



VERENIGING VOOR DE
AARDAPPELVERWERKENDE
INDUSTRIE



PURCHASING

CONDITIONS OF

THE POTATO

GROWING/PROCESSING

INDUSTRY

2021

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GENERAL TERMS AND CONDITIONS FOR THE PURCHASE AND CONTRACT GROWING OF POTATOES IN THE POTATO GROWING/PROCESSING INDUSTRY

General provisions and definitions

Article 1

The general terms and conditions “Purchasing Conditions of the Potato Growing/Processing Industry 2021”, hereinafter called the “General Terms and Conditions”, have been adopted by the Association of the Potato Processing Industry (VAVI) and the Dutch Federation of Agricultural and Horticultural Organizations (LTO Nederland). The General Terms and Conditions have been filed with the office of the District Court of The Hague and are effective as of 1 January 2021. In the general terms and conditions, the following terms have the following meanings:

Field crop yield:	the unsorted result of the growing of potatoes for human consumption from a specifically-defined plot (RVO plot registration).
Net tonnage yield:	the sorted - in accordance with the agreed dimensions - result of the growing of potatoes for human consumption from a specifically-defined plot (RVO plot registration).
Tonnage contract:	contract for the delivery of a previously-agreed number of (net) tonnes of potatoes to the buyer.
Hectare contract:	contract for the delivery of the total yield (field crop yield and/or net tonnage yield) of a previously-agreed plot.
Multi-year contract:	a contract with a term of longer than one growing year.

Applicability of conditions

Article 2

- 2.1 These General Terms and Conditions are applicable to all purchase agreements and growing agreements for potatoes whereby the Purchasing Conditions of the Potato Growing/Processing Industry 2021 have been declared applicable.
- 2.2 The purchasing conditions of the relevant customer/the buyer have precedence over the Purchasing Conditions of the Potato Growing/Processing Industry.
- 2.3 Supplementary to the General Terms and Conditions, Dutch law is applicable. The agreements shall be deemed to have been concluded in the Netherlands,

and to be carried out there.

- 2.4 The applicability of the Vienna Sales Convention is expressly excluded.
- 2.5 The General Terms and Conditions are likewise applicable to all purchase agreements that are concluded with growers of potatoes outside of the Netherlands. The applicability of the RUCIP Rules and Practices, Rules for Expert Assessment, and Arbitration Rules for the Inter-European Trade in Potatoes is explicitly excluded.
- 2.6 In the General Terms and Conditions, "in writing" also includes digital communication, such as by e-mail with delivery receipt confirmation, which is sent in such a way that the recipient can open and save the messages.

Purchase and sale confirmation

Article 3

- 3.1 A purchase agreement is binding on the parties as soon as they have reached an agreement about such. This can be proven by all legal means.
- 3.2 The buyer shall confirm the agreement in writing or by e-mail with delivery receipt confirmation with the statement that the General Terms and Conditions are applicable to such. The confirmation shall be deemed to reflect the agreements, unless the seller established in the Netherlands makes its objections to the confirmation known within two business days after sending. For sellers established outside of Dutch national borders, the objections have to be notified within five business days.

Contract growing

Quantity/area specification

Article 4

- 4.1 The parties shall agree a tonnage contract or a hectare contract for the growing of a certain variety.
- 4.2 In the case of a tonnage contract, the seller has to supply this quantity from the total area of the land where the agreed variety of potatoes are being grown, unless it has been stipulated in the agreement that this quantity has to be grown on a specifically-defined plot/area.
- 4.3 In the case of a hectare contract, the seller will be obligated to deliver the entire yield of that area to the buyer, unless otherwise has been agreed.
- 4.4 In the event of a multi-year contract, the buyer and the seller can agree to change to a different variety during the term of the contract. In that case, an agreement has to be reached about the price and conditions that will apply. The seller shall have the right to dissolve the contract in the event of a change of variety. The seller shall not have a right of dissolution in the event of a change to the size of seed potatoes. Contract amendments have to be agreed in writing or digitally.

