

## GENERAL TERMS AND CONDITIONS OF SALE

Drawn up by BASF New Zealand Ltd., Level 4, 4 Leonard Isitt Drive, Auckland Airport 2022 Auckland, New Zealand, on May 1<sup>st</sup>, 2019. These terms and conditions replace all previously published issues.

### Article 1 Definitions and Interpretations

**Agreement:** means an Agreement for Sale which is concluded between Parties with due observance of Article 2 of these Terms and in which all commercial conditions between Parties are laid down.

**Brands:** means all the trademarks, logos, signs and similar means of expression BASF NZ uses on the packaging of the Products and all communication, displays and statements to distinguish itself and its products from third parties and which Brands are exclusive property of BASF NZ or one of its relevant affiliates in BASF NZ' group of companies.

**Business Day:** means a day that is not a Saturday, Sunday or public holiday in New Zealand or, for deliveries of the Products, at the place of delivery.

**Buyer:** means the person or entity who/which orders Products from BASF NZ whether by phone, email, in person, through BASF NZ' online ordering system or otherwise.

**GST:** the GST levied by the New Zealand government.

**Order:** means a purchase order for Products.

**Parties:** means the parties to the Agreement jointly referred to.

**Products:** means the goods purchased or to be purchased by Buyer from BASF NZ which are subject of the Agreement.

**BASF NZ:** means BASF New Zealand

**Terms:** means these general terms and conditions of sale.

### Article 1. Applicability of these General Terms and Conditions

1. These Terms apply to all offers and Agreements between BASF NZ and Buyer, except as otherwise agreed in writing. The applicability of any terms and conditions of Buyer, including any terms and conditions printed on or referred to in Buyer's offer to purchase or Order, is thus expressly rejected, even if these terms and conditions may have been (partly or fully) applied to previous transactions between Parties.
2. If there is any inconsistency between these Terms and another provision in the Agreement, then the provision of the Agreement will prevail only to the extent of the inconsistency.
3. These Terms relate specifically to the vegetable seeds business of BASF NZ. With respect to all BASF NZ's agreements in the broadest sense of the word relating to the vegetable seeds business, these Terms apply. These Terms therefore prevail at all times over the BASF NZ's general terms and conditions printed on the back of its invoices. The latter do not apply.

### Article 2. Offers and Orders

1. The offers made by BASF NZ are without commitment. Up to three working days after Buyer accepts an offer without commitment, BASF NZ is entitled to withdraw this offer. Once an offer is accepted by BASF NZ, an Order may not be cancelled by Buyer except with the express written consent of BASF NZ.
2. All Orders must be placed in the manner and form required by BASF NZ from time to time.
3. BASF NZ may in its absolute discretion determine from time to time a "Specified Order Quantity", being the minimum order value or quantity for each order of Products to be supplied to Buyer.
4. If the quantity ordered in any order differs from the standard quantity applied by BASF NZ or a multiple thereof, BASF NZ is free to deliver the nearest higher quantity.

### Article 3. Prices and Payment

1. The price for the Products and which Products will be sold to Buyer are specified in the Agreement. Unless the Agreement states otherwise, BASF NZ may alter the price at any time prior to the acceptance of an Order without prior notice.
2. The prices specified in an offer or Agreement are exclusive of GST, or equivalent tax duty, unless otherwise specified.

