



Potato

*Creating value from potatoes*

# Terms & Conditions 2021



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## **1) General**

If Aviko Potato B.V., hereinafter referred to as Aviko Potato, enters into an agreement for the purchase and/or delivery of potatoes with another party, hereinafter referred to as the Other Party, Supplier or Grower, these Aviko Potato Terms & Conditions shall apply to any such agreement unless specifically stated otherwise in the agreement.

The Supplier declares that by entering into an agreement with Aviko Potato in which reference is made to the Aviko Potato Terms & Conditions, they possess, know and accept the Aviko Potato Terms & Conditions, as well as any other conditions referred to hereinafter, and that they agree to comply with them.

The batches of potatoes to be delivered to Aviko Potato shall be suitable for processing according to the objective specified in the agreement and/or confirmation of sale, including due compliance with all provisions of the Aviko Potato Terms & Conditions. Chapter 6 includes the quality assessment and standards, whereby the relevant processing goals are also specified. The potatoes to be supplied shall be assessed and standardised in keeping with the explicit provisions of the processing goal as mentioned in the purchase agreement and/or confirmation of sale. They must comply with these explicit requirements.

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## **2) Registration of cultivation and food safety**

### **1. General**

The potatoes to be delivered to Aviko Potato shall, at the time of delivery, comply with all legally imposed regulations relating to the use and application of crop protection agents and with regard to permitted tolerances for residues of crop protection agents and heavy metals and/or any other regulations that have been legally issued in relation to the use and/or processing of potatoes.

Unless explicitly specified otherwise, the sections in this chapter apply to both growers and trade suppliers.

### **2. Certificates, traceability and audits/recall**

The potatoes and potato-growing and supply businesses must be certified within the framework of food safety. Below is a list of those certificates accepted by Aviko Potato, grouped for growers and trade suppliers. The availability of a valid food safety certificate is mandatory for the supply of potatoes.

### **a. Certificates for growers**

The following certificates have been accepted for Dutch growers: the most recent Food Safety Certificate for the Potato Processing Industry - VVA(K) certificate or 2) the most recent Global Gap Directive, issued by FoodPLUS GmbH.

- For German growers, QS-GAP is accepted in addition to the Dutch certificates.
- For Belgian and French growers, Vegaplan is accepted in addition to the Dutch certificates.
- No other certificates will be accepted until such time as Aviko Potato has given consent in writing. If Aviko Potato is willing to accept alternative certificates, such alternative certificates must at least be demonstrably equivalent to those above, to be determined at the discretion of Aviko Potato.

### **b. Certificates for trade suppliers**

The stipulations in this chapter concern a so-called perpetual clause. The Supplier shall, if applicable, impose upon their supplier and they in turn upon their supplier the applicability of section 2 to the contracts concluded.

- The potatoes shall be certified on the primary business in keeping with the certificates specified in 1.
- Both the trade supplier and all links preceding them in the supply chain shall themselves participate in a self-regulation or supply chain guarantee system accepted by the NVWA and be duly certified for it. In that context, Aviko Potato accepts the following certificates:
  - i. BRC
  - ii. IFS
  - iii. FSSC
  - iv. NAO hygiene code
- v. No other certificates will be accepted until such time as Aviko Potato has given consent in writing. If Aviko Potato is willing to accept alternative certificates, such alternative certificates must at least be demonstrably equivalent to those above, to be determined at the discretion of Aviko Potato.

### **c. Growers and trade**

The Supplier shall check prior to delivery that the batch is accompanied by valid certificates and complies with all prevailing food safety regulations. The Supplier shall, at the request of Aviko Potato, ensure that the relevant certificates are sent to Aviko Potato (digitally) at the time of delivery at the latest. The Supplier shall register in their own system and, if made available by Aviko Potato, also in the system of Aviko Potato, the parcels from which the potatoes stored in specific storages originate as well as any relationship between transport movements and parcels, in order to be able to carry out correct tracking and tracing (traceability). In the event of recalls (the calling back of products from the market), the Supplier shall make available to Aviko Potato within

two hours such data as the latter have requested (including at least the registration of cultivation and certificate). The Supplier shall treat such requests with the utmost priority.

By entering into an agreement of supply with Aviko Potato, the Supplier provides both the order and consent to the verifying authorities to provide status information, as well as any other information about food safety certification, to Aviko. This consent is irrevocable. Furthermore, by entering into a supply agreement with Aviko Potato, the Supplier grants to Aviko Potato the irrevocable proxy to request this information from the responsible authorities, also on the Supplier's behalf. However, the Supplier shall themselves ensure that, within 10 days of the conclusion of the agreement at the latest, the verifying authorities have been authorised to provide the relevant data to Aviko Potato.

#### Supplementary demands

Aviko Potato and the Supplier may agree on supplementary (certification) demands. Organically grown potatoes shall be grown in keeping with all prevailing regulations (including those of Skal) and must be totally free from any residue of crop protection agents or sprout inhibitors.

#### Transport

Only HACCP-certified hauliers are permitted to transport the potatoes to be delivered to Aviko Potato. The Supplier undertakes to guarantee this and shall be fully liable for any damage in the event of any contravention of this obligation and is also under an obligation to supply substitute potatoes at the request of Aviko Potato.

### **3. Registration of cultivation (growers)**

The Supplier shall specify the plots provisionally designated for Aviko Potato by means of the Aviko Potato extranet (registration of cultivation) or their own management system by 31 May 2021 at the latest, and in the event of management packages, forward this data to Aviko Potato. Suppliers with net ton contracts must register plots as soon as possible once it is known from which plot(s) the potatoes are likely to be delivered to Aviko Potato. The Supplier shall specify a number of fields such that the plotted surfaces will cover the supply obligation as a minimum. The early designation of plots is essential to a number of processes at Aviko Potato, such as proper sampling to assess quality both at the field stage and during first storage, traceability for customers, and support for growers in improving cultivation and storage. This does not, however, detract from the supplier's delivery obligation, for example, in the event of the yield from the designated plots remaining below the agreed quantity and quality of potatoes. The definition of a plot is: an uninterrupted array of potatoes including one single potato variety.

The registration of cultivation (a record of fertilisation, spraying, irrigation and the logging in writing of any other operations, plus anything that is further requested) must be made available at all times – in a fully completed form – to Aviko Potato two (2) days prior to delivery. If a delivery is to be made from a storage depot, the cultivation registration form for the relevant part of the crop must be completed no later than 15 November 2021. Two days before delivery the registration shall be marked 'complete'.

Growers who supply from a storage depot shall keep track of the use of sprout inhibitors, if any, using the application made available for that purpose by Aviko Potato. It is not possible to provide such data in any way other than by forwarding the details to Aviko Potato through the Aviko Potato extranet or by means of the Grower's own management system. Aviko Potato has the right to refrain from shipping the potatoes and/or to suspend payment for potatoes if they have received inadequate cultivation registrations or sprout-inhibitor registrations, or if registrations appear to be incomplete.

#### **4. Use of data**

Aviko Potato adheres to the behavioural code for the use of arable data, issued by the branch organisation Akkerbouw. The rights and obligations for the Supplier and for Aviko Potato ensuing from this behavioural code are the basis for the following stipulations in the purchasing conditions. By entering into a contract/agreement with Aviko Potato, the Supplier provides irrevocable agreement/proxy to Aviko Potato and its associated group businesses, as well as to third parties engaged by the latter for the use of various types of (raw) data (for example: registration of cultivation, measurements performed, food safety data, personal data etc.) pertaining to all cultivation and storage for the full harvesting year, which data are provided by the Supplier to Aviko Potato in the context of this agreement or at the latter's request.

The Supplier guarantees the provision of correct and complete data. The information provided shall be used for a) the improvement of cultivation in the broadest sense, b) the reporting on food safety and sustainability at group level, c) the transfer of data to customers upon request, d) the transfer of data to suppliers, if necessary, for food safety and quality optimisation, e) Aviko Potato business optimisation/assurance and f) the building up of expertise. Aviko Potato undertakes never to sell such data on to third parties. Public divulgence, if any, shall take place at group level or by means of a grower number which cannot be identified by third parties. Any data or expertise obtained as a result of processing become the property of Aviko Potato and its associated group businesses.

