throughout the various stages of production, all essential information regarding time of sowing, the conditions and the inspections of fields, and the prospects of the crop, the yield and the quality.

17. a) The seller shall, without delay, inform the buyer by telecommunication and immediately furnish proof of any shortage or deficiency of quantity and quality, including, as far as the quality is concerned, the exterior appearance, as well as the result of an analysis which presents an inferiority of the quality.

b) If the quality is inferior to the contractual specifications, the buyer shall have the right to refuse the seeds or to accept them at a reduction in price, as provided for in the articles of the specific rules concerning the assessment of damages.

The buyer's decision shall be in the seller's possession within 5 days after the date of receipt of the result of the analysis carried out by an official laboratory. After 5 days, the seller shall be discharged from his obligation to deliver the available seeds.

c) The present Rules may be applied to a multiplication contract. Taking into account the variations of situations, it is recommended that the parties state precisely the particular provisions in the contract, as some of these provisions may not figure in the specific rules of the species under consideration.

Section VI. Import regulations

18. If a contract has been concluded "guaranteed to pass" or "subject to passing" the regulations concerning seeds of a named country, the regulations in force at the date of conclusion of the contract shall apply. In the case where the delivery or a part of the delivery of the seeds is not admitted as a result of analysis and/or phytosanitary objections, the buyer shall have the right:

a) in the case of "guaranteed to pass", to demand replacement of the seeds or to cancel the contract. In both cases he shall have the right to claim for damages;

b) in the case of "subject to passing", to refuse the delivery. In this case, he has no right to demand replacement of the seeds or to claim for damages.

If the seeds can be brought up to the standards required to satisfy the regulations of the importing country, the parties may agree to have carried out the necessary operations to bring the seeds into conformity (this applies to both (a) and (b) above). Any modification of the regulations concerning seeds of the importing country after the

date of conclusion of the contract shall be at the buyer's risk.

19. Pending the decision on the admission or non-admission, the seeds shall remain at the port of discharge or at the border station. However, if the contract states "subject to passing", the buyer may have the seeds transferred under customs' control to one or several specific inland places of the country, on the condition that in case of non-admission, to pay the return costs to the arrival port or the border station.

If the contract is concluded "guaranteed to pass", the transport costs and warehousing shall be at the seller's charge provided that he shall have had the possibility to accept or to refuse the specific place or places.

Part C. Conditions of a Contract

Section VII. Quantity

20. The contract shall indicate the total quantity of the transaction. It shall clearly be indicated in the contract if the quantities are expressed in kilograms (kg), in Imperial pounds (lbs) or in predetermined numbers of seeds per package. If necessary, the following conversions shall apply:

1 kg = 2.205 lbs
1,000 kg = 2,205 lbs (1 metric tonne)
1 lb = 0.4536 kg
cwt = hundredweight or 100 lbs
one ton = one 'short ton' or 2,000 lbs

21. The addition of the word "about" or "approximately" shall authorize the seller to deliver, at the conditions of the contract, a quantity up to 5% more or less than the quantity agreed to in the contract.

In case of non-delivery or partial delivery, the quantity indicated in the contract shall serve as basis for the accounting.

22. If the quantity agreed to in the contract varies between two figures, the seller shall deliver within these limits. In case of non-delivery or partial delivery, the average of the two figures shall serve as basis for the accounting.

Section VIII. Quality

23. At the time of shipment, the seed shall be sound, sufficiently dry, without bad odour, unadulterated and marketable. Any treatment of the seeds, including inoculation, fumigation and/or artificial staining shall be expressly agreed upon.

24. Each lot, as well as the contents of each of the packages, shall be homogeneous.

25. a) A description of the quality shall be given in the offer, the order and the contract. If missing, and if the standards are indicated in an annex corresponding to the designated specie, these standards shall then apply.

b) A description of the quality shall be given, where applicable, as to the purity, germination, weed content, crop year and any other essential points pertaining to the quality of the seed.

c) If the contract contains a provision relating to the content of weed seeds or the content of seeds of other cultivated plants or both, the official classification of weed seeds or seeds of other cultivated plants shall be precisely stated in the contract as well as all particular description agreed upon.

If the classification is not precisely stated, the official classification in the seller's country at the date of conclusion of the contract shall prevail.

26. Terms pertaining to tolerances are described as follows:

a) Terms such as "minimum," "maximum," "or better," "less than," "not to exceed," et cetera, mean that no tolerances shall apply.

b) The Seller shall not apply tolerances at time of shipment.

c) Tolerances as defined in the U.S. Federal Seed Act, under the Canada Seeds Act or in the Mexican Import Norms, in effect at date of the contract, shall apply based on tests made from samples of the seed lot drawn at destination.

d) The Seller shall lose the benefit of permitted tolerances if these are exceeded, and it shall give the Buyer the right to refuse the seed.