3. Buyer must pay the GST or any other tax duty, levy, tariff or charge in addition to and at the same time as payment of the price. BASF NZ will provide Buyer with a tax invoice as required by law.
4. BASF NZ reserves the right to change its prices periodically. Each new price listing will invalidate the preceding one regarding all orders placed after that new price listing.
5. Payment must be received by BASF NZ within thirty (30) days after the invoice date, unless otherwise agreed in the Agreement. If Buyer has not fulfilled his payment obligation after this thirty (30) days payment term, Buyer will automatically and without formal notice be in default. Buyer will then owe interest at a rate of 1% a month or the statutory interest for overdue payment in Buyer's country, whichever is higher, on the outstanding amount as from the date of default. Any payment made by Buyer will be credited first against any interest that has occurred.
6. Notwithstanding Article 3 sub 5 above, BASF NZ reserves the right to require payment (or appropriate payment guarantees) prior to or upon delivery of the products to Buyer.
7. If payment in instalments has been agreed between Parties, the entire remaining amount will fall due immediately without notice of default being required in the event of late payment of an instalment. The provisions of the last sentence of Article 3 sub 5 apply accordingly.
8. If Buyer fails to fulfil one or more of its obligations under the Agreement and the Terms or to do so correctly and/or in time:
  - BASF NZ' obligations will automatically and immediately be suspended until Buyer has paid all amounts due and payable by it, including payment of any out-of-court costs; and
  - BASF NZ may demand full payment (upfront) and/or sufficient security from Buyer, for instance in the form of a bank guarantee to be issued by a reputable banking institution in BASF NZ's country, regarding the performance by Buyer.
9. Under no circumstances is Buyer authorized to delay any payments due or to deduct any amount from BASF NZ' invoices due, without the prior written agreement of BASF NZ.
10. BASF NZ may at its discretion allocate a payment that does not specifically identify the invoice for which such payment is made in satisfaction for monies owing under any outstanding invoices without regard to the date of those invoices.
11. Buyer is not allowed to invoke suspension of payment and/or settlement of claims without the prior written approval of BASF NZ.
12. If BASF NZ has a claim against a company related to Buyer - e.g. a parent, daughter or sister company - and that company is in a state of bankruptcy or liquidation or has been granted suspension of payment, BASF NZ may set off that claim against any claim that Buyer may have against BASF NZ, even if BASF NZ' claim may not have become payable at that time.
13. If Buyer experiences an insolvency event due to liquidation, declaration of bankruptcy or is granted a suspension of payments, Buyer's payment obligations will fall due immediately and BASF NZ will be entitled to suspend the further performance of the agreement or to dissolve the agreement, all of this without prejudice to BASF NZ' right to claim damages and without being liable for any compensation towards Buyer itself.
14. If Buyer fails to perform one or more of its obligations under the Agreement and the Terms, all costs of obtaining payment in and out of court will be for Buyer's account, including the interest due in respect of these costs.

#### Article 4. Harvesting and Processing Reservation

1. All deliveries are subject to the customary harvesting and processing reservation. If BASF NZ invokes the harvesting or processing reservation, BASF NZ is not obliged to supply, but will, if possible, try to supply pro rata to the quantity ordered or equivalent alternatives.
2. Buyer is not entitled to damages if BASF NZ invokes this reservation.
3. Article 5 sub 11 and 12 are fully applicable when BASF NZ invokes the harvesting or processing reservation.

#### Article 5. Packaging and Delivery

1. Buyer must specify in writing, upon placing its order or at BASF NZ' first request, which data, specifications and documents are required pursuant to the regulations of the country in which the delivery must take place, such as those relating to:
  - invoicing;
  - phytosanitary requirements;
  - international certificates; and
  - other import documents or import statements.
2. All references by BASF NZ to product specifications correspond to the most recent product specifications as published by BASF NZ.
3. Products are packed by BASF NZ in its own packaging. Buyer is prohibited from repacking the Products and Buyer must not alter, remove, conceal or temper any label or batch number or other specifications on the packages.
4. BASF NZ will always act to the best of its ability in fulfilling its obligation to deliver.
5. Sound fulfilment of BASF NZ' obligation to deliver also includes delivery with a minor difference in size, packaging, number or weight.

6. BASF NZ is permitted to deliver sold products in parts. If the products are delivered in parts, BASF NZ has the right to invoice each part separately.
7. Shipments will be delivered DAP, ex Incoterms® 2010, unless agreed upon otherwise in writing.
8. BASF NZ undertakes to deliver within a reasonable period after the purchase agreement was concluded in accordance with the sowing or planting season.
9. Any timeframes quoted by BASF NZ for delivery of the Products are estimates only and thus not of the essence. In the event of late delivery, Buyer must therefore give BASF NZ notice of default in writing and grant it a reasonable period in which to perform the agreement.
10. Buyer agrees to accept delivery of the Products at any time between 9.00 am to 5.00 pm on a Business Day.
11. BASF NZ will be not liable for any loss suffered by Buyer arising out of any delay or failure to deliver the Products (or any part of them) or failure to deliver in the requested quantities.
12. If BASF NZ fails to deliver some or all Products pursuant to an Agreement, Buyer will be not entitled to cancel that Agreement or any other Order, Agreement of Delivery.