Seed potatoes

- 4.5 The variety to be grown has to be specified in the agreement.
- 4.6 If a clause is included in the agreement that the buyer will supply the seed potatoes, then the seed potatoes for the contracted quantity/area/or agreed quantity of seed potatoes of the agreed type and grade have to be made available to the seller in a timely manner for planting. The costs of the seed potatoes shall be for the account of the seller.
- 4.7 The agreement for the delivery of seed potatoes is subject to the “General Contract Terms for Seed Potatoes 2018 with associated arbitration regulations” (adopted by the NAO, LTO, VAVI and NAV).

Growing, harvest and storage

- 4.8 The seller has to care for the potatoes during the growing, harvest, and storage as a careful owner.
- 4.9 The seller is liable for the quality of the potatoes to be supplied up until the moment of delivery. The advice issued by the buyer in relation to the growing, harvesting, and storage of potatoes, either before or during the growing, harvesting, and storage, shall not give rise to any liability on the part of the buyer in relation to the yield or the quality of the potatoes. Whether or not such advice is followed is entirely the responsibility of the seller.
- 4.10 The buyer has the right, both during the growing of the crop and during any period of storage, to take samples in order to determine the quality of the potatoes that will be supplied. The buyer is obligated to inform the seller about the sampling. The seller has to make sure the taking of samples can be carried out in a safe and responsible manner. The seller will be informed about the results of the sampling. An interim quality assessment will not be binding on the parties. The definitive assessment of the quality will be made in accordance with article 7 of these conditions.
- 4.11 In the event of sampling of a consignment in storage, the seller is obligated to inform the buyer about the most recent treatment of the consignment in storage. The seller is moreover obligated to provide a safe and accessible working environment.
- 4.12 The seller shall inform the buyer immediately in writing or digitally with delivery receipt confirmation if it is unable to fulfil the agreed quantitative and/or quantitative obligations in relation to the growing, harvest, or storage.

Delivery

Article 5

- 5.1 The seller is obligated to supply the contracted quantity, in the case of a tonnage contract, or the entire yield of the contracted area, in the case of a hectare contract, to the buyer. The buyer is obligated to accept delivery.
- 5.2 If the seller has concluded a sales agreement with more than one buyer for the same variety, it is obligated to inform the relevant buyers about such (duty of disclosure) and/or it will be obligated to conclude tonnage contracts with the relevant buyers of the same variety.
- 5.3 In the event of two buyers (of the same variety) and a situation where there is a shortfall in quantity of potatoes that have to be delivered by the seller under the contracts, the following order of priority for delivery shall apply:
- a. Contracts that have been concluded before 1 April shall have priority of delivery;
 - b. If both contracts have been concluded before 1 April, then a pro rata amount shall be delivered to each of the buyers;
 - c. Multi-year contracts will have priority of delivery over one-year contracts.
- 5.4 Delivery shall take place at a location to be designated by the buyer. The parties shall agree a delivery period to be specified in the agreement. If delivery before a certain date or in instalments is agreed, then the relevant date or the instalments, as well as the quantity to be delivered per instalment, and the part to be delivered, have to be specified in the agreement.
- 5.5 The agreed delivery period referred to in article 5, paragraph 3, can be deviated from through mutual consultation and with the mutual consent of both parties. The following conditions shall apply:
- If delivery takes place earlier than agreed at the request of the seller, then the contract price for the period in which delivery actually takes place shall apply.
 - If delivery takes place earlier than agreed at the request of the buyer, then the contract price for the delivery period originally agreed shall apply.
 - If delivery takes place later than agreed at the request of the seller, then the contract price for the delivery period originally agreed shall apply.
 - If the buyer asks the seller to deliver a consignment later than agreed, then the buyer shall take over the risk of loss of quality and reject stock, which might arise after the originally agreed delivery date, from the buyer. The seller has to continue to provide optimal storage conditions as a careful owner. Upon the physical delivery of the consignment, the contract price for the period in which delivery actually takes place shall apply.
- 5.6 The buyer shall inform the seller (in writing or digitally) in a timely manner about the delivery date and place so that the seller has the opportunity to warm up the potatoes in the right way.

