



**POTATO PURCHASING**

**CONDITIONS FOR LINKED**

**INDUSTRIES/GROWERS and**

**RULES FOR ARBITRATION**

**2012**

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**GENERAL TERMS AND CONDITIONS FOR THE PURCHASE AND  
CONTRACT FARMING OF POTATOES FOR LINKED  
INDUSTRIES/ GROWERS**

**General Terms and Conditions**

**Clause 1**

- 1.1 These General Terms and Conditions shall be called "Potato Purchasing Conditions for Linked Industries/Growers".
- 1.2 These Terms and Conditions with the accompanying Rules for Arbitration have been laid down by the Vereniging voor de Aardappelverwerkende Industrie (VAVI) and LTO Nederland in the month of December of the year 2011. These Terms and Conditions have been filed with the Registry of the District Court of The Hague in December 2011 and shall be effective as of 2 January 2012.

**The applicability of the Terms and Conditions**

**Clause 2**

- 2.1 These Terms and Conditions shall apply to all purchasing agreements and farming agreements for potatoes to which these Purchasing Conditions for Potatoes for Linked Industries/Growers have been declared to apply.
- 2.2 In addition, these Purchasing Conditions for Potatoes for Linked Industries/Growers are subject to Dutch law. The agreements are deemed to have been drawn up and executed in the Netherlands.
- 2.3 The operation of the Vienna Sales Convention is hereby expressly excluded.
- 2.4 The Potato Purchasing Conditions for Linked Industries/Growers also apply to all purchasing agreements that are concluded with potato growers established outside the Netherlands. The operation of the RUCIP-Trading Conditions, Rules for Expert Assessment and Rules for Arbitration for the European Trade in Potatoes is hereby expressly excluded.
- 2.5 In the Potato Purchasing Conditions for Linked Industries/Growers, "in writing/written" shall be taken to also mean messages by telefax and by electronic mail provided in such a way that the addressee can save them and display them.

**Confirmation of purchase and sale**

**Clause 3**

- 3.1 A purchasing agreement binds parties as soon as they have reached agreement on it and can be proved by all legal means.

- 3.2 Buyer shall confirm the agreement in writing, stating that it shall be subject to the Potato Purchasing Conditions for Linked Industries/Growers with the accompanying Arbitration. The confirmation shall be deemed to render the arrangements, unless the other party established in the Netherlands announces its objections against the confirmation within 2 working days. A term of 5 working days shall apply to other parties established outside the Dutch national borders.

### **Contract farming**

#### **Specification of quantity and area**

##### **Clause 4**

- 4.1 Pertaining to the cultivation of a certain variety, parties shall agree on the specifications for the consignment whereby the quantity that is to be supplied is expressed in net tons and/or on the area agreed in the contract (specification of parcel-ha) grown at the farm and/or under the management of, and under supervision, of seller.
- 4.2 If the quantity that is to be supplied is expressed in tons, the seller shall deliver this quantity from the total area upon which he grows potatoes of the agreed variety, unless it has been laid down in the agreement that this quantity shall be grown on an accurately specified parcel of land/area.
- 4.3 If the yield of a certain area is purchased, the seller is obliged to supply the whole yield of that area to buyer, unless otherwise agreed.
- 4.4 If buyer and seller have concluded a long-term contract, they may select another variety during the term of the contract. If that is the case, there should be agreement on the price and conditions. Amendments to contracts should be made in writing.

#### **Seed material**

- 4.5 The agreement shall state which variety shall be grown.
- 4.6 If it has been arranged in the agreement that the buyer shall supply the seed material, he should supply it timely to seller, with the agreed properties and quality for the quantity/area agreed in the contract and/or supply the agreed quantity of seed material with the agreed properties and quality timely for planting. The costs of the seed material shall be charged to seller.
- 4.7 The agreement pertaining to the delivery of seed material is subject to the "Algemene Voorwaarden Pootaardappelen [General Terms and Conditions for Seed Potatoes] (AVP)".

#### **Cultivation, harvest and storage**

- 4.8 Seller shall attend to the potatoes with due care during cultivation, harvest and storage.

- 4.9 The seller is liable for the quality of the potatoes that are to be supplied until the delivery. The recommendations supplied by the buyer prior to, or during the cultivation, harvest and storage pertaining to the cultivation, harvest and storage does not render the buyer liable for the yield or for the quality of the potatoes. Accepting or ignoring recommendations is completely the seller's responsibility.
- 4.10 Buyer has the right, both during the cultivation of the crop and the storage, if any, to take samples to determine the quality of the potatoes that are to be supplied. Seller shall ensure that the samples can be taken safely and responsibly. Seller shall be notified of the results of the sample. A preliminary quality assessment shall not bind parties. The definite assessment shall be done in accordance with Clause 7 of these Terms and Conditions.
- 4.11 Seller shall immediately notify buyer in writing if he cannot meet agreed obligations regarding quality and/or quantity pertaining to cultivation, harvest and storage.