27. Without mentioning the terms "maximum" and/or "minimum", the tolerances shall apply with the exceptions provided for in the articles of the specific rules relating to the assessment of damages.

28. Special terms pertaining to quality are described as follows:

a) "Representative sample" shall mean that such a sample shall be identical to the lot from which it is drawn.

b) "Type sample" shall mean that such a sample shall be considered as the basis for comparison as to the essential characteristics of a seed lot, such as purity, size of seed, color, cleanliness and approximate contents of other seeds, weeds and foreign matter.

c) "Clear Tag" for any named state or states shall mean that a purity analysis and noxious weed seed examination of a representative sample by a competent analyst, as prescribed in h), disclosed no weeds or other seeds which must otherwise be stated on the label to comply with the seed laws of the named state or states in effect at the date of contract.

d) "Tagged to comply" or "legal for" shall mean that the purity, germination, weed and seed contents, as well as any other specifications, shall comply with the minimum quality standards of the seed laws of the named state or states in effect at the date of the contract.

- e) "Free of" means that no named weeds or other named seeds shall be present in a sample of the minimum weight prescribed for seed examination in the seed testing rules of the Association of Official Seed Analysts of North America in effect on the date of the contract.
- f) "Canadian Grade" shall be defined by the corresponding regulations and quality standards of the Canada Seeds Act in effect at the date of the contract.
- g) "Eastern States" comprise the following states: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia.
- h) "Midwest States" – Midwest States - North Dakota, South Dakota, Nebraska, Kansas, Minnesota, Iowa, Missouri, Wisconsin, Illinois, Michigan, Indiana, Ohio
- i) "Rocky Mountain" – Idaho, Nevada, Arizona, Montana, Wyoming, Utah, Colorado, New Mexico.
- j) "Pacific Northwest" – Washington, Oregon, Idaho

29. Seed Vigour is not a single measurable property, like germination. Seed Vigour may be tested directly or indirectly, and vigour testing is always very delicate and slight fluctuations in test conditions may significantly affect reliability of results. Seed Vigour may also decrease extremely rapidly. Consequently, except otherwise specifically agreed by the parties, vigour characteristics are excluded from arbitration. If vigour characteristics are included in the contract at the request and with the agreement of both parties, then the arbitrators will have to take them into account in case of arbitration.

Section IX. Packaging

30. a) The seeds shall be put in single packages of good quality, sound, suitable for shipment and sale. and for contracts of sale by weight, shall correspond to conventional multiples of weight units in kilograms or in pounds. Packaging in double bags shall be expressly agreed upon. The contract shall specify the unit of weight, or otherwise a predetermined number of seeds, as well as the type and material of the packages, such as bag, box, container, in jute, paper, plastic, cardboard, metal, etc.

b) The contract shall indicate if the costs of the packages are included in or excluded from the price indicated in the contract. If excluded, the costs of the packages shall be indicated in the contract. Without any indication in the contract, they shall be considered as included.

c) The packages shall be closed in such a way that it shall be impossible to open them without destroying the fastening or without leaving traces showing clear evidence

that the contents could have been altered or changed.

d) The packages shall be marked or labelled so that they can be identified based on the documents.

e) The contract shall indicate if net weight or gross weight will apply, within limitations as set by Commerce norms and other applicable laws of the buyer's country.

Section X. Shipping terms

31. All the definitions of abbreviations such as "FOB", , etc. shall be those given by the "INCOTERMS", published by the International Chamber of Commerce, in force at the date of conclusion of the contract.

32. Any additional provisions concerning the shipment shall be specified in the contract.

Section XI. Documents

33. The documents to be presented shall include those which figure in the contract,, plus any applicable documents such as required under Commerce norms or other laws of the buyer's country.

34. The seller shall take all appropriate precautions so that the documents arrive at their destination before or at the time of the arrival of the seeds.

35. If the seeds arrive prior to the receipt or the presentation of the complete documents, the buyer shall take all appropriate and practical measures in its power to avoid undue costs, such as demurrage, which might arise at the point of unloading. Except otherwise agreed, the complete documents shall be received or presented as soon as possible, but not later than one day after the arrival of the seeds.

Part D. Execution of a Contract

Section XIII. Notification of intent to ship and shipping instructions

36. The following periods for shipment shall be valid if the parties have not previously agreed to other specific conditions:

a) "Instant shipment" means shipment within 24 hours;

b) "Immediate shipment" means shipment within 3 days;

c) "Prompt shipment" means shipment within 10 days;

d) "Shipment before a fixed date" means shipment on any day before the fixed date;

e) "Shipment within a specific time period" (such as August/September) means

shipment on any day within this time period;

- f) "Shipment at Seller's option" means shipment on any day convenient to the Seller within a given time span, if any is indicated;
- g) "Shipment at Buyer's option" means shipment within a time span of not less than 10 days, to be indicated by the Buyer.