- 5.7 The buyer is obligated to make suitable quantitative and qualitative transport capacity available. Qualitative in terms of such aspects as state of repair, safety, hygiene, and insurance. The seller has the right to refuse the means of transport on the grounds of inadequate state of repair, safety, or hygiene.
- 5.8 The seller has to make sure that sufficient plant and equipment and manpower is present at the agreed delivery time to be able to load the transport vehicle at a loading rate of at least 30 tonnes per hour. In the event of delivery ex works, then in mutual consultation and by mutual consent this loading rate can be changed to 30 tonnes per two hours. Furthermore, the seller is obligated to inspect the transportation, cold storage, frost protection measures, loading and/or storage for compliance with the advice of the buyer or its agent.
- 5.9 Subject to local laws and regulations, loading can take place at any time of the day. In general, loading will take place between 04:00 AM and 10:00 PM, unless circumstances make loading outside of these hours necessary. If there are principled or social objections against the loading of potatoes on Sundays and public holidays, then the buyer will have to take this into consideration. The seller has to make this known when the agreement is concluded.
- 5.10 The delivery will take place after the buyer or its agent has sampled the potatoes upon the arrival at the delivery address in accordance with article 7, and has approved the quality of such, subject to demonstrable and traceable hidden defects in the relevant consignment of potatoes.
- 5.11 The delivered potatoes shall be for the account and risk of the buyer as of the date of delivery. As of the moment when the potatoes are made available to the buyer by the seller, up to the time of delivery, the buyer has to look after the potatoes as a careful owner.
- 5.12 If after the grading of the potatoes in accordance with article 7, which the seller can be present at (see article 6.3), the buyer determines that they do not satisfy the agreed quality specifications, in derogation to that provided for in article 5, paragraph 1, the buyer shall have the right to refuse the potatoes and/or to accept delivery of the potatoes at a reduced price to be agreed in mutual consultation. A refusal of delivery and/or the setting of a reduced price will apply to those potatoes insofar as they can be specifically identified (i.e., traceable). If an agreement is not reached, the seller shall have the right to have the potatoes transported back to his place of business, whereby the cost of the return transport will be for the account of the seller. A decision to this effect must be taken within four hours after the ending of the negotiations.
- 5.13 In derogation to that provided for in article 5.1, the buyer will not be obligated to accept delivery if the potatoes represent a danger to public health pursuant to European or national laws. In the event of a quarantine disease or organism, the protocol drawn up by the Netherlands Food and Consumer Product Safety Authority (NVWA) will be followed. If the acceptance of delivery leads to additional costs in such a case, then the relevant costs shall be for the account of the supplier.
- 5.14 The buyer, its agent, or the carrier will issue the seller with a delivery receipt for each consignment of potatoes, which, insofar as relevant, will include the following details:

- name and address of the seller (the grower);
- name and address of the buyer (processing industry);
- place of delivery (delivery address);
- name and address of the carrier and signature of the driver and the vehicle details (e.g., vehicle registration number);
- time and date of arrival (time when the trailer was left or unloaded);
- estimated quantity of potatoes.

5.15 The seller has a food safety certificate (VVA, GlobalGAP or Vegaplan) and authorizes the buyer to inspect the food safety certificate. Relevant crop treatments will be recorded in the crop register. At the request of the buyer, the crop register has to be presented within four hours.

5.16 In the absence of a food safety certificate, the seller is obligated to inform the buyer about such. It will be decided in consultation whether or not residue testing is necessary. If residue testing is necessary, the parties will jointly decide, on the basis of reasonableness and fairness, which critical elements have to be tested. The cost of the residue testing shall be for the account of the seller.

5.17 In the absence of a food safety certificate, the buyer shall have the right to refuse the potatoes and/or to take delivery of such at a discount to be agreed after the residue testing has been carried out.

Quality

Article 6

6.1 The potatoes to be supplied must satisfy the agreed quality specifications at the moment when the quality assessment is carried out in accordance with article 7 of these conditions.

6.2 The quality specifications will be detailed in the purchase agreement. For the sake of completeness, these requirements will be referred to in the purchase-sale confirmation.

6.3 The buyer has the right to submit a complaint about the quality of the potatoes up until the moment of the quality assessment in accordance with article 7. The seller has the right to be present or to be represented during the quality assessment.

6.4 The buyer has to notify the seller as quickly as possible, but no later than within 12 hours or before 12 noon on the first working day following the date on which the quality assessment was carried out in accordance with article 7, subject to the forfeiture of the right to complain, about the quality deficiencies that have been identified by the buyer. In that case, the buyer has to keep the potatoes in safe storage for a possible expert assessment.