## **Delivery**

### **Clause 5**

- 5.1 Seller is obliged to deliver the quantity arranged in the contract and/or the whole yield of the area agreed in the contract to buyer. The buyer is obliged to buy it.
- 5.2 Delivery shall be done at a location specified by buyer. Parties shall agree on a delivery period to be laid down in the agreement. If delivery is arranged before a certain date, or in instalments, this date or these instalments and the corresponding quantity per instalment and the part that is to be delivered shall be laid down in the agreement.
- 5.3 After mutual consultation and by mutual consent, parties may depart from the agreed delivery period as intended in Clause 5, paragraph 2, whereby the following principles apply:
- If, at seller's request, the delivery is made earlier than agreed, the contract price for the period in which the delivery is actually made shall apply.
  - If, at buyer's request, the delivery is made earlier than agreed, the contract price for the originally arranged delivery period shall apply.
  - If, at seller's request, the delivery is made later than agreed, the contract price for the originally arranged delivery period shall apply.
  - If buyer requests seller to deliver a consignment later than agreed, buyer shall assume the risk of loss of quality and rejection from the moment of the originally arranged time of delivery from seller. Seller should continue to attend to optimal storage conditions with due care. On the physical delivery of the consignment, the contract price for the period in which the delivery is actually made shall apply.

- 5.4 Buyer shall notify seller timely of delivery date and location so that seller will have the opportunity to warm the potatoes correctly.
- 5.5 Buyer is obliged to provide suitable transport capacity, both in terms of quantity and quality. Terms of quality means considering aspects such as the state of repair, safety, hygiene and insurance. Seller retains the right to reject the means of transport by reason of its state of repair, safety and hygiene.
- 5.6 Seller shall provide sufficient equipment and manpower at the arranged loading time to load the means of transport with a loading capacity of approximately 30 tons within one hour at the most. Furthermore, seller is obliged to check that buyer's recommendations concerning means of transport, refrigeration, frost protection packaging, shipment and/or stowage are followed.
- 5.7 Shipment may be done at any time of day. Generally speaking, shipment shall be done between 04.00 hours and 22.00 hours unless circumstances make it necessary to extend these hours. If there are fundamental or societal objections to shipping potatoes on Sundays or public holidays, buyer shall take that into account. Seller should inform buyer of this when concluding the agreement.
- 5.8 The delivery shall take place after the buyer or his representative has taken samples of the potatoes on arrival, in accordance with Clause 7, and has approved their quality, subject to demonstrable and traceable concealed defects in the consignment of potatoes in question.
- 5.9 The supplied potatoes are at the buyer's risk and expense from the time of delivery. From the time seller has supplied the potatoes to buyer, the buyer shall attend to the potatoes with due care.
- 5.10 If, after inspecting the potatoes in accordance with Clause 7, during which seller may be present (see Clause 6.3), the buyer determines that they do not meet the quality requirements, he is entitled, contrary to that which is stated in Clause 5, paragraph 1, to reject the potatoes or receive the potatoes at a decreased value that is to be decided by agreement. Rejection, or the agreement of a decreased value, shall cover these potatoes insofar as these can be indicated separately (i.e. traceably). If no agreement can be reached, seller is entitled to have the potatoes returned to his farm whereby the transport costs of the returned consignment shall be charged to seller. A resolution for this purpose shall be made within four hours after the negotiations have been terminated.
- 5.11 Contrary to that which is intended in Clause 5, paragraph 1, buyer is entitled to reject the potatoes if they are infected by a disease, which, according to EU or national legislation and regulations, requires quarantine, such as potato brown rot and ring rot or if uncertified organic compost has been used.

- 5.12 Buyer, his representative or carrier, shall submit a receipt for every cargo of potatoes, stating the following details, insofar as they are pertinent:
- seller's name and address (grower)
  - buyer's name and address (processing industry)
  - destination (delivery address)
  - carrier's name and address, the driver's signature and details of the transport (e.g. registration)
  - date and hour of arrival (time goods were left or trailer was unloaded)
  - estimated volume of potatoes.
- 5.13 Seller shall have a food safety certificate. Relevant growing operations shall be recorded in the cultivation registration. At buyer's request, the cultivation registration shall be delivered within 4 hours.
- 5.14 If a food safety certificate should be missing, the seller shall notify buyer of this. After consultation, it shall be decided whether a residual inspection is necessary. If a residual inspection is necessary, parties shall decide, in accordance with requirements of reasonableness and fairness, which critical substances shall be the subject of that inspection. The costs of the residual inspection shall be charged to seller.