Section XIV. Default of shipping instructions

37. If the Buyer does not give shipping instructions in time, the Seller shall give the Buyer at any time, via telecommunication, a delay of two working days to receive proper instructions.

a) Should the instructions be forthcoming within these two working days, the Seller shall not be entitled to any payment of damages, etc. However, should no instructions be received by the Seller within these two working days, the Seller shall have the right to cancel the contract and shall be entitled to payment of direct and indirect damages, such as interest, warehouse costs, price difference (loss of profit) etc. The Seller shall inform the Buyer of his decision by telecommunication.

b) Should the Seller accept shipping instructions after expiration of the contract period, payment of damages, if any, shall be agreed upon before shipment.

38. The provisions contained in 37 shall not apply where "instant" or "immediate" shipment is agreed to, because shipping instructions shall have been expressed at the conclusion of the contract.

39. If seed is released at a storage facility, then payment of any storage charge depends if the transaction is at seller's or buyer's option. In the case of seller's option, then the seller is responsible for any storage fees until the release date and the buyer after the release date (as long as release date is within contract period). In the case of buyer's option, once the seed is released at the request of the buyer, all storage fees from that point in time forward, if any, are the responsibility of the buyer.

Section XV. Defaults of Shipment

40. If the Seller does not ship within the agreed time period, the Buyer shall, at any time, grant the Seller by telecommunication a delay of two working days to make shipment. No such delays apply to shipments as described under "instant" or "immediate" shipments

41. Should shipment take place within the two days, the Buyer shall not be entitled to any damages, etc. However, should no confirmation be received by the Buyer that the shipment was made within this delay, the Buyer shall have the right to cancel the contract and shall be entitled to payment of direct and indirect damages, such as interest, warehouse costs, price difference (loss of profit) etc.

The Buyer shall inform the Seller of his decision by telecommunication.

- 42.** If the contract specifies "without extra time limit" or "latest" or in similar terminology expresses that there is no extension implied, the Buyer shall have no obligation to grant an extra time limit.

Section XVI. Notification of shipment

- 43.** The seller shall inform the buyer by telecommunication of the means of transport and estimated date of arrival (; by rail and by road: name of transport company, by air: name of airline and flight number).

Section XVIII. Expiration of a contract

- 44.** If, following default of shipping instructions or default of shipment, neither of the parties has come forward within 30 days of the last permitted date for the shipment called for in the contract, the latter shall be considered lapsed and cancelled, and neither the seller nor the buyer may claim for damages.

Section XIX. Payment

- 45.** Terms of payment are to specified in the contract but if they are not, the payment shall be made net against documents at first presentation.

- 46.** The total payment shall take place when due. Every portion of a shipment shall be paid for separately as soon as it falls due.

- 47.** The bank transfer costs shall be at the seller's account, except if the buyer has not made the total payment when due. In this case, the costs shall be for the buyer's account.

- 48.** a) If the buyer does not settle within 3 working days from the due date or from the date at which it is legally possible for him to do so, he shall pay the costs of collection and an interest charge at an annual rate of 5% higher than the official rate of bank interest in the country of the buyer or the seller, whichever was higher at the time when the settlement was due.

b) This penalty of 5% is not due if the buyer can prove that the delay of payment was caused by circumstances beyond his control.

- 49.** If the buyer has not paid for the documents or has not taken delivery of the seeds on arrival or has declared that he will do neither, he shall be liable for all damages, including the expenses as well as the loss of profit caused to the seller due to the immobilization of the seeds.

- 50.** It shall not be permitted to retain all or part of a payment in compensation for

litigation and/or debts.

51. If the seeds have been furnished on credit, the buyer shall normally not be authorized to dispose of them as long as he has not paid for them.

As long as the invoice remains unpaid, the seeds remain the property of the seller. On the condition that he can identify the seed lot, he shall have the right to take it back as soon as the date of payment has passed.

52. If the circumstances indicate that the buyer does not intend to pay or is unable to pay, the seller shall have the right to seek recovery of the outstanding debt:

- either through the intermediary of a competent court of law without having recourse to arbitration as provided for in the present Rules (Section XXV, Arbitration).
- or through the intermediary of an expedited arbitration procedure as provided for in Art. 21 of the ISF Arbitration Procedure Rules.