#### Article 6. Retention of Title

1. The title to Products delivered by BASF NZ and/or the Products derived therefrom will remain with BASF NZ, until Buyer has fulfilled properly all obligations under the Agreement and these Terms towards BASF NZ in connection with these deliveries.
2. All Products delivered by BASF NZ shall be separately stored or used in such a way that the quality is guaranteed, and the products can be easily identified as property of BASF NZ.
3. Products delivered by BASF NZ to which the retention of title pursuant to Article 5 sub 1 applies may be resold or used only in the normal course of business. If they are resold, Buyer is in its turn obliged to deliver the products with retention of title to its buyers.
4. It is prohibited for Buyer to establish a pledge or lien on the goods subject to retention of title.
5. In the event of a default (as described in Article 3, more specific in the circumstances described in paragraph 8 and 13) BASF NZ or its representative will be entitled, without the necessity of giving any notice, to enter premises occupied by Buyer to search for and remove any of those Products without in any way being liable to Buyer, and may dispose of or retain such Products as BASF NZ sees fit without being required to give notice or account to Buyer. All costs and expenses incurred by BASF NZ as a result of taking action in accordance with this Article, together with transportation and storage charges, must be paid by Buyer to BASF NZ on first request.

#### Article 7 Containers and Pallets

1. Any pallets or containers used for the delivery, storage or display of the Products are not included in the price of the Products and will remain property of their owner.
2. Buyer must promptly return or exchange the pallets and containers in its custody on the day of delivery, unless otherwise agreed between Parties, or reimburse BASF NZ the cost of replacement or repair of lost or damaged pallets and containers.
3. BASF NZ may charge a deposit to Buyer for a pallet or container which will be credited in full if the pallet or container is returned to BASF NZ within 3 months of dispatch and is in good order and condition.

#### Article 8. Liability

1. BASF NZ's liability is exclusively governed by this Article and will apply to the extent permitted by law.
2. BASF NZ is not liable for any damage resulting from a shortcoming in the performance rendered, except in the case of intent and/or gross negligence on the part of BASF NZ and/or its employee.
3. In a situation of force majeure as described in Article 15, BASF NZ shall not be liable for any failure in the performance of any of its obligations under these Terms.
4. In any event and notwithstanding the foregoing, BASF NZ' liability shall be limited to the invoice value of the performances. BASF NZ will in no event be liable for any form of indirect damages, such as but not limited to special, incidental or consequential damage, reputational damage or loss of profit.
5. Buyer is required to limit as much as possible the damages in respect of which Buyer submits a complaint to BASF NZ.
6. Any potential claim for compensation or complaint based on the Agreement and these Terms shall expire in the event that no claim has been issued in writing against BASF NZ within one year of the delivery of the particular products.

#### Article 9. Use and Guarantee

1. BASF NZ guarantees that the performances rendered will comply to the best of its ability with the relevant product specifications. However, the product specifications will not apply as a guarantee. If the products delivered do not comply with the product specifications, Buyer will be informed. BASF NZ furthermore does not guarantee that the performances rendered will comply with the purpose to which these are put by Buyer.

2. If BASF NZ has specified a germination capacity, it is based only on reproducible laboratory tests. No direct relationship may be assumed between the specified germination capacity and the emergence of the seed at Buyer. This specified germination capacity merely indicates the germination capacity at the time when and in the circumstances in which the test was performed. Emergence depends, among other things, on the location, cultivation measures and climate conditions at Buyer.
3. Any and all guarantees on the part of BASF NZ will lapse if Buyer processes the products or has them processed, repackages the products or has them repackaged, or uses and/or stores the products incorrectly or has them used and/or stored incorrectly.