## **Quality**

### **Clause 6**

- 6.1 The potatoes that are to be supplied shall meet the agreed quality requirements at the time of the quality assessment in accordance with Clause 7.
- 6.2 The quality requirements are described in the purchase agreement. For reasons of completeness, the purchase-sales confirmation shall refer to them.
- 6.3 The buyer is entitled to lodge a complaint about the quality of the potatoes up to and including the time of the quality assessment in accordance with Clause 7. The seller is entitled to be present at the quality assessment or to send a representative.
- 6.4 The buyer shall notify seller of the quality defects he has discerned as soon as possible, but at the latest within twelve hours or before 12.00 hours on the next working day following the day of the quality assessment in accordance with Clause 7 at the risk of forfeiting the right to lodge a complaint. In this event, the buyer shall store the potatoes carefully in case of an appraisal.
- 6.5 If seller does not accept the complaint, he shall notify buyer of this at the latest on the first working day following the day on which he was notified that the potatoes do not meet the agreed quality standards in accordance with Clause 6.4 at the risk of forfeiting rights.
- 6.6 If a dispute arises between seller and buyer about the quality of the potatoes that are to be supplied, this dispute shall be settled by means of an independent appraisal.
- 6.7 Either party shall submit a request for the appointment of a certified expert without delay, but at the latest on the first working day after the dispute has arisen, to the Instituut voor Agrarisch Recht [Institute for Agricultural Law], Agro Business Park 75 in Wageningen, the Netherlands. Postal address: P.O. Box 245, 6700 AE Wageningen, the Netherlands; telephone number 0317-42 41 81; fax number 0317-42 43 13.
- 6.8 The appraisal shall be carried out at the latest on the first working day that follows the day

on which the dispute arose. Both parties shall be timely informed of the day, location and the hour of the appraisal so that parties can be present. A report shall be made of the appraisal.

- 6.9 The VAVI and LTO Nederland shall jointly draw up a list of sworn experts.
- 6.10 The costs of the appraisal shall be settled by the requesting party but shall be charged to party/parties, in accordance with the agreements to be made about that matter when the dispute is resolved.
- 6.11 The VAVI and LTO Nederland may require the requesting party to pay an advance for the costs of appraisal prior to appointing a sworn expert.

### **Weight, quality assessment and taring**

#### **Weight**

##### **Clause 7**

- 7.1 The weight shall be determined on a weighbridge specified by buyer by means of weighing equipment that has been calibrated in accordance with the applicable legal regulations.
- 7.2 Buyer shall ensure that the weighing is done in accordance with the VAVI – LTO weighing protocol. The weighing protocol specifies that all trailers shall be weighed at least once per year, that lorries are weighed in and out, and that, if the loading is done without docking, the combination shall be weighed in and out.
- 7.3 If the seller indicates that he wishes to be present at the weighing, the buyer shall provide the opportunity for the seller or his representative to do so.
- 7.4 Buyer shall notify seller within two working days after delivery of the weight of the delivered product.
- 7.5 The costs of the weighing and shovelling shall be charged to seller.

#### **Quality assessment**

- 7.6 The method of sampling, the taring and the quality assessment shall be done in accordance with the inspection methodology used by the buyer as it read at the conclusion of the agreement.
- 7.7 Seller shall be given the inspection methodology used by the buyer at the conclusion of agreement.
- 7.8 The buyer's inspection methodology shall be the general VAVI inspection methodology or shall be based on that with due observance of changes and/or additions made by buyer.
- 7.9 The sampling, the taring and the quality assessment shall be done at a location specified by buyer. Buyer shall ensure that the quality assessment is done within twelve hours after the potatoes have been loaded.
- 7.10 If the potatoes are delivered ex works by seller for storage at buyer's, the taring and quality

assessment shall be done no sooner than 48 hours and no later than 7 working days after taking delivery. The quality assessment shall be done by means of a representative sample in the agreed graded sizes taken from the net sample kilograms after taring. For a possible appraisal, a duplicate sample shall be taken in an identical fashion.

- 7.11 If the buyer, after inspecting the potatoes that have been delivered ex works for storage at buyer's in accordance with this Clause, decides that they do not meet the agreed quality requirements, buyer shall accept the potatoes against a decreased value to be arranged in agreement.
- 7.12 Seller is entitled to be present during the sampling, tare assessment and quality assessment.

### **Taring**

- 7.13 Potato tare is: the tubers with diseases and defects such as mentioned in the inspection methodology used by the buyer.
- 7.14 Other tare, not being a potato tare, includes the soil that is delivered with the potatoes, and alien components as described in the inspection methodology used by the buyer.
- 7.15 The tare intended in the inspection methodology used by the buyer does not belong to the net product that is to be settled.
- 7.16 The costs of the disposal of the remaining tare shall be charged to seller, for which a disposal contribution shall be laid down to be settled with seller.