## **5. Relevant details for delivery**

On first contact with Logistics regarding the planning of a plot or storage depot, the Supplier shall specify:

1. the safety term or waiting term of a plot or storage depot on the basis of agents applied
2. any other consequences which may result from the application of agents, such as labelling instructions
3. consequences, if any, resulting from such measures as have been imposed upon the grower or field by governmental bodies
4. the presence of a golf course within 500 meters of the (original) field
5. the variety to be delivered

## **6. CIPC prohibition**

On 17 June 2019, the European Commission decreed (EU 2019/989) that from 8 October 2020 at the latest the use of the active substance chlorpropham will be prohibited in the European Union. The T-MRL for the active substance chlorpropham is to be set at 0.4 ppm for the time being as the result of an EU decision. There is a risk of contamination of potatoes from the 2020 harvest stored in facilities with a history of chlorpropham use. In order to prevent chlorpropham contamination, the VAVI has published a statement containing four conditions ([https://avikopotato.nl/images/content/ATCvoorwaardenPDF/EN\\_Werkwijze\\_aardappelbewaring\\_oogst\\_2020.pdf](https://avikopotato.nl/images/content/ATCvoorwaardenPDF/EN_Werkwijze_aardappelbewaring_oogst_2020.pdf)). This Statement forms part of these purchasing conditions. All suppliers (including trade suppliers and growers) are bound to execute/comply with this statement. In addition, dealers must ensure that their sub-suppliers throughout the chain also abide by this statement. Aviko Potato may decide, in the light of further information, to exclude certain parts of this statement from its applicability to the 2021 harvest.

## **7. Crop protection/Sprout inhibitors/Fertilisers etc.**

The use of crop protection agents still in the testing stage, e.g. on test fields or in storage depots, is strictly forbidden without the prior consent in writing of Aviko Potato. In addition, the general rule prevailing throughout cultivation and/or storage is that the potatoes may only have been treated with and/or contain residues of such products as pose no danger whatsoever to human health or to that of animals. This means products about which there is no suspicion whatsoever as regards their potential harmfulness, and such products must not have any suggestion whatsoever of a tarnished reputation (including negative press coverage), all of this solely at the discretion of Aviko Potato. The potatoes that the Supplier delivers to Aviko Potato must also meet such supra-statutory requirements for crop protection agents and other products/substances as Aviko Potato may impose in specific situations after the agreement has been concluded. If additional costs arise from such requirements, the grower is entitled to compensation for such costs to an amount to be established jointly by Aviko Potato and ATC. The Supplier shall deliver potatoes for which the waiting time in respect of agents applied has expired at the time of delivery.

## **8. Foreign bodies and crop residues resulting from crop rotation**

The Supplier shall guarantee that the potatoes supplied by them to Aviko Potato do not contain any foreign bodies, such as ammunition, golf balls, animal material, large stones, pieces of glass, balls of haulm, plant residues from previous crops (such as roots, chicory roots, maize stubble, (flower) bulbs), iron, wood, sprout sticks, toxic plant parts, weed grains, manure residues, peat clods, plastic and fence posts and/or any other undesirable and/or hazardous and/or explosive substances. The Supplier shall indemnify Aviko Potato against any such occurrence, and also against any consequential damages which may arise. The Supplier guarantees that any foreign matter will at all times be removed from the batch prior to its transport. Aviko has the right of rejection if any contamination is found. Any stipulations that restrict the Supplier's indemnification obligations (as referred to in the VAVI conditions) shall not apply to such damage and deficiencies. If, following the approval of a load of potatoes, any contamination is found during unloading which may be harmful to the installation of the receiver, Aviko Potato retains the right to reject the batch or to have it cleaned at another location, whereby the cost of transport and cleaning shall be charged to the Supplier.

The Supplier guarantees to check a 10m strip alongside any roads and/or pathways adjoining the plot from which the potatoes to be supplied to Aviko Potato will be harvested for foreign matter, and that any such matter will be removed by them from the plot. The Supplier shall inform Aviko Potato of the presence of any golf course or driving range within 500m of any boundary of the potato field.

In order to avoid any traces of the previous crop, the Supplier shall clean the plot (extracting and disposal) if adequate removal is not reasonably possible, or not to be expected during delivery. The Supplier shall in any event clean the plot (extracting and disposal) at all times to prevent Jimson Weed.

Aviko Potato retains the right at all times to reject the entire batch or to arrange to have it cleaned at another location if, following approval, any contamination which may be harmful to the installation of the receiver is found during the unloading of a load of potatoes, whereby the cost of transport and cleaning as well as any other damages incurred shall be charged to the Supplier.

The growing of the following crops prior to the cultivation of potatoes destined for Aviko is not permitted:

1. Toxic plant species, in particular Colchicum

## **9. Reporting of calamities**

Upon observation, the Supplier undertakes to inform Aviko Potato immediately of any (alleged) food safety issues. In the event of food safety issues occurring during either cultivation or storage stage, a notification term of one working day as a maximum prevails. If the Supplier only becomes aware of the actual or alleged food safety issues

after delivery, they must inform Aviko Potato both verbally and by e-mail without delay, i.e. within 15 minutes.

## **10. Other business**

The potatoes to be delivered to Aviko Potato must be completely free of all quarantinable diseases such as ring rot or brown rot and from any suspicion of such disease on the part of NVWA (Netherlands Food and Consumer Product Safety Authority) or similar foreign authority; if this is not the case, the potatoes will be rejected.

It is explicitly specified that the supply of genetically engineered potatoes to Aviko Potato is not permitted.

The Supplier shall refrain from delivering: potatoes from storage depots that have suffered fire damage; dressed seedlings; and any varieties that are not fit for consumption (for example, varieties with too high a TGA content, whereby the prevailing standard will be determined by Aviko Potato).

The Supplier shall guarantee that all varieties supplied are genuine. This implies that varieties shall be supplied under the correct variety name and that the variety specified by Aviko Potato is the one which is actually delivered. Random testing will be performed by Aviko Potato to ensure that this is the case.

Aviko Potato is entitled to make additional demands on the choice of plot prior to the cultivation of specific varieties.

The Supplier shall be responsible for the safety of Aviko Potato employees as soon as they enter the plots, yard and/or used facilities of the Supplier. Relevant examples are: restrained dogs, reliable and safe passes and stairways, sufficient lighting and ventilation, a tidy yard and facilities with a view to trip hazards etc. The Supplier shall adequately inform Aviko Potato employees about the use of any product, such as crop protection agents or sprout inhibitors, prior to their accessing a field, yard or facility. The Supplier shall warn the Aviko Potato personnel if fields, a yard or any other facilities should not be accessed from a health-risk perspective or in keeping with the prevailing instructions for the resources used. Aviko Potato employees shall have a duty to report to the Supplier prior to accessing any field, yard and/or facilities in use.

## **11. Final stipulations**

If the potatoes to be supplied do not comply with one or more of the provisions, including (food safety) provisions, of this chapter and/or the Supplier has not met such provisions, Aviko Potato shall have the right to reject the potatoes. Arrangements for the disposal of the batch will then be made with the Supplier. Any non-compliance with the provisions of Chapter 2 constitutes a deficiency to be attributed to the Supplier, on the grounds of which they are liable to Aviko Potato for such damages as may ensue for Aviko Potato and/or their customers. For example, the Supplier shall fully indemnify Aviko Potato for any damages that can be traced to deficiencies in food safety, non-genuine variety, foreign matter in the product and recalls (the recalling of products from the market). The Supplier must take out adequate insurance to cover these risks. Any provisions as regards restricted liability (for example, as included in the VAVI conditions) shall not apply to the deficiencies and damages referred to in the present clause.

## **12. Guidance in terms of cultivation/storage**

Aviko Potato shall not be held responsible for any incorrect advice and/or instructions.

### **3) Specific stipulations for the trade**

#### **3.1 Supplementary conditions**

Chapter 3 of these conditions applies solely to agreements concluded by Aviko Potato with a Supplier who is not themselves responsible for the cultivation of the contracted potatoes.

In the event that the agreement or the Aviko Potato Terms & Conditions do not provide for a given situation because it has not been specified, the most recent VAVI potato purchase conditions for the industry/trade chain shall first apply on a supplementary basis, after which, in the event that the aforementioned VAVI conditions also fail to provide for the situation in question, the stipulations of the Civil Code shall apply.

If there should be any contradiction between the provisions in the agreement and these Aviko Potato Terms & Conditions and/or the VAVI conditions, the stipulations of the agreement shall apply. If there should be any contradiction between the provisions in the Aviko Potato Terms & Conditions and the VAVI conditions, the stipulations of the Aviko Potato Terms & Conditions shall apply.

#### **3.2 Delivery**

The Supplier undertakes to cooperate with the provision of up-to-date quality data per batch if such are requested by Aviko Potato. This cooperation consists in a) the actual provision of up-to-date quality data in a format established to that effect or b) the granting by the Supplier of permission to Aviko Potato to collect samples, after which these samples will be assessed in Aviko Potato's quality-control laboratory.

Delivery shall take place at the specified time. If the delivery of a load is more than 2 hours late, the resulting costs shall be fully for the account of the Supplier. Delivery times for non-standard loads, i.e. substitute loads or additional loads, shall be agreed by mutual consultation.