Part E. Quality Checks and Analyses

Section XX. Quality control

53. The seller shall declare the quality of the seeds at the time of the shipment.

If the contract does not otherwise specify, this declaration may be made by furnishing of an official seed testing report. "Official seed testing report" means a report issued by a governmental laboratory or a private laboratory accredited either by Canadian Seed Institute (CSI), Canadian Food Inspection Agency(CFIA), ISTA or AOSA or an OECD National Designated Authority;

54. Unless otherwise agreed by the parties, any duly accredited sampler and/or any duly accredited seed testing laboratory shall be acceptable and the seed testing results obtained can be used as evidence for all commercial and litigation processes. If the parties so wish, they may agree on a specific sampler and/or seed testing laboratory.

55. Claims concerning the quality, other than for genetic purity, shall be telecommunicated by the Buyer to the Seller within three working days of learning of the discrepancy, but not later than within 45 days from the date of delivery. This shall give the Buyer sufficient time to have time-consuming tests, such as for germination, completed within this period.

56. Claims regarding genetic purity shall be made not later than within 180 days from the date of delivery. Fields or laboratory plantings used to determine genetic purity shall not be destroyed before the Seller has been notified by telecommunication of any discrepancies and given reasonable time to inspect them.

57. Claims regarding trueness to variety for lots of certified seed shall give the Buyer the right to obtain, upon request, a copy of the official analysis, certifying the identity of the variety. This certificate shall be supplied by the Seller.

58. When variations occur in the tests of the Buyer and the Seller, resulting in a dispute as to the quality of seed delivered, an official sampler, duly authorized by the respective State, Canadian Seed Institute, or Federal Department of Agriculture, shall draw a representative sample in accordance with the sampling procedures of the Association of Official Seed Analysts or Canadian Food Inspection Agency. This sample shall be divided into a sufficient number of parts and delivered as follows: one part each for information to the Buyer and the Seller, and one part for analysis to such official laboratory agreed upon by the Seller and the Buyer. If the Buyer and the Seller cannot agree on the laboratory, the Executive Vice President of CSTA or President of ASTA, upon request, shall designate a competent laboratory.

59. The laboratory to which the sample is mailed shall be instructed to submit, without delay, copies of its analysis to both the Seller and the Buyer.

60. The costs for sampling and the analysis shall be paid by the claimant, but reimbursed if the claimant obtains a decision in his favor.

61. These Rules describes the numerous, but necessary, quality standards used in contracts concluded for the buying and selling of seed for planting in North America. The diversity of state and federal laws and regulations, in addition to special quality requirements stated in a contract, make it impractical to formulate more detailed Rules pertaining to quality.

62. The following, however, shall apply as guidelines to settle quality deficiencies:

a) The Buyer shall accept the seed where tolerances apply (as described in Section 25) as long as tolerances are not exceeded, as determined by a retest (procedure in Section 65). The Seller shall not be responsible for payment of any price difference. If the quality exceeds the permitted tolerances or tolerances are excluded by contract, the Buyer shall have the right to refuse the seed.

b) The Seller shall have the right to replace non-contractual seed as long as the replacement shall take place within the contractual shipping period. The costs, including return freight, handling, etc., shall be borne by the Seller.

c) The Buyer and the Seller may agree that the Buyer attempts to recondition the seed at Seller's expense. The costs for reconditioning, however, cannot exceed the costs which would have occurred if the seed had been replaced by the Seller (including the loss of quantity due to reconditioning).

63. If no amicable settlement can be reached, the Buyer and the Seller shall have the right to submit the case for arbitration in accordance with Section XXV of these Rules.

Section XXIV. Force Majeure

64. The clause of *force majeure* of the International Chamber of Commerce, in force at the date of conclusion of the contract, shall be an integral part of the present Rules.

The party invoking the clause of *force majeure* shall notify the other party, as soon as possible and by telecommunication, of the impossibility of delivery or the necessity to defer the delivery, indicating the reasons.

Section XXV. Arbitration

65. a) With the exception of the differences mentioned in Section XIX, article 52, any difference between the parties, even if the difference is only recognized by one party, resulting from transactions started or concluded on the basis of the present Rules, and which cannot be settled amicably, shall be settled by binding arbitration in accordance with these Rules and the applicable procedural rules of the American Arbitration Association (AAA), unless (1) the contract provides otherwise, (2) all parties in writing agree to forego binding arbitration, or (3) a court with competent jurisdiction orders that binding arbitration be stayed.

b) Application for arbitration shall be made directly to AAA in conformity with the applicable procedural rules of AAA.

c) Application for arbitration shall be made within one year of the event giving rise to the dispute between the parties with respect to which arbitration is sought.

d) The NORAM Seed Rules shall govern in case of conflict or apparent conflict between these NORAM Seed Rules and the applicable AAA rules.

e) ASTA and CSTA shall cooperatively develop and maintain, and shall provide to AAA, a listing of seed industry experts from which parties may select individuals to serve as arbitrators of disputes for resolution under these Rules. In the alternative, parties may select individuals to serve as arbitrators from a listing of experts maintained and provided by AAA.