6.5 If the seller does not accept the complaint, the seller has to notify the seller about this no later than the first working day following the date on which it was notified that the potatoes did not satisfy the agreed quality specifications in accordance with that provided for in article 6.4, subject to the forfeiture of all rights.

- 6.6 If a dispute arises between the seller and the buyer about the quality of the potatoes to be supplied, then this dispute has to be settled by independent expert assessment.
- 6.7 The party taking the initiative has to make an application for the appointment of a certified expert immediately, but no later than the first business day after the dispute has arisen, to the Foundation for the Settlement of Agricultural Disputes c.a., PO Box 245, 6700 AE Wageningen, T: +31 (0)317 42 41 81, e-mail: info@iar.nl.
- 6.8 The expert assessment has to be carried out no later than the first working day after the date on which the dispute arose. Both parties will be notified in advance about the date, time, and place when the expert assessment will be carried out so that the parties can be present when it is carried out. An expert assessment report will be issued.
- 6.9 The VAVI and LTO Nederland shall draw up a list of certified experts in joint consultation.
- 6.10 The costs of the expert assessment have to be paid for by the applicant, but shall be for the account of the party/parties in accordance with the agreements that are made in relation to such as part of the settlement of the dispute.
- 6.11 The VAVI and LTO Nederland can require the applicant to make an advance payment on the costs of the expert assessment before proceeding with the designation of a certified expert.

Weight, grading, and taring

Weight

Article 7

- 7.1 The weight will be measured on a weighbridge to be designated by the buyer with a weighing system that has been calibrated in accordance with the applicable statutory regulations.
- 7.2 The buyer shall ensure that all trailers are weighed at least once per year, that tractors are weighed before and after delivery, and that tractor-trailer combinations are weighed before and after delivery if unloading takes place without uncoupling.
- 7.3 If the seller has notified that it wants to be present during weighing, then the buyer must give the seller or its agent the opportunity to do so.
- 7.4 The buyer shall inform the seller about the weight of the supplied products within two business days after delivery.

Grading

- 7.5 The method of sampling, as well as the taring and grading, shall be carried out in accordance with the inspection procedure used by the buyer, which shall be made available to the seller digitally, as in effect at the time when the agreement

was concluded.

- 7.6 The seller will be issued with the inspection procedure used by the buyer digitally when the agreement is concluded.
- 7.7 The inspection procedure of the buyer will be the general VAVI inspection procedure, or will be based on such, subject to any changes and/or additions made by the buyer.
- 7.8 The sampling, taring, and grading will take place at a location to be designated by the buyer. The buyer has to ensure that the grading takes place within 12 hours after the potatoes are loaded.
- 7.9 If the potatoes are delivered by the seller ex works for storage by the buyer, then the taring and grading will take place no earlier than 48 hours, and no later than seven business days, after the acceptance of the delivery. The grading will be carried out based on a representative sample of the agreed sorted size taken from the net sample kilograms after taring. A duplicate sample will be taken for a possible expert assessment in an identical way.
- 7.10 If after the inspection of the potatoes that have been delivered ex works for storage by the buyer in accordance with this article, the buyer determines that the potatoes do not satisfy the agreed quality specifications (including smell or taste defects), the buyer shall have the right to refuse the consignment or to accept the potatoes at a reduced price to be determined in consultation.
- 7.11 The seller has the right to be present during the sampling, taring, and grading.

Taring

- 7.12 Potato tare means: the tubers with diseases and defects as specified in, among other, the inspection procedure used by the buyer.
- 7.13 Other tare, not being potato tare, shall be understood to include, amongst other things, soil and foreign matter delivered with the potatoes, as referred to in the inspection procedure used by the buyer.
- 7.14 The tare referred to in the inspection procedure used by the buyer is not included in the net weight of the product to be settled.
- 7.15 The disposal costs, in the event of external handling (by third parties), of tare or other foreign matter will be for the account of the seller. A disposal fee to be settled with the seller will apply for this. A disposal fee can be set for potato tare.

Storage and sorting

Storage

Article 8

- 8.1 If storage of the potatoes to be supplied by the seller has been stipulated in the

purchase agreement or the growing agreement, then additional instructions can be issued concerning the method of storage as well as the measures to be taken during storage.

- 8.2 The fee that will be charged for the storage will be specified in the purchase agreement and/or growing agreement.