If the production process of Aviko Potato or of their customer is interrupted, in full or in part, as a result of machine failure, failure of power and/or water supply, and/or reduced demand for potato products, e.g. due to a pandemic or government measures, fire or other causes and/or in the event of force majeure, Aviko Potato shall have the right to defer the delivery of all or some of the potatoes to a later time, as well as the right to rescind the agreement in full or in part if delivery has not taken place with 4 weeks, to be calculated from the moment of notification by Aviko Potato that they have deferred their taking delivery of the potatoes, in full or in part, and provided there is a period of at least thirty days between the moment of cancellation and the contractually agreed ultimate date of

delivery. Aviko Potato shall never be liable for any indemnification in connection with such a delayed delivery and/or rescinding of an agreement. The time of any delayed delivery shall be decided by mutual consultation.

Aviko Potato shall never be liable for any indemnification in connection with such a delayed delivery and/or the rescinding of the agreement. The time of any delayed delivery shall be decided by mutual consultation.

If the potatoes are sold on condition that they are collected, although transport costs are for the account of Aviko Potato, the risk remains with the seller until such time as the risk passes to Aviko Potato on the strength of provision 8.

If the potatoes are sold on the condition 'carriage paid', the Supplier shall outsource the transport to AB Texel Holding B.V., unless otherwise agreed beforehand. The transport costs are then for the account of the Supplier.

Waiting hours invoiced by the transport company shall be for the account of the Supplier at all times. Transport costs for rejected loads shall also be for the account of the Supplier. The purchase of collected potatoes shall always be on the basis of truck delivery.

Potatoes delivered in a transport unit (lorry trailer) shall in principle stem from one and the same batch. Only if the requirements for a specific assortment (for instance 40/50) cannot be met on the basis of a single batch, shall it be permissible to combine several batches into one new batch. The Supplier must then register those batches which have been combined so that the potatoes can always be traced back to field level (traceability), including all associated data. The delivery of more than one variety per lorry-load is not permitted.

In the event of delivery of assorted sizes at the request of Aviko Potato, a size tolerance of 3% in respect of the agreed size is acceptable. If sizes differ beyond this margin, Aviko Potato retains the right to reject the load.

The Supplier undertakes to strictly comply with the house rules prevailing at the premises of Aviko Potato and/or their customers. Among other things, the objective of these house rules is to safeguard personnel and product safety and quality, as well as environmental precepts. In the event of a Supplier or person(s) engaged by them not complying with the aforementioned house rules, Aviko Potato and their customers retain the right, following a warning, to remove the Supplier or person(s) engaged by them in question from their premises and to deny them further access to those premises.

In the event of repeated infringement on the house rules, Aviko Potato shall be entitled to rescind the agreement in relation to the supply of potatoes without being bound to any indemnification whatsoever. If Aviko Potato suffers damages in consequence of the

rescinding of the agreement, the Supplier is under the obligation to indemnify Aviko Potato accordingly.

Rejected loads of potatoes must be removed from Aviko's premises as soon as possible. If such loads are not removed within 24 hours, the Supplier shall owe to Aviko Potato a fine of € 25,- per hour/per load.

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## 4) Specific provisions for Growers

### 4.1. Supplementary conditions

Chapter 4 of these conditions shall be solely applicable to agreements concluded between Aviko Potato and the Grower of the contracted potatoes.

In the event that neither the agreement nor the Aviko Potato Terms & Conditions provide for a given situation since its occurrence is not covered, the regulations of the Potato Growers Commission of Aviko Potato B.V. shall first apply and, additionally, if a pool contract is involved, the Aviko Potato B.V. Pool Regulations shall also apply. To the extent that neither of the aforementioned conditions and regulations provide for a situation, the most recent VAVI potato purchase conditions for the industry/trade chain shall apply, after which, in the event that the VAVI conditions fail to provide for a situation, the stipulations of the Civil Code shall apply.

If there should be a conflict between the provisions in the agreement and these Aviko Potato Terms & Conditions and/or the aforementioned conditions and regulations, the stipulations of the agreement shall prevail. If there should be a contradiction between the provisions in the Aviko Potato Terms & Conditions and the aforementioned regulations on the one hand and the VAVI conditions on the other hand, the terms of the Aviko Potato Terms & Conditions and the aforementioned regulations shall prevail. Clauses 1.3 up to and including 1.6, 4.1, 4.4, 5.1 and 12 of the VAVI conditions, among others, shall not be applicable.

The Supplier shall do everything that is reasonably within their power to ensure that the cultivation, storage and delivery of the contracted potatoes are carried out as effectively and successfully as possible.

### 4.2 Quantities and varieties

Upon the conclusion of an agreement, the total net contracted quantity originating from the field crop and the number of hectares shall be specified on the potato purchasing agreement, whereby the line taken is that a net maximum of 40 tons of potatoes

(Fontane 45 tons net) 40/+ may be contracted for net contract varieties. The Supplier shall be under an obligation to plant for Aviko Potato at least the number of hectares equal to the number specified in the potato purchasing contract or, failing this, the number of hectares that equals the number of net tons 40/+ as specified in the agreement, divided by 40 (Fontane 45). If the Supplier fails to meet this obligation and harvests too little to completely fulfil the terms of the agreement, they shall be under the obligation to purchase the shortfall of potatoes and to supply this to Aviko Potato unless Aviko Potato explicitly renounces this obligation in writing. Aviko Potato reserves the right to measure the planted fields immediately after planting has taken place.

If, due to any cause whatsoever the harvest remains below the net contracted volume per hectare, the Supplier, if they still have available so-called 'free' potatoes of the same variety grown within their own business, shall be obliged to replenish the shortfall up to the net contracted volume per hectare. Furthermore, in such a situation the Supplier shall have the right to supply potatoes grown by their business but of a different variety fit for processing in terms of the objectives for which the potatoes have been purchased (supply of an alternative variety may only take place in consultation with Aviko Potato) albeit that any price difference in relation to the fixed price must be settled. If the potatoes offered for delivery by the Supplier are rejected, the Supplier shall have the right to supply substitute potatoes, also provided that they have been grown by the same business when potatoes of a different variety are involved and provided that these potatoes are fit for processing at Aviko for the purpose for which the original variety were purchased (supply of an alternative variety may only to take place in consultation with Aviko Potato) whereby the price difference in relation to the fixed price must be settled. If the Supplier supplies one variety on the basis of different types of contract with several times of delivery, the first fully contracted net quantity of that variety shall be paid in the order of the times of delivery, starting with the contract that was first concluded. The contract price applying in the week of actual delivery shall apply. For food safety reasons, the Supplier must specify the field from which the delivered potatoes originate and which contract the delivery fulfils prior to delivery.

If, as a result of cultivation conditions beyond their control and/or liability and despite having met their obligation to plant the correct number of hectares required to achieve the contracted quantity divided by 40 tons (Fontane 45 tons), a Supplier is unable to fulfil their obligations for net delivery, the various net quantity contracts shall be finalised according to the order of the date of conclusion, starting with the contract concluded first. If a fixed price contract, a guarantee contract for French fries and/or a pool contract with a net quantity were concluded on the same date, the net quantity of the fixed price contract is deducted first, followed by the net quantity for the French fries guarantee contract, and finally the pool contract. If a market price contract which was later converted into a fixed price contract was concluded, the date of conversion to the fixed price shall apply as the contract date.

The contract quantity remaining after deduction of the various net quantities shall be deducted last. Provided that the supply of potatoes is sufficient, the order as specified above shall also be the standard manner of handling the contracts.

#### **4.3 Time of delivery**

Upon conclusion of the contract, the Supplier shall specify the period of delivery in weeks. Deliveries made 'on call' by Aviko Potato during the period of delivery weeks may only be by means of lorry-loads. If due to unforeseen circumstances affecting Aviko Potato or their customers, e.g. standstill or delay of production, Aviko Potato may defer the delivery obligation to a later date. Aviko Potato retains the right to attribute another purpose to the batch than that for which the batch was originally intended. In such a case, the batch will be handled according to contract.

If the Supplier, at their request and following approval by Aviko Potato, delivers their contractual quantity earlier than agreed, the contract price of the period of weeks shall be valid for the actual delivery.

If the Supplier, at their request and following approval by Aviko Potato, delivers their contractual quantity later than agreed, the contract price for the period of weeks that was agreed upon conclusion of the contract shall be maintained. The part of the delivery with a fixed price may be shipped at any time, irrespective of any agreement which may, or may not, have been reached about the daily price.