#### Article 10. Defects and Complaint Periods

1. Buyer must inspect the products purchased upon delivery at the latest five (5) Business Days after delivery. In doing so Buyer must check whether the products delivered comply with the Agreement, i.e.:
  - whether the correct Products have been delivered;
  - whether the quantity of the Products delivered corresponds with the Agreement;
  - whether the Products delivered meet the agreed quality requirements or—if none were agreed—the requirements that may be stipulated for normal use and/or trading purposes.
2. If visible defects or deficiencies are established, Buyer must inform BASF NZ accordingly in writing per registered mail addressed to BASF NZ within five (5) working days after delivery, specifying the batch, delivery note and/or invoice details.
3. Buyer must report any invisible defects to BASF NZ in writing per registered mail addressed to BASF NZ within five (5) working days after discovery, specifying the batch, delivery note and/or invoice details.
4. Complaints must be described in such a manner that BASF NZ or a third party can verify them. For that purpose, Buyer must also keep records regarding the use of the Products and, in the event of resale of the Products, with regard to its buyers and must impose the same written obligation on its buyers, to the extent possible. If Buyer does not file a complaint within the aforesaid period, the complaint will not be dealt with and all its rights will expire.
5. In the event of a permanent dispute between the parties concerning the germination capacity, varietal trueness, varietal purity or technical purity and health, a (re)inspection may be performed by Naktuinbouw (Netherlands Inspection Service for Horticulture), having its registered office in Roelofarendsveen, the Netherlands, for the account of the unsuccessful party. The inspection will be performed on the basis of a sample taken at BASF NZ by Naktuinbouw and retained by them. The outcome of this (re)inspection will be binding on both parties, without prejudice to the parties' right to submit disputes regarding the consequences of this outcome to the institutes referred to in Article 18.
6. In the event Buyer has submitted timely a substantive claim, this shall not release Buyer from its timely payment obligation nor shall Buyer invoke suspension of payment.

#### Article 11. Right of Return

1. In the event of a valid complaint of Buyer, Parties may agree on a return of (part of) the delivered products. Due to the high-quality standards of the products, the products can only be returned in their original, undamaged packing within fifteen (15) calendar days after the invoice date. A credit note shall be issued at 75% of the invoiced amount, excluding GST or sales/ turnover tax.
2. Primed seed and seed treated with insecticides cannot be returned and shall thus not be credited.

#### Article 12. Provision of Information

1. Information provided by BASF NZ in any form whatsoever is without commitment. Descriptions, recommendations and illustrations in brochures, leaflets and other means of communication are based as closely as possible on experiences in tests and in practice and are not intended as an indication for quality claims and/or warranties. BASF NZ in no event accepts any liability based on such information for different results in the cultivated product. Buyer itself must determine whether the products are suitable for the intended growth and/or can be used in the local conditions.
2. As used in the information supplied by BASF NZ, "immunity, resistance and susceptibility" shall mean the following:
  - a) **Immunity:** Not subject to attack or infection by a specified pathogen or pest.
  - b) **Resistance:** the ability of a plant variety to restrict the growth and development of a specified pathogen or pest and/or the damage they cause when compared to susceptible plant varieties under similar environmental factors and pathogen or pest pressure. Resistant varieties may exhibit some disease symptoms or damage under heavy pathogen or pest pressure.

Two levels of resistance are defined:

- (i) **High resistance (HR\*):** plant varieties that highly restrict the growth and development of the specified pathogen or pest under normal pathogen or pest pressure when compared to susceptible varieties. These plant varieties may, however, exhibit some symptoms or damage under heavy pathogen pressure.

- (ii) **Intermediate resistance (IR\*)**: plant varieties that restrict the growth and development of the specified pathogen or pest but may exhibit a greater range of symptoms or damage compared to resistant varieties. Moderately/intermediately resistant plant varieties will still show less severe symptoms or damage than susceptible plant varieties when grown under similar environmental factors and/or pathogen or pest pressure.

\* The standard abbreviations HR (high resistance) and IR (intermediate resistance) are used in all languages.

- c) Susceptibility: the inability of a plant variety to restrict the growth and development of a specified pathogen or pest.

