

## **AGRICO Trading Conditions**

### **1. Definitions**

- 1.1 Agrico: Coöperatie Agrico U.A. and/or Agrico B.V.
- 1.2 Other Party: Any party that has entered into an agreement with Agrico and/or submitted an offer to Agrico and/or whom Agrico has submitted an offer to.
- 1.3 Agrico Trading conditions: The foregoing form the general trading conditions.
- 1.4 RUCIP conditions: the coherent whole of the Règles et Usages du Commerce Intereuropeen des Pommes de Terre 2017, as well as the 2017 Expertise and Arbitration Regulations of the European Committee.
- 1.5 AHP conditions: General Trading conditions for seed potatoes 2015, with corresponding Arbitration Regulations of June 2015.
- 1.6 AHV conditions: General Trading Conditions for the potato wholesale trade with corresponding Arbitration Regulations of 1 September 1986.
- 1.7 VAVI potatoes: 2009 purchase conditions of the potatoes in the industry/trade and Arbitration Regulations.

### **2. Applicability**

- 2.1 The Agrico Trading Conditions exclusively apply to all offers and quotations to and by Agrico and all agreements entered into by Agrico and all related obligations.
- 2.2 In addition to the Agrico Trading Conditions, the following apply, depending on the legal relationship between Agrico and the Other Party:
  - a. RUCIP conditions: if the agreement is entered into with an Other Party outside the Netherlands;
  - b. AHP conditions, with the exclusion of article 33 sub 6, 7 and 8 and article 35: if the agreement concerns seed materials and is entered into with an Other party in the Netherlands;
  - c. AHV conditions: if the agreement concerns ware potatoes and is entered into with an Other Party in the Netherlands;
  - d. VAVI conditions: if the agreement concerns the sale of potatoes by Agrico to the potato processing industry in the Netherlands;
- 2.3 In the event of conflicts between the Agrico Trading Conditions and the applicable RUCIP, AHP, AHV or VAVI conditions, the Agrico Trading Conditions prevail.
- 2.4 The applicability of the general terms and conditions, by whatever name, of the Other Party, is hereby explicitly excluded.
- 2.5 Such terms and conditions varying from the Agrico Trading Conditions and the applicable RUCIP, AHP, AHV or VAVI conditions can only be agreed in writing and are subject to the explicit written confirmation thereof by Agrico.

### **3. Applicable law and arbitration**

- 3.1 All legal relationships between Agrico and its Other Party are governed by Dutch law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods; Vienna, 11 April 1980 (Vienna Sales Convention / CISG).

- 3.2 Arbitration occurs according to the Arbitration Regulations that are included in the applicable RUCIP, AHP, AHV or VAVI conditions via Article 2.2 of the Agrico Trade Terms & Conditions. Contrary to the statement(s) in the Arbitration Regulations, all disputes shall be subject to arbitration in Wageningen, the Netherlands, the explicitly agreed upon place of arbitration, and the Arbitration Institute for Agrarian Law shall act as the arbitration agency. This Arbitration Institute for Agrarian Law is authorized to form an arbitration committee according to its discretion if it emerges that forming the arbitration committee is not/no longer possible according to the conditions mentioned before.
- 3.3 Without prejudice to the stipulations in article 3.2, Agrico shall be entitled to submit to the competent Court in the district in which Agrico is located claims in respect of monies due, of which the liability to pay is not disputed within four weeks of the invoice date. Agrico shall further be entitled to submit to the competent Court in the district in which Agrico is located claims that are urgent in nature.
- All collection costs, both judicial and extrajudicial, shall be at the expense of the buyer. Judicial costs include actual costs incurred by Agrico due to charges by lawyers, bailiffs and experts. The extrajudicial costs payable are 15% of the principal sum, subject to a minimum of two hundred and fifty (€250) Euros.

#### **4. Liability**

- 4.1 Any shortages, flaws and damage must be reported by the Other Party to Agrico in writing. Notwithstanding the provisions in the RUCIP conditions, Agrico cannot be held liable for defects, if the complaint is submitted to Agrico at a time that the seed materials had already been planted or were cut.
- Notwithstanding the provisions in the AHP conditions, Agrico cannot be held liable for defects, if the complaint is submitted to Agrico at a time that the seed materials had already been planted or were cut, or has crossed the Dutch land or sea border.
- 4.2 In all cases and notwithstanding the provisions in the RUCIP, AHP, AHV or VAVI conditions, the liability of Agrico is at all times limited to direct damage, and the liability is at all times limited to the invoice amount of the goods that are subject to a well-founded complaint, least that part which the damage relates to.
- 4.3 In the event of damage, the Other Party is obliged to limit this to a minimum.
- 4.4 If the Other Party fails to fulfil any of its obligations, the Other Party shall be obliged to fully compensate Agrico for the damage suffered by them due to this non-performance, including any loss of profits.