If the Supplier, at the request of Aviko Potato, delivers their contractual quantity earlier than agreed, the contract price for the period of weeks agreed upon conclusion of the contract shall be maintained. If the Supplier, at the request of Aviko Potato, delivers the quantity contracted later than agreed, the contract price for the period of weeks shall be valid for the actual delivery. Sunday is taken to be the last day of the week. Loads shipped on Sundays and official holidays (00:00 – 24:00 hours) in the Supplier's country of residence will be eligible for compensation.

#### **4.4 Shipping**

The Supplier shall be under an obligation to deliver the potatoes through the receiving hopper. Aviko Potato shall determine whether the batch to be delivered must be separated according to size or as from 28+. The Supplier shall not grade the potatoes for size (with the exception of undersize < 28 mm) without permission in writing from Aviko Potato; the Supplier shall deliver the potatoes according to the size ratio of field production. The loading of several varieties onto one lorry for delivery to the factories is not permitted.

Deliveries shall take place at the specified time. If, due to any reason attributable to the Supplier, a truck leaves more than 2 hours after the planned time of arrival, the additional waiting/loading hours may be charged to the Supplier. If a Supplier has to wait for a truck for more than 2 hours after the planned time of arrival, the waiting hours may be charged to the transport company.

The maximum time which may elapse between departure from the Supplier's premises

and inspection at the factory is 12 hours. If, due to a cause that can be attributed to Aviko Potato, inspection at the factory takes place more than 12 hours after departure from the Supplier's premises, the batch may not be rejected for blue colouration. The mixing of batches/plots without the permission of Aviko Potato is not permitted.

#### **4.5 Force majeure**

1. The term 'force majeure' is deemed to be any particular circumstance that makes fulfilment of the obligation impossible, or is so cumbersome that fulfilment cannot be reasonably required. Force majeure is deemed to include, among other things: war, mobilisation, industrial fire, extreme weather conditions that obstruct logistics etc., as well as total or partial crop failure as a result of abnormal drought or permanent and/or intensive rainfall, frost or the occurrence of crop diseases or plagues of vermin that cannot be attributed to the seller.
2. If fulfilment of the agreement at the agreed time seems likely to become impossible due to force majeure, the obligation to deliver at the time agreed shall be suspended without any right to compensation.

The party appealing to force majeure shall immediately inform the other party to that effect in writing. In this situation, Aviko Potato and the counterparty shall decide by mutual consent a time at which the agreement shall be effectively fulfilled.

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## **5) Establishing the weight**

The weight of the potatoes to be supplied to Aviko Potato shall be established at the processing locations in question. For deliveries made to Steenderen, the weight of the samples taken prior to weighing shall be separately settled at the daily price (beyond the contract quantity).

If the potatoes are destined for export, they will be weighed in the Netherlands.

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## **6) Sampling and quality assessment**

### **6.1 Sampling**

The Supplier shall at all times cooperate with any pre-sampling of the batches of potatoes to be supplied. This includes three different types of sample: field, storage and box samples. The Supplier shall ensure that the required method is applied, so that the results are representative of the batch(es) of potatoes.

The quality of the potatoes to be delivered to Aviko Potato is assessed according to the following procedure.

Loads of potatoes delivered in time will be sampled within 4 hours. Loads of potatoes delivered too early in respect of the originally agreed time of delivery will be sampled no sooner than required for processing or within 4 hours of the originally agreed time of delivery. Aviko Potato shall make all efforts to sample loads that have been delivered late within 4 hours of arrival. Chilled potato loads are assessed no less than 48 hours after arrival.

Especially appointed inspectors in the service of Aviko Potato, their customer, or the grading business of Bongers Aardappelen in Boxmeer, shall sample each load of potatoes and assess the quality.

Sampling involves the taking of a sample with a weight of 20kg as a minimum, which consists of three part samples as a minimum, taken either during the inspection process or during unloading.

The potatoes are peeled using a peeling machine (or a scraping device) in such a way that approximately 70% of the skin of the potatoes is removed. Potatoes that are supplied to factories producing flakes/granulate are only washed.

Aviko Potato retains the right to unilaterally amend the requirements, provided that such an amendment will result in more pliable standards.

#### Floater

The percentage of floaters (based on weight) is established by putting the potatoes in a water bath with a specific gravity of 1,060 grams per litre (for French fries and flakes/granulate) or of 1,040 grams per litre (for chilled products).

#### Underwater weight

The following formula is used to establish the underwater weight:

$$UWW = \frac{5,050 \text{ grams} \times \text{weight in grams under water}}{\text{weight in grams in the air}}$$

The underwater weight is established on the basis of samples of at least 5 kilograms of partially peeled, washed potatoes (washed only for flakes/granulate). The water in the bath must be clean. The underwater weight is corrected on the basis of the water temperature in keeping with the next table:

Water temperature	UWW correction
5	0,6
6	0,3
7	0
8	-0,4
9	-0,8
10	-1,2
11	-1,7
12	-2,3
13	-2,9
14	-3,5
15	-4,2
16	-4,9
17	-5,7
18	-6,5
19	-7,3
20	-8,2
21	-9,2
22	-10,2

The limit for rejection on the basis of underwater weight is a minimum of 360 grams (a minimum of 310 grams applies to chilled products). If the processor feels that it will be possible to process a batch despite a low underwater weight, a discount will be applied.

## **6.2 Quality assessment of French fries and other pre-cooked potato products**

Samples are checked for the following:

1. Any element foreign to potatoes
2. Number of tubers 40/+
3. Temperature (at least 5 tubers)
4. Undersize < 28 mm
5. Size variations in graded product
6. Underwater weight 40/+

100 tubers are further inspected for the following:

7. External sprouting
8. Clay coats
9. Skin abnormalities
10. Wrinkling
11. Deformed tubers
12. Growth splits
13. Green colouration
14. Rot
15. Phytophthora
16. Frost damage
17. Blemishes
18. Blue colouration
19. Smell
20. Top end glassiness

100 tubers are then cut before being checked for the following:

21. Internal sprouting
22. HOLLOWNESS
23. Blackheart
24. Gangrene
25. FLESH DEFICIENCIES (internal brown, ashen etc.)
26. ABNORMAL FLESH COLOUR
27. BLENDING OF VARIETIES OR TOO MANY DIFFERENCES IN VARIETY/COLOUR

A minimum of 20 small bars are then fried and checked for:

28. Fry colour
29. Dark ends

The quality of the potatoes supplied is established on the basis of this sampling, taking the following methodologies and standards into account.

### Tuber count

Tuber count is understood to be the number of 40/+ tubers per kilo in the sample. The tuber count is established by counting the number of tubers in the sample and then dividing it by the weight of the sample. The average tuber count per load is established on the basis of the sample taken, using a tuber counter (during the quality assessment). The acceptance or rejection of the load will be decided in terms of whether it exceeds the maximum of 9.5 tubers per kilo upon reception.

### Total of points

The points total is calculated as follows:

1. The factor value as listed in the 'factor' columns of the overview of quality standards is attributed to tubers with at least one deficiency.
2. The largest factor is attributed to tubers with multiple deficiencies.
3. These values are added for the total of 100 tubers; the result is the points total.

### Fry colour index

A minimum of twenty healthy tubers are taken from the sample, after which one 10 x 10 mm length-wise bar is extracted from each tuber using a cutter. The sample must include one bar from each tuber, taken from the heart of the potato.

The bars are rinsed in water, after which any excess water is removed.

The fryer is fitted with a thermostat to ensure that a temperature of 180 °C can be maintained, with a plus/minus fluctuation of 5 °C in respect of the set temperature value (175 °C - 185 °C).

100% vegetable fat is used for frying. The fat must be replaced immediately if it becomes discoloured (brown) or at least once a week.

The frying temperature of 180 °C must be continuously checked using a thermometer. Frying time is 5 minutes precisely; this can be checked using a timer.

At the end of the frying time, the sample is shaken to remove excess fat and a comparison is made with the U.S.D.A. colour chart, edited by Munsell Color Company, 3rd edition 1972, within 2 minutes of drying.

The bars are compared with the colours on the chart and divided into the classes 000, 00, 0, 1, 2, 3 and 4 on the basis of the colour chart.

Colour scale	000	00	0	1	2	3	4	
Number of bars in sample			2	9	9			
Multiplication factor	0	1	2	3	4	5	6	

Fry colour rating

$$\frac{2 \times 2 + 9 \times 3 + 9 \times 4}{\text{Total number of bars}} = 3,35$$

If the ends of the bars are clearly strongly discoloured for approximately 2 cm on a colour scale of 3 or 4 this is indicative of dark ends.

In the event of presence of these dark ends, the bar in question is classified one colour scale class higher than indicated by the light part of the bar.

If the fry quality must be assessed as a consequence of arbitration, a new colour chart will be used.