#### Article 13 Use of Brands

1. Buyer may not use Brands which cannot be clearly distinguished from the brands of BASF NZ. An exception is made for Buyer regarding the trade in Products in the original packaging of BASF NZ.
2. Notwithstanding Article 13 sub 1, all intellectual property rights (including but not limited to copyrights, trademarks, logo's, patents, breeder's rights, trade names, brands, confidential know-how) world-wide regarding the products of BASF NZ, shall remain the property of BASF NZ or the relevant affiliate in BASF NZ' group of companies.

#### Article 14 Intellectual Property Rights

1. Seed from varieties protected by intellectual property rights, applied for or granted in the European Community and/or any other country, or by contract, may not be used for reproduction without BASF NZ' prior written permission. Conditions may be attached to such permission by way of a contract relating to production or reproduction (propagation), conditioning for the purposes of propagation, offering for sale, selling or otherwise introducing to the market; export; import and storage for one of the purposes mentioned above.
2. In accordance with Article 14 sub 1 above the relevant seed supplied by BASF NZ may therefore only be used by Buyer or its buyers for the cultivation of end products and/or other finished products on Buyer's premises.
3. The finished product, derived from the seed supplied to Buyer, may only be sold by Buyer under the variety name registered by BASF NZ.
4. Buyer is obliged to allow BASF NZ – or a third party that carries out inspections on behalf of BASF NZ – direct access to the business of Buyer (including amongst others and in particular to the greenhouses of its business) for inspections. Buyer shall upon request also allow access to records and accounts that are relevant to these inspections. BASF NZ will inform Buyer in good time of its plans to visit.
5. If Buyer finds a mutant in the protected variety, it shall immediately inform BASF NZ of this by registered post.
6. At BASF NZ' first request, Buyer will provide BASF NZ with test material from the mutant within two months of receiving the request. Buyer is aware that anyone finding a mutant in the protected variety requires the permission of the grower(s) of the 'parent variety' to exploit the mutant. Buyer is aware in particular that the finder of a mutant requires the permission of BASF NZ relating to the 'parent variety' in order to carry out any of the following acts: production or reproduction (propagation), conditioning for the purposes of propagation, offering for sale, selling or otherwise introducing to the market; export; import; storage for one of the purposes mentioned above.
7. If Buyer resells the products of BASF NZ to its buyers, Buyer shall impose unabridged the obligations it has under this Article 14 upon his buyers, including the obligation for that buyer to impose the same obligations upon his buyer and so forth.

#### Article 15. Force Majeure

1. BASF NZ may delay its performance of an obligation towards Buyer when it cannot perform due to a circumstance that stands in the way of fulfilling the obligation and cannot be attributed to BASF NZ if and in so far as this circumstance makes performance impossible or unreasonably complicated. Such a circumstance includes – without limitation – extreme weather conditions, natural disasters, acts, regulations or law of any Government, wars or civil commotions, destruction of production facilities or materials by fire, epidemics, failure of public utilities or common carrier, strikes at companies other than BASF NZ' company, unofficial strikes or political strikes at BASF NZ' company, a general or partial lack of the necessary raw materials and other goods or services required to render the agreed performance, unforeseeable delays at sub-suppliers or other third parties on which BASF NZ is dependent, and general transport problems.
2. BASF NZ will inform Buyer as soon as possible if he is unable to deliver or to deliver in time due to an event of force majeure.
3. If the event of force majeure lasts longer than three (3) months, both parties will be entitled to dissolve the agreement. In that case neither party will be required to pay any damages to the other party.
4. Insofar BASF NZ has partially fulfilled or will fulfil its obligations towards Buyer at the time of the occurrence of a force majeure, and the fulfilled or to be fulfilled part has an independent value, BASF NZ is entitled to invoice separately and Buyer is obliged to pay this fulfilled or to be fulfilled part.