### **Storage and grading**

#### **Storage**

#### **Clause 8**

- 8.1 If storage by seller of the potatoes that are to be supplied has been specified in the purchase agreement or in the farming agreement, additional provisions may be laid down pertaining to the method of storage and the measures to be taken during storage.
- 8.2 The purchase agreement or the farming agreement may include compensation due for storage.

#### **Grading**

- 8.3 If delivery of field crops was agreed, the potatoes shall be delivered as the soil yields them, without being sorted and without the addition of other graded sizes.

- 8.4 If it has been agreed that seller shall deliver a certain quality and/or graded size, the preparation and grading respectively shall be charged to seller. Parties are entitled to check, or order to be checked, the preparation and grading respectively.

## **Payment**

### **Clause 9**

- 9.1 The payment of the purchase price shall be settled within 30 days after delivery. In the event of protracted deliveries, all deliveries within one calendar week shall be paid within 30 days after the end of the week of the deliveries.

If the term of payment is exceeded, buyer shall be in default without further notice of default and buyer shall owe statutory interest on the part of the purchase price still due to seller over the period after the occurrence of the default.

- 9.2 Seller may demand in writing a payment guarantee and all costs that arise from that shall be charged to seller. The payment guarantee may only be requested within the term of one week prior to the scheduled delivery.

## **Liability**

### **Clause 10**

- 10.1 The liability of the seller or his representative shall be limited to the value of the potatoes that are to be delivered, subject to deliberate intent, serious fault or gross negligence.

## **Force Majeure**

### **Clause 11**

- 11.1 Every exceptional circumstance that renders the fulfilment of the obligation impossible or so inconvenient that fulfilment cannot reasonably be demanded any more shall be regarded as Force Majeure. Matters that constitute Force Majeure include: war, mobilisation, a company fire, extreme weather conditions that obstruct the logistics, etc. and full or partial crop failure as a consequence of abnormal drought, continuous and/or intensive rains, frost, the development of disease in the crop and/or plagues of vermin that cannot be imputed to the seller.
- 11.2 If, as a consequence of Force Majeure, fulfilment of the agreement is rendered impossible, the obligation to fulfil the agreement shall be suspended without right to compensation for damages. The party pleading Force Majeure shall immediately notify the other party of this by registered letter.
- 11.3 If the circumstances of Force Majeure last longer than one month, the agreement shall be terminated without right of compensation for damages.
- 11.4 If, in the event of Force Majeure, the seller is not capable of supplying the quantity agreed in the contract, the whole yield of the area agreed in the contract, to buyer, seller is obliged to deliver no more but also no less than the quantity agreed in the contract of the same variety grown at his farm unless that parcel of land has been defined in the contract, with the exception of that part that had previously been intended for seed

material. In that event, the obligation does not cover any more than the delivery of the whole crop from that parcel of land, or parcels of land as described in the contract.

### **Mediation and Arbitration**

#### **Clause 12**

- 12.1 If a dispute involving (the failure of) the execution of the agreement cannot be settled by agreement between parties, before submitting the dispute to the competent Institute of Arbitration, parties shall dedicate themselves to resolve the dispute by means of mediation in accordance with regulations of the Stichting Nederlands Mediation Instituut, as it reads on the date on which the agreement was signed.
- 12.2 Either party shall submit a request for that purpose in writing to the Instituut voor Agrarisch Recht [Institute of Agricultural Law], P.O. Box 245, 6700 AE Wageningen, the Netherlands, telephone number 0317-424181, fax number 0317-424313.
- 12.3 Either party shall notify the other party of its intention of proceeding with mediation in writing or by electronic message.
- 12.4 If either party has not received a response from the other party within 14 days after the notification intended in the previous paragraph, from which it is evident that the other party is prepared to resolve the dispute by means of mediation, the dispute shall be settled by means of arbitration in accordance with the Arbitration Regulations of the Stichting Instituut voor Agrarisch Recht [Institute of Agricultural Law], as they read on the date on which the agreement was signed, though this is on the understanding that the arbiters are only authorised to examine the demand if the buyer of the potatoes is a member of the VAVI or affiliated with a member of the VAVI. If the buyer is not a member or affiliated with a member, the dispute shall be resolved by the competent Civil Court.

### **Amendment to the purchasing conditions**

#### **Clause 13**

- 13.1 The VAVI and LTO Nederland jointly shall always be authorised to amend these purchasing conditions, on the understanding that these amendments become effective once the amendments have been filed with the Court and/or the Chamber of Commerce of The Hague and the members have been notified of these amendments.