### 6.3 Quality standards for French fries and other pre-cooked potato products

Quality standards for French fries and other pre-cooked potato products		
	Quality data	Threshold for rejection*
1	Temperature	< 6 °C
2	Underwater weight, floaters excluded	< 360 and > 460
3	40/+ tubers per kg	> 9.5 per kg
4	Size differences in graded product	> 3%

	Quality data	Factor in calculation of points	Threshold for rejection*
1	Slight external sprouting < 10 mm	1	> 3%
2	Extensive external sprouting > 10 mm	4	> 1%
3	Wrinkles (flabbiness)	1	> 3%
4	Deformed tubers	1	> 7%
5	Growth splits	1	> 7%
6	Slight green colouration	0	> 10%
7	Heavy green colouration	1	> 5%
8	Rot	4	> 2%
9	Top end glassiness	1	> 10%
10	Phytophthora	4	> 1%
11	Frost damage	4	> 0%

### Overview of quality standards for French fries and other pre-cooked potato products

	Internal deficiencies	Factor in calculation of points	Threshold for rejection*
1	Slight internal sprouting < 10 mm	1	> 3%
2	Extensive internal sprouting > 10 mm	4	> 0%
3	Hollowness	4	> 6%
4	Blackheart	4	> 4%
5	Slight gangrene < 5 mm	1	> 8%
6	Significant gangrene > 5 mm	2	> 4%
7	Slight internal brown colouration < 10% of the tuber	1	> 6%

8	Significant internal brown colouration > 10% of the tuber	4	> 2%
9	Slight internal grey colouration	1	> 8%
10	Significant internal grey colouration	4	> 6%
11	Slight Rhizoctonia < 5 mm	1	> 8%
12	Significant Rhizoctonia > 5 mm	2	> 4%

Blue colouration and blemishing		Factor and calculation of points	Threshold for rejection*
1	Slight blue colouration 2 mm - 10 mm	1	
2	Moderate blue colouration 10 mm - 30 mm	2	
3	Heavy blue colouration > 30 mm	4	> 5%
4	Slight blemishing 2 mm - 10 mm	1	
5	Moderate blemishing 10 mm - 30 mm	2	> 10%
6	Heavy blemishing > 30 mm	4	> 5%
	Total blue colouration and blemishing		Max. 30%

Overview of quality standards for French fries and other pre-cooked potato products		
	Other deficiencies	Threshold for rejection
1	Soil ** Balls of haulm **	> 3% > 0,5%
2	Any foreign bodies, such as ammunition, golf balls, animal material, large stones, pieces of glass, balls of haulm, plant residues (such as roots, chicory roots, maize stubble, (flower) bulbs), iron, wood, sprout sticks, toxic plant parts, weed grains, manure residues, peat clods, plastic and fence posts and/or any other undesirable and/or hazardous and/or explosive substances	> 0%
3	Stones **	> 0,5%
4	Clay coats *	> 1%
5	Slight skin defects (scab, powdery scab and the like) up to a 2 mm depth/ coverage up to 30% of the surface	N/A
6	SSignificant skin defects (scab, powdery scab and the like) up to a 2 mm depth/ coverage > 10% of the surface	> 5%
7	Smell	Deviation
8	Blending of varieties	Deviation
9	Abnormal flesh colour	Deviation
10	Floater **	> 2%
11	Undersize (0-28) **	> 1%
12	Size differences in graded product 35/40, 40/50 or 50/+ **	3% (provided that grading to size was agreed)

## Overview of quality standards for French fries and other pre-cooked potato products

	Fry colour based on 40 sample bars	Threshold for rejection
1	Fry colour Weeks 32 up to and including 52	> 4 x in class 3 > 0 x in class 4 > 3x consecutive classes fry colour rating > 4.00
	Weeks 1 up to and including 13	> 6 x in class 3 > 0 x in class 4 > 3x consecutive classes fry colour rating > 4.00
	Weeks 14 up to and including 31	> 8 x in class 3 > 0 x in class 4 > 3x consecutive classes fry colour rating > 4.00
2	Dark ends	> 0
Total of points		Threshold for rejection
Total of points		> 50

\* Percentage of rejection threshold established on the basis of the number of tubers

\*\* Percentage of rejection threshold established on the basis of kilograms

### 6.4 Assessment of quality when dried (Rixona)

Sampling takes place by extracting a sample consisting of at least three part samples, taken from different areas.

The potatoes are washed and then assessed for:

1. Any elements foreign to potatoes
2. Temperature
3. Undersize < 28 mm
4. Underwater weight 28/+

100 tubers are then inspected for the following:

5. Clay coats
6. Frost damage
7. Rot
8. Phytophthora
9. Powdery scab/scab
10. External sprouting
11. Wrinkles (flabbiness)

12. Deformed tubers/growth splits
13. Green colouration
14. Blue colouration
15. Blemishes
16. Smell
17. Floaters and glassiness

The tubers are then cut, after which they are checked for the following:

18. Internal sprouting
19. Hallowness
20. Blackheart
21. Gangrene
22. Internal brown colouration
23. Blending of varieties
24. Abnormal flesh colour

A sample is then ground and filtered before being checked for:

25. Reducing sugars

#### Reducing sugars

At least 10 potatoes are cut into small segments and ground up. The ground segments are filtered and the sugar content in the juice released is measured using a blood glucose meter. Sugar content is specified as a percentage of reducing sugars (% RS).

## 6.5. Quality standards when dried (Rixona)

Overview of quality standards dried		
Kwaliteitsgegevens		Threshold for rejection HDS/mashed potatoes for consumption
1	Temperature	< 6 °C
2	Underwater weight floaters included	< 360
External deficiencies		Threshold for rejection HDS/mashed potatoes for consumption*
1	Slight external sprouting <10 mm	> 3%
2	Extensive external sprouting > 10 mm	> 0%
3	Wrinkles (flabbiness)	> 3%
4	Deformed tubers	> 7,5%
5	Growth splits	> 7,5%
6	Slight green colouration	N/A
7	Heavy green colouration	> 5%
8	Rot	> 2%
9	Top end glassiness	N/A
10	Phytophthora	> 3%
11	Frost damage	> 0%
Internal deficiencies		Threshold for rejection HDS/mashed potatoes for consumption*
1	Slight internal sprouting < 10 mm	> 8%
2	Extensive internal sprouting > 10 mm	> 3%
3	Hollowness	N/A
4	Blackheart	> 4%
5	Slight gangrene	n.v.t.
6	Significant gangrene	> 15%
7	Slight internal brown colouration	N/A
8	Significant internal brown colouration	> 8%

Overview of quality standards dried		
	Blue colouration and blemishing	Threshold for rejection HDS/mashed potatoes for consumption*
1	Slight blue colouration 2 mm - 10 mm	N/A
2	Moderate blue colouration 10 mm - 30 mm	N/A
3	Heavy blue colouration > 30 mm	> 5%
4	Slight blemishing 2 mm - 10 mm	N/A
5	Moderate blemishing 10 mm - 30 mm	> 25%
6	Heavy blemishing > 30 mm	> 5%

Other deficiencies		Threshold for rejection HDS/mashed potatoes for consumption	
1	Soil ** Balls of haulm **	> 3%	
2	Any foreign bodies, such as ammunition, golf balls, animal material, large stones, pieces of glass, balls of haulm, plant residues (such as roots, chicory roots, maize stubble, (flower) bulbs), iron, wood, sprout sticks, toxic plant parts, weed grains, manure residues, peat clods, plastic and fence posts and/or any other undesirable and/or hazardous and/or explosive substances	> 0%	
3	Stones **	> 0,5%	
4	Clay coats *	> 1%	
5	Slight skin defects (scab, powdery scab and the like) up to a 2mm depth/coverage of the surface up to 30%	N/A	
6	Significant skin defects (scab, powdery scab and the like) up to a 2mm depth/coverage of the surface > 10%	> 5%	
7	Smell	Deviation	
8	Blending of varieties	Deviation	
9	Abnormal flesh colour (e.g. purple/red potatoes) **	> 0%	
10	Floater **	> 5%	
11	Undersize < 28 mm **	> 3%	
		HDS threshold for rejection	Threshold for rejection Mashed potatoes for consumption
12	Reducing sugars measured in juice	> 0.26%RS	> 0.61%RS

Deficiency percentage		Threshold for rejection HDS/mashed potatoes for consumption	
Deficiency percentage		> 20%	

\* Percentage of rejection threshold established on the basis of the number of tubers

\*\* Percentage of rejection threshold established on the basis of kilograms

## **6.6 Quality assessment for chilled products (Aviko pre-cooked potato products)**

Prior to peeling, the sample is checked for the following:

1. Any elements foreign to potatoes
2. Temperature (at least 5 tubers)
3. Smell
4. Underwater weight 28/+

A sample is taken during unloading. The potatoes are then peeled using a peeling machine or a scraping device in such a way that approximately 70% of the skin has been removed. 100 tubers are then inspected for the following:

5. Glassiness
6. External sprouting
7. Wrinkles (flabbiness)
8. Deformed tubers
9. Growth splits
10. Green colouration
11. Rot
12. Phytophthora
13. Frost damage
14. Blue colouration
15. Blemishes
16. Chitwoodi

The tubers are then cut, after which they are checked for the following:

17. Internal sprouting
18. Hallowness
19. Blackheart
20. Gangrene
21. Internal brown colouration
22. Blending of varieties
23. Abnormal flesh colour

### Quality assessment

The quality of the potatoes supplied is established on the basis of the sample, whereby the following methodologies and standards are taken into account.