Sorting

- 8.3 If a contract for the supply of a field crop has been agreed, the potatoes must be delivered as lifted from the field, without any sorting or addition of other sorted sizes.
- 8.4 If it has been agreed that the seller will supply a certain grade and/or sorted size (yield in net tonnes), the preparation and/or sorting will be for the account of the seller. The parties have the right to check the preparation and/or sorting.

Payment

Article 9

- 9.1 The purchase price will be paid within 30 days after delivery. In the event of deliveries over an extended period, all the deliveries made in a particular calendar week must be paid for within 30 days after the end of the week of delivery.
- 9.2 If payment is not made by the end of the payment period, the buyer will be in default without any notice of default being required, and the buyer will owe statutory interest on the amount of the purchase price owed to the seller as of the date of the inception of the default.
- 9.3 The seller can ask for a payment guarantee to be provided in writing or by e-mail with receipt confirmation. All costs arising out of such shall be for the account of the seller. The payment guarantee can only be requested within a period of one week before the planned delivery.

Liability

Article 10

- 10.1 The liability of the seller or its agent shall be limited to the value of the potatoes to be supplied, except in the event of wilful misconduct or gross negligence.
- 10.2 The seller has to have commercial liability insurance, with an insured amount of at least €2,500,000.
- 10.3 The seller is liable for the cost of a recall, up to a maximum of the amount specified in article 10.2, which is attributable to a hidden defect in the consignment delivered by the seller.

Force Majeure

Article 11

- 11.1 Force majeure shall be understood to mean any exceptional circumstance that makes the fulfilment of the obligation impossible or onerous to such extent that fulfilment cannot reasonably be demanded. Force majeure includes, amongst other things: war, mobilization, fire damage, extreme weather conditions that disrupt logistics, etc., as well as a total or partial failed harvest as a result of abnormal drought or continuous and/or excessive rainfall, frost, a crop disease and/or vermin infestation that is not attributable to the seller.
- 11.2 If as a result of force majeure the fulfilment/performance of the agreement by the agreed date would appear to be impossible, the obligation of fulfilment/performance by the agreed date will be suspended, without any right to compensation. The party that has invoked force majeure must inform the opposite party (the buyer) about such immediately by registered letter. In such a situation, the buyer and the seller will decide in mutual consultation when the agreement can be fulfilled/performed.
- 11.3 If, in the event of force majeure, the seller is not able to deliver the contracted quantity (tonnage contract) and/or the entire yield of the contracted area (hectare contract), the seller shall be obligated to supply no more, but no less than the contracted quantity of the same variety that is grown on his farm. This obligation does not apply for that part which had been designated for use as Seed Potatoes beforehand.

Mediation and Arbitration

Article 12

- 12.1 If a dispute in connection with (an attributable failure in) the performance of the agreement cannot be settled through consultation between the parties, before putting the dispute to the competent arbitration board, the parties shall make every effort to resolve the dispute by way of mediation in accordance with the MfN mediation regulations, as in effect on the date of the signing of the agreement.
- 12.2 The party taking the initiative has to make an application to that effect to the Foundation for the Settlement of Agricultural Disputes c.a., PO Box 245, 6700 AE Wageningen, T: +31 (0)317 42 41 81, e-mail: info@iar.nl.
- 12.3 The party taking the initiative shall inform the opposite party in writing or by e-mail of its intention to start mediation.
- 12.4 If the party taking the initiative has not received a reply from the opposite party within 14 days after the notification referred to in the previous paragraph, which confirms that the opposite party is willing to have the dispute settled through mediation, the dispute shall be settled by way of arbitration by the Foundation for the Settlement of Agricultural Disputes c.a., in accordance with the arbitration regulations of the Foundation for the Settlement of Agricultural Disputes c.a., as in effect on the date of the signing of the agreement, however with the understanding that the arbitrators shall only have competence to hear the action if the buyer of the potatoes is a member of the VAVI or affiliated to a member of the VAVI. If the buyer is not a

member for affiliated to a member, then the dispute shall be settled by the competent civil court.

Amendment of the purchasing conditions

Article 13

- 13.1 The VAVI and LTO Nederland are jointly to amend these purchasing conditions at any time, with the understanding that the amendments shall only become effective after these amendments have been filed with the District Court and/or the Chamber of Commerce in The Hague, and an announcement about these amendments has been made to the members.