#### Article 16. Export Control

1. Buyer hereby acknowledges and agrees that the Products delivered by BASF NZ may be subject to applicable trade sanctions laws, regulations, rules and licenses, including but not limited to those imposed by the United Nations, the United States, the European Union and the Member States of the European Union ('Sanctions Rules'). Buyer shall comply with the Sanctions Rules and agrees that it alone is responsible for ensuring its compliance with these Sanctions Rules. In particular, but without limit, Buyer will not, and will procure that none of its affiliates will use, sell, resell, export, re-export, dispose of, disclose or otherwise deal with the products, directly or indirectly, to any country, destination or person without first obtaining any required export license or other governmental approval, and completing such formalities as may be required by Sanctions Rules. Buyer shall not do anything which would cause BASF NZ to be in breach of the Sanctions Rules and shall protect, indemnify and hold harmless BASF NZ from any fines, losses and liabilities incurred by BASF NZ as a result of the failure of Buyer to comply with this Article.
2. Failure by Buyer to comply with any part of this Article shall constitute a material breach of the agreement. BASF NZ reserves the right to refuse to enter into or to perform any Order, to cancel any Order at its sole discretion if BASF NZ believes Buyer has failed to comply with any part of this Article.

#### Article 17. Indemnification

Buyer shall indemnify BASF NZ against all claims of third parties for compensation of damage (allegedly) caused by or otherwise associated with any products delivered by BASF NZ, including claims that have been filed against BASF NZ in his capacity as producer of the products based on any rule concerning product liability in any country, unless the damage is caused by intent or gross negligence of BASF NZ and/or its employees.

#### Article 18. Settlement of Disputes and Applicable Law

1. All agreements between BASF NZ and Buyer are governed by the laws of New Zealand.
2. The United Nations Convention on the Contracts for International Sale of Goods (the Vienna Sales Convention) shall be excluded.
3. In the event of a dispute between Parties, Parties will first try to reach a solution in consultation, or otherwise by means of mediation, before Parties submit the dispute to an arbitration tribunal or to the civil court.
4. Unless Parties have agreed on arbitration in consultation, any disputes will be settled by the civil court that is competent in first instance in New Zealand. BASF NZ will always have the right to summon Buyer before the court that is competent by law or pursuant to the applicable international convention.

#### Article 19. GMO Disclaimer

The seeds of varieties which are supplied to Buyer are varieties which are not developed by using of the technologies of genetic modification ("GM"). The methods used in the development and identity preservation of these varieties are aimed at avoiding the presence of off-types, which includes avoiding the presence of GM material.

Seed production has been carried out in accordance with production rules in the country where production took place, including stipulated isolation distances. BASF NZ is committed to the proper stewardship of its products, supports and has affirmed its commitment to the Excellence Through Stewardship™ industry stewardship initiative to be found at the following website: [www.excellencethroughstewardship.org](http://www.excellencethroughstewardship.org). However, due to free circulation of pollen and because it cannot be excluded that GM material is cultivated by others in seed production areas, admixtures with GM material cannot totally be prevented. Therefore, no guarantee can be given that the seed lots comprising this delivery are free from any traces of GM material.

#### Article 20. General

1. In these Terms and any Agreement, unless the contrary intention appears:
  - a) a person includes a corporation, unincorporated association, partnership, joint venture or public, statutory or governmental association or agency;
  - b) a reference to dollars is to New Zealand Dollars;
  - c) the word 'including' and similar expressions are not words of limitations;
  - d) a reference to conduct includes any omission and any statement or undertaking, whether or not in writing; and
  - e) where an act is to be performed on a day that is not a Business Day, the act will be required to be performed on the following Business Day.
2. Any notice in connection with these Terms or any Agreement will be deemed and fully given when made in writing and delivered or sent by email or post to the Party to whom such notice is intended to be given, at the address of email address of that Party in the Agreement or to such other addresses as may from time to time be notified in writing to the other Party.
3. If a provision of these Terms is invalid, that provision will automatically (by operation of law) be replaced by a valid provision that corresponds as closely as possible to the purport of the invalid provision. Parties must, if necessary,

enter reasonable consultations about the text of that new provision. In that case the other provisions of the Terms will remain fully valid in so far as possible

4. The Agreement and these Terms together contain the entire agreement of Parties with respect to its subject matter and may only be amended in writing.