### Total of points

The points total is calculated as follows:

1. The number of points as specified in the column 'number of points' of the overview of quality standards is attributed to tubers with one deficiency.
2. The largest numbers of points are attributed to tubers with multiple deficiencies.
3. These values are added for the total of 100 tubers; the result is the points total.

## 6.7 Quality standards for chilled products (Aviko pre-cooked potato products)

Overview of quality standards for chilled products		
	Quality threshold	Threshold for rejection
1	Temperature	< 8 °C
2	Underwater weight	< 310 and > 400 firm-boiling potatoes (Hansa, amongst others) < 310 and > 420 floury potatoes (Bintje, amongst others)

Overview of quality standards for chilled products			
	External deficiencies	Factor in calculation of points	Threshold for rejection*
1	Slight external sprouting < 10 mm	0	
2	Extensive external sprouting > 10 mm	1	> 7%
3	Wrinkles (flabbiness)	1	> 3%
4	Deformed tubers	2	> 7%
5	Growth splits	1	> 7%
6	Light green colouration (< 1/3 of the tuber surface)	0	> 10%
7	Heavy green colouration (> 1/3 of the tuber surface)	2	> 5%
8	Rot	4	> 1%
9	Top end glassiness	1	> 10%
10	Phytophthora	4	> 1%
11	Frost damage	2	> 0%
12	Moderate Chitwoodi depth 1-2 mm	2	
13	Significant Chitwoodi > depth 2 mm	4	> 5%
14	Pressure marks if blue and wrinkled	3	> 6%

Internal deficiencies		Factor in calculation of points	Threshold for rejection*
1	Slight internal sprouting (2 mm up to 5 mm)	1	> 6%
2	Extensive internal sprouting > 5 mm	4	> 3%
3	Hollowness	4	> 6%
4	Blackheart	4	> 4%
5	Slight gangrene < 5 mm	1	> 6%
6	Significant gangrene > 5 mm	4	> 3%
7	Slight internal brown colouration < 10% of the tuber	1	> 6% or > 30% max. per size grading
8	Significant internal brown colouration > 10% of the tuber	4	> 2% or > 30% max. per size grading

Overview of quality standards for chilled products			
	Blue colouration and blemishing	Factor in calculation of points	Threshold for rejection*
1	Slight blue colouration 2 mm - 5 mm surface and/or depth	1	
2	Moderate blue colouration 5 mm - 10 mm surface and/or depth	2	
3	Heavy blue colouration > 10 mm, surface and/or depth	4	> 10%
4	Slight blemishing 2 mm - 5 mm surface and/or depth	1	
5	Moderate blemishing 5 mm - 10 mm surface and/or depth	2	
6	Heavy blemishing > 10 mm, surface and/or depth	4	> 10%

Overview of quality standards for chilled products		
	Other deficiencies	Threshold for rejection**
1	Soil Balls of haulm	> 3% > 0,5%
2	Any foreign bodies, such as ammunition, golf balls, animal material, large stones, pieces of glass, balls of haulm, plant residues (such as roots, chicory roots, maize stubble, (flower) bulbs), iron, wood, sprout sticks, toxic plant parts, weed grains, manure residues, peat clods, plastic and fence posts and/or any other undesirable and/or hazardous and/or explosive substances	> 0%
3	Stones	> 0,5%
4	Slight skin defects (scab, powdery scab and the like) up to a 2 mm depth/coverage up to 30% of the surface	> 15%
5	Significant skin defects (scab, powdery scab and the like) up to a 2 mm depth/coverage > 10% of the surface	> 5%
6	Smell	Deviation
7	Blending of varieties	None
8	Abnormal flesh colour (e.g. purple/red potatoes)	Deviation
9	Floater (at a specific weight of 1,040 grams per litre)	> 10% of the total number of tubers

Total of points	Threshold for rejection
Total of points	51-75 discount > 75 rejected

\* Percentage of rejection threshold established on the basis of the number of tubers

\*\* Percentage of rejection threshold established on the basis of kilograms

## **6.8 Discounts and rejections**

### **6.8.1 Trade**

Article 6.8.1 of these Terms & Conditions applies only to those agreements concluded by Aviko Potato with a supplier who does not cultivate the contracted potatoes themselves.

#### Rejection

Having taken samples, Aviko Potato shall inform the Supplier within two hours (during business hours) and within 16 hours as a maximum (outside business hours) if the potatoes supplied fall within the rejection class and after more than 48 hours in the event of chilled products. Aviko Potato will also inform the Supplier, within a reasonable time of detection by Aviko Potato, of any hidden defects or elements foreign to the product, as well as any complaints about food safety.

If it is established that the batch falls within the rejection class for one or more criteria, Aviko Potato retains the right to reject the batch or any remainder thereof and to refuse delivery of the potatoes without being subject to any form of indemnification.

If the right of rejection applies, Aviko Potato shall also have the right to process the potatoes at a discount to be determined by Aviko Potato, obviously taking fair and reasonable considerations into account.

If the potatoes offered for delivery are rejected, Aviko Potato shall have the right to demand that the Supplier supply substitute potatoes, which must obviously meet the agreed standard. In the event that Aviko Potato does not make use of their right to a substitute delivery, the Supplier shall be bound to indemnify any damage incurred.

If a dispute arises between Aviko Potato and the Supplier regarding the outcome of the quality assessment carried out by the inspector, the appropriate party may, at their own risk, request that the Stichting Geschillen in de Landbouw c.a. (Agricultural Arbitration Bureau) designate an expert to conduct an assessment, binding for both parties, to determine whether the batch meets the agreed requirements. Such a request must be submitted in writing within 24 hours of the quality assessment by the inspector to the Stichting Geschillen in de Landbouw c.a. (Postbus 245, 6700 AE Wageningen, tel. 0317-424181, fax 0317-424313, e-mail: [info@iar.nl](mailto:info@iar.nl)). Failure to do so in a timely manner will result in the lapsing of this right and the original quality assessment performed by the inspector shall become irrevocable and unassailable as well as binding for both parties.

If a dispute arises between Aviko Potato and the Supplier with regard to any hidden defects, elements foreign to the product, complaints in terms of food safety and/or the extent of any damages, or any other dispute requiring the appointment of an expert

adjudicator, the appropriate party may, within a reasonable term, request the Stichting Geschillen in de Landbouw c.a. to designate an expert to assess the matter. The outcome of this expertise shall be binding on Aviko Potato and the Supplier.

#### **6.8.2 Growers**

Article 6.8.2 of these Terms & Conditions shall apply solely to agreements concluded by Aviko Potato with the grower of the contracted potatoes.

##### Rejection

Having taking samples, Aviko Potato shall inform the Supplier within two hours (during business hours) and within 16 hours as a maximum (outside business hours) if the potatoes supplied fall within the rejection class, and after more than 48 hours in the event of chilled products. Aviko Potato will also inform the Supplier, within a reasonable time of detection by Aviko Potato, of any hidden defects or elements foreign to the product, as well as any complaints about food safety.

In the event of rejection, Aviko Potato shall consult with the Supplier about the right to attribute a different destination for the potatoes at a discount to be established by Aviko Potato. The discount shall be equal to the decrease in value resulting from the new destination in respect of French fries potatoes on the day market on the day of rejection plus, if applicable, any additional costs of the sale, processing and transport, as well as tare differences, if any. If an excess value is involved, the contract price shall be the maximum price. If, despite not meeting the quality requirements, it proves possible to prepare a batch for processing, such a batch may be washed and/or salted if appropriate. The costs of washing/salting shall be for the account of the Supplier. If the batch must be gleaned, the costs of this are also for the account of the Supplier. Any additional logistics costs are also for the account of the Supplier.

If a batch of potatoes proves to be totally unfit, i.e. if it is ultimately rejected, arrangements for the disposal of the batch will be made in mutual consultation with the Supplier. The cost of disposal, if any, shall be for the account of the Supplier. If the Supplier is unable to replace the rejected quantum with potatoes of the same variety grown by their own business, or potatoes of another variety grown by their own business and fit for processing at Aviko, the volume will first be deducted from the balance contract and, subsequently, from the various net quantity contracts in the order of the date of conclusion, starting with the contract last concluded. If a fixed price contract is involved, and a French fries guarantee contract and a pool contract with a net quantity bear the same date, the net quantity will be first deducted from the pool contract, then from the net quantity of the French fries guarantee contract, and finally from the net quantity of the fixed price contract. If a market price contract was concluded which was later converted to a fixed price contract the date of conversion to the fixed

price shall prevail as the contract date.

If a dispute arises between Aviko Potato and the Supplier about the outcome of a quality assessment carried out by the inspector the Supplier may refer to the Potato Growers Commission (hereinafter referred to as PGC) with a request to intervene in the dispute. The Supplier must submit such a request to the PGC in writing within 24 hours of being informed of the result of the quality assessment. If this time limit is not met, the right of complaint will lapse and the original judgement of the inspector will be binding for both parties. If, for any reason whatsoever, the PGC fails to reconcile the parties the Supplier may, at their own risk, request that the Stichting Geschillen in de Landbouw c.a. in Wageningen appoint an expert in keeping with the VAVI potato purchase conditions for the industry/trade chain. This expert will then establish whether or not the batch meets the requirements agreed.

The opinion of this expert shall be binding for both parties. Such a request must, at the risk of lapse of rights, be submitted in writing no later than 24 hours from the time at which it becomes clear that the PGC has not managed to reconcile the parties to the Stichting Geschillen in de Landbouw c.a. Failure to submit such a request in a timely manner will result in the original outcome of the quality assessment becoming irrevocable and unassailable and binding for both parties (Stichting Geschillen in de Landbouw c.a., Postbus 245, 6700 AE Wageningen, tel. 0317-424181, fax 0317-424313, e-mail: [info@iar.nl](mailto:info@iar.nl)).

If a dispute arises between Aviko Potato and the Supplier with regard to any hidden defects, elements foreign to the product, complaints in terms of food safety and/or the extent of any damages or any other dispute requiring the appointment of an expert adjudicator, the appropriate party may, within a reasonable term, request that the Stichting Geschillen in de Landbouw c.a. designate an expert. The outcome of this expertise shall be binding on Aviko Potato and the Supplier.

#### Control of sampling and quality method

Sampling and quality assessment procedures are checked by the PGC at least once every three months by means of unannounced random sampling.

As regards sampling, sample sizes and the way in which samples are taken are checked against the procedure described under 6.1 (sampling). As regards quality assessment, the quality assessment, quality methodologies and quality standards as applied by Aviko Potato are checked to ensure that they correspond with those described under 6.2 up to and including 6.7 (Quality assessment, Quality method and Quality standards).

#### Control of taring

At least once every three months the PGC will perform an unannounced random test to check that Aviko Potato is applying the correct method of taring. As regards sampling,

checks are conducted to determine whether the sampling itself and the sample sizes correspond with those described under 7.1 (sampling). As far as the methodology applied is concerned, this is checked against that described under 7.2 (methodology). In addition, the PGC checks that the manner of taring does justice to the resultant losses for the processing of the product seen in the light of the objective for which the potatoes were purchased. In the event of exceptional growing conditions in which, according to the joint judgement of Aviko Potato and the GPC, a major part of the Dutch raw material does not meet the acceptance standards of the factory, Aviko Potato shall make all efforts to ensure that the factory carries out such incidental or temporary modifications as are required to enable the processing of the raw material as yet.

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## 7) Taring

### 7.1 Sampling

To assess the taring of the potatoes to be supplied to Aviko Potato a sample of approximately 25 kg is taken during the quality assessment and prior to processing in the factory. Sampling is either performed manually or using automated sampling equipment. For either method, at least three part- samples per lorry load are taken to amass a complete sample. This sample is used to determine the following:

1. Soil and other elements foreign to potatoes
2. Feed tare
3. Floaters
4. Coarseness and undersize < 28 mm (if applicable)

The taring of washed products takes place within 7 working days from delivery to either Aviko Potato or the business taking delivery.

### 7.2 Methodology

#### Soil and other foreign elements

Soil, stones and other elements foreign to potatoes, undersize 0-28 mm, are not considered to form part of the net potato volume; neither are haulms, sprouts (stalks) and root remnants (chicory roots, maize stubble and the like). Any soil, clods, stones, undersize < 28 mm or other elements foreign to potatoes included in the delivery will be charged to the Supplier.

#### Feed tare

Feed tare is not considered to form part of the net potato volume. Feed tare includes those potatoes that are deformed, have significant green colouration or serious Chitwoodi, are flabby/wrinkly, fully or partially rotten or infected with Phytophthora, or exhibit growth splits, partial fractures/cuts and/or irregular shape.

#### Floaters

Floaters are not considered to form part of the net potato volume. The percentage of floaters (based on weight) is established by putting the potatoes into a water bath with a specific gravity of 1,060 grams per litre (French fries and flakes/granulate) or of 1,040 grams per litre (for chilled products).

#### Coarseness and undersize < 28mm

Non-permitted undersize and oversize are not considered to form part of the net potato volume, whereby the tolerances (rejection thresholds) listed in the overview of quality standards are applied.

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## **8) Transfer of risk**

The risk to any potatoes to be purchased by Aviko Potato shall be transferred from the Supplier to Aviko Potato only after either Aviko Potato or their customer has approved the quality on arrival at the delivery address, with the exception of any demonstrable and traceable defects later established in the batch of potatoes in question but not detectable at the time of sampling.

Any liability on the part of Aviko Potato for damage suffered by the Supplier for any reason whatsoever is excluded.

## **9) Price**

### **9.1 Payment term**

Aviko Potato shall pay for approved and accepted potatoes within 30 days of the end of an agreed period of delivery during which deliveries have been made. If Aviko Potato is in default, they shall owe interest of 0.75 % per month. Aviko Potato shall never be liable for any extrajudicial costs.

### **9.2 Trade**

Article 9.2 of these conditions solely applies to the agreements that Aviko Potato concludes with a supplier who does not cultivate the contracted potatoes themselves.

The price specified in the contract shall apply to the net volume of potatoes delivered.

### **9.3 Growers**

Article 9.3 of these Terms & Conditions shall apply solely to agreements concluded between Aviko Potato and the Grower of the contracted potatoes.

#### Fixed price contract

The agreed price specified in the Aviko Potato purchasing contract is the basic price and does not necessarily correspond exactly with the price to be paid. The price to be paid is the basic price, valid for the contract period and week of delivery and increased/decreased by bonuses/discounts if any, as specified in the Aviko Potato purchasing contract.

#### French fries guarantee contract'

For an explanation, please refer to the Aviko Potato purchasing contract.

#### Pool contract with and without pre-sale

The final price is dependent on the pool result for the full harvesting year (please refer to the Aviko Potato PGC, the Aviko Potato pool regulations and the Aviko Potato purchasing contract) as mentioned in the explanation of the Aviko Potato purchasing contract.

#### Market price contract

Please refer to the Aviko Potato purchasing contract for an explanation.

#### 28-40 mm size

Potatoes falling within the 28-40 mm size range of a 40/+ contract shall be invoiced at the day price to be established by Aviko Potato.

## **9.4 Disposal**

Such costs as are deducted from proceeds include, among other things, the cost of storage and of offering the potatoes in the market. If contracted potatoes are not collected, the cost of their disposal shall not be paid.

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# **10) Sale of seed potatoes**

## **10.1 Conditions for the industry**

**10.1.1** Solely the provisions of this chapter of the Aviko Potato conditions, as well as article 11.2.2 and 11.3 of these Terms & Conditions, shall apply to all agreements whereby Aviko Potato sells seedlings to third parties, hereinafter referred to as the Other Party. In addition, the following conditions will apply on a supplementary basis, insofar as they do not conflict with the agreement and the part of the Aviko Potato conditions referred to in the previous sentence: the 2018 General Trading Conditions for Seed Potatoes, including the associated arbitration regulations (established by the NAO, LTO, VAVI and NAV), hereinafter referred to as the Conditions for the Industry.

**10.1.2** Any disputes will be settled by arbitration in keeping with the arbitration regulations of the Conditions for the Industry. Arbitration in the first and second instance will take place in Wageningen, in the Dutch language. The Agricultural Arbitration Bureau (Stichting Geschillen in de Landbouw c.a.) has its offices in 6700 AE Wageningen, Postbus 245 ([info@iar.nl](mailto:info@iar.nl), tel.: 0317-424181, fax: 0317-424313).

**10.1.3** In addition to that stipulated in articles 10.1.1 and 10.1.2, Aviko Potato shall always have the right to summon the Other Party before the Court in Rotterdam in respect of any claims that have not been disputed within 30 days of the date of invoice.

## **10.2 Liability**

**10.2.1** The liability of Aviko Potato is limited to the lowest amount of either of the following: the invoice amount of the goods to which the founded claims and damage refer, or an amount of € 25,000.00. Aviko Potato shall never be liable for indirect damage, consequential damage and loss of profit.

**10.2.2** Aviko Potato does not wash or cut seed potatoes. If the other party requires washed and/or cut seed potatoes they must take care of this themselves after delivery, i.e. after the transfer of property to the Other Party. The washing and/or cutting of seed potatoes shall always take place for the account and risk of the Other Party. Aviko Potato shall never be liable for any damage arising from quarantinable diseases, including brown rot, ring rot and Chitwoodi.

### **10.3 Force majeure**

10.3.1 All sales of Aviko Potato shall take place subject to harvest. If a significantly smaller volume of product is available than might reasonably be expected in terms of the quantity and/or quality of the potatoes due to an adverse harvest, including any of the crop rejected by the prevailing authorities, Aviko Potato shall have the right to reduce the quantities sold by them accordingly. This situation, among others, applies if the products purchased by Aviko Potato on the basis of grower contracts are insufficient to meet the demand from all customers of Aviko Potato. Aviko Potato shall fully meet their delivery obligations in accordance with this unavoidably reduced quantity. In such a case, Aviko Potato shall not be bound to deliver substitute products; neither shall they be liable for any damage whatsoever.

10.3.2 In addition to the Conditions for the Industry, Aviko Potato may appeal to force majeure in the event of strike, interruption of work, government measures and/or regulations which make difficult, delay or impede compliance, lack of means of transport, problems on the transport route, interruption in the supply of energy and products, insufficient stock due to, for example, weather conditions and diseases, as well as technical failure.

10.3.3 While the situation of force majeure continues, Aviko Potato shall be entitled to suspend their obligations. If it can no longer be expected of Aviko Potato that they comply with their obligations because of a situation of force majeure (which shall be the case if the force majeure situation persists for more than 30 days) Aviko Potato shall be entitled to rescind the agreement without any party being entitled to indemnification.

### **10.4 The rights of growers**

10.4.1 The Other Party may only plant the seedlings themselves. The Other Party is not permitted to re-sell the seedlings.

10.4.2 By entering into the purchasing agreement the Other Party grants to Aviko Potato their representatives and the license holder of the variety (if applicable) the right to check and test all plots on which the seedlings have been planted, including sites of storage, whether temporary or permanent, of the seedlings. The Other Party shall identify the fields in question upon first request.

10.4.3 In the event of the purchase of seedlings protected by growers' rights, the Other Party shall be under the obligation to permit immediate access to their business and potatoes, be this on the field or in storage, to the supervising authorities who perform control interventions on behalf of the holder of the growers' right. Furthermore, the Other Party shall provide access to their administration, including invoices, if relevant to the investigation.

**10.4.4** If Aviko Potato should become involved in a procedure about growers' right or any other industrial and/or intellectual rights, the Other Party shall be under the obligation to render any assistance required by Aviko Potato, including the collection of evidence.

### **10.5 Payment**

**10.5.1** Unless otherwise agreed in writing, the Other Party shall pay all invoices within 30 days of the date of invoice, also if the goods incurred damage or were lost after delivery. If the Other Party fails to pay within this term they will, without any notification of default being required, become liable for interest of 0.75% per month.

**10.5.2** Aviko Potato retains at all times the right to request a security from the Other Party in the form of a bank guarantee. If the Other Party fails to submit the bank guarantee within the term specified by Aviko Potato, Aviko Potato shall have the right to suspend and/or rescind the agreement and to require full compensation from the Other Party.

**10.5.3** Aviko Potato shall retain the ownership of the goods supplied until all payments owing by the Other Party have been paid in full to Aviko Potato. In entering into the purchasing agreement, the Other Party grants to Aviko Potato the irrevocable consent and proxy to access the premises and buildings of the Other Party in order to execute the retention of property and/or to retake possession of the goods supplied.

**10.5.4** Aviko Potato and businesses belonging to the Aviko Potato group of companies may at all times offset outstanding invoices against such claims as are held or will be held by the counterparty on Aviko Potato or businesses belonging to the Aviko Potato group of companies, including claims resulting from potatoes supplied.

### **10.6 Use**

The seed potatoes supplied by Aviko Potato to the counterparty may only be used for the growing of ware potato crops.

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## **11) Final provisions**

### **11.1 Trade**

#### **11.1.1 Application**

Article 11.1 of these Terms & Conditions applies to the agreements concluded by Aviko Potato with a supplier who does not cultivate the contracted potatoes themselves.

#### **11.1.2 Mediation**

If any dispute relating to a failure in the execution of the agreement to which these

Terms & Conditions apply or further agreements issuing from them cannot be settled in consultation between parties, the parties shall make all efforts to solve the dispute by means of mediation according to the regulations of the Stichting Nederlands Mediation Instituut in the version that applies on the date of signing the agreements to which these Terms & Conditions or further agreements issuing from them apply before resorting to the authorised institution for arbitration. The appropriate party may submit an application in writing to that effect to the Stichting Geschillen in de Landbouw c.a., Postbus 245, 6700 AE Wageningen.

The appropriate party shall notify the Other Party, either in writing or electronically, of their intention to proceed to mediation.

If the appropriate party has not received, within 14 days of the notification referred to in the previous article, a reaction from the Other Party making it clear that they are also prepared to solve the dispute by means of mediation, the dispute shall be settled by means of arbitration of the part of the Stichting Geschillen in de Landbouw c.a. in keeping with the arbitration regulations of the latter.

### **11.1.3 Arbitration**

Any disputes emanating from the agreements to which the Terms & Conditions (with the exception of article 10) or from any other agreements issuing from them apply shall be settled, with the exclusion of the civil court, by means of arbitration in the way stipulated in the arbitration regulations of the Stichting Geschillen in de Landbouw c.a. in Wageningen. Arbitration shall take place in Wageningen. Dutch shall be the language of the procedure.

## **11.2 Growers**

### **11.2.1 Application**

Article 11.2 of these Terms & Conditions shall apply solely to agreements concluded between Aviko Potato and the Grower of the contracted potatoes.

### **11.2.2 Mediation through the PGC**

If a dispute arises between Aviko Potato and a Supplier about the execution of the agreement to which these Terms & Conditions or of any further agreements issuing from them apply which cannot be settled amicably, either party may request the PGC to act as a mediator.

To that effect, they shall submit a request in writing to the PGC, c/o Aviko Potato, Postbus 171, 8250 AD Dronten, [aardappeltelergroep@avikopotato.nl](mailto:aardappeltelergroep@avikopotato.nl), including a detailed description of the dispute and a request for intervention.

Upon receipt of such a request the PGC shall designate three of their members, including the member who represents the region in which the business of the Supplier is domiciled. These members, having heard the parties and/or enabled them to explain their standpoint, shall attempt to reconcile the parties. The costs of any such mediation shall be borne, in equal parts, by Aviko Potato and the Supplier.

If the members of the PGC fail to reconcile the parties, or in a situation where both parties or either party prefer not to make use of the intervention facility of the PGC, a dispute shall be settled, with the exclusion of the civil court, by means of arbitration by the Stichting Geschillen in de Landbouw c.a.

#### **11.2.3 Arbitration**

Any disputes emanating from the agreements to which these Terms & Conditions (with the exception of article 10) apply, or from any other agreements issuing from them, shall be settled, with the exclusion of the civil court, by means of arbitration in the manner stipulated in the arbitration regulations of the Stichting Geschillen in de Landbouw c.a. in Wageningen. Arbitration shall take place in Wageningen. Dutch shall be the prevailing language of the procedure.

#### **11.3 Applicable law and period of limitation**

The Other Party shall, at the risk of losing all their rights including the right to apply for arbitration, be under the obligation to apply for arbitration within three months of the time at which it becomes apparent that the dispute cannot be solved amicably between the parties at the latest. The period of three months begins when: a) the mediation pathway or the mediation by the PGC is interrupted without having led to general agreement between the parties or b) if either party informs the Other Party that they do not consent to mediation or intervention on the part of the PGC. Solely Dutch law shall apply to all agreements concluded with Aviko Potato. The stipulations of the Convention for the International Sale of Goods do not apply.

Unless the claim is precluded earlier by the lapse of time on the grounds of the applicable Conditions of the Industry, the claim of the Other Party on Aviko Potato will be precluded by the lapse of time one year from the date and time at which the claim has arisen.

In the event of any differences between the Dutch text of these terms and conditions and any subsequent translations, the Dutch wording shall prevail. One or more conditions of these provisions being null and void or subject to nullity shall not affect the other stipulations.

Dronten, January 2021



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