#### **5. Payment and retention of title**

- 5.1 Payment must be effected by the Other Party within 30 days of the invoice date, unless otherwise agreed in writing, regardless of the fact whether the goods were lost and/or sustained damage during transit. In the event of non-payment within the agreed term, the Other Party shall owe interest of 12% per year, in which part of a month shall be deemed a full month, without the need for a notice of default.
- 5.2 At any time during the term of the agreement, Agrico may demand security or additional security for payment by the Other Party, provided the Other Party gives reasonable rise to this. If the Other Party fails to comply with a reasonable request for security, Agrico shall be entitled to suspend its obligations or to terminate the agreement and claim compensation.

- 5.3 All goods supplied remain the property of Agrico until full payment has been received for all that the Other Party owes by virtue of the agreement. If, in the event of late payment, a moratorium on payment or insolvency, Agrico will rely on its retention of title, Agrico shall be entitled to repossess the goods delivered by them and access the grounds and buildings where the goods are stored.

## **6. Sale of seed materials subject to plant breeder's right**

- 6.1 Seed material of varieties subject to plant breeder's rights may not be used for further propagation of those varieties, unless a written agreement to that effect, containing a provision for fair payment, has been concluded with Agrico.
- 6.2. Seed materials subject to plant breeder's right can solely be planted in the agreed country of destination.
- 6.3 If so requested by Agrico, the Other Party is obliged to provide Agrico with all names and addresses of parties to whom the Other Party sold or resold seed materials from Agrico.
- 6.4 The Other Party grants Agrico and its representatives the right to inspect, test and check all fields planted with seed potatoes bought from Agrico. The Other Party, if so requested by Agrico and/or its representatives, must point out all fields planted with seed potatoes originating from Agrico.
- 6.5 The Other Party is obliged to grant supervisory powers carrying out inspections on behalf of Agrico direct access to its business and the potatoes, either in the field or stored, in respect of a protected variety delivered to the Other Party. If so requested, the Other Party must also provide direct access to its administrative records that are relevant to the investigation, including invoices.
- 6.6 In the event Agrico is drawn into proceedings in respect of plant breeder's rights or other industrial property rights, the Other Party is obliged to render all assistance as desired by Agrico, including assistance in the collection of evidence.
- 6.7 In the event of resale of seed materials of varieties that are subject to plant breeder's rights, the Other Party is obliged to stipulate with its customer(s) the provisions of articles 6.1 to 6.7. The Other Party is at all times responsible for compliance with these obligations by its customer(s).

## **7. Quality standards**

- 7.1 Agrico supplies seed potatoes subject to the standards the class of seed potatoes to be delivered must meet as stipulated in the inspection regulations of an officially certifying body. No additional guarantees are given by Agrico, unless explicitly agreed otherwise. Agrico reserves the right to apply more stringent standards than the officially certifying organisations.

## **8. Force majeure**

- 8.1 If, due to force majeure, Agrico is unable to fulfil any obligation it has towards the Other Party and, in the opinion of Agrico, the force majeure event is of a temporary nature or a passing phase, Agrico shall be entitled to suspend performance of the agreement until the circumstance, reason or event causing the force majeure situation has ceased to exist.
- 8.2 If after a force majeure event as referred to in this article the circumstances have changed to the extent that Agrico cannot reasonably be expected to perform the agreement anymore, Agrico shall be entitled to dissolve the agreement. If the force majeure event with regard to potatoes grown in any year still exists on 15 July of the subsequent year, the agreement shall be dissolved by operation of law on that date, without the right to compensation.

- 8.3 Notwithstanding the force majeure clauses in the RUCIP, AHP, AHV and/or VAVI conditions, force majeure applies, but is not limited to, in all of the following events: strikes; walkouts; government measures and/or regulations preventing, delaying or otherwise impeding the fulfilment of obligations; lack of means of transport; any possible routes or means of transport being impassable or unusable; interruptions in the supply of energy, raw materials, semi-finished or end products; insufficient stock due to weather conditions and quarantine diseases, technical breakdowns and/or defects.

#### **9. Restricted Harvest Clause**

- 9.1 All sales of Agrico are subject to harvest. If due to a disappointing harvest in terms of quantity or quality of the potatoes fewer products are available, which includes rejects by bodies competent to that effect, than was reasonable to expect upon conclusion of the agreement, Agrico has the right to reduce the quantity it sells accordingly. The above also applies if the products bought through cultivation contracts prove to be insufficient to satisfy all customers of Agrico. By supplying this reduced quantity Agrico thus fully meets its obligations to deliver. In that instance, Agrico is not obliged to supply replacement products, nor can Agrico be held liable for any damage.

#### **10. Right of Retention**

- 10.1 Towards anyone who demands surrender thereof, Agrico has a right of pledge and a right of retention on all goods, documents and monies of the Other Party, regardless of their destination, held by Agrico, for as long as the Other Party has not fulfilled all its obligations towards Agrico, in respect of all current and future claims Agrico has against the Other Party.
- 10.2 Agrico can also exercise the rights granted to them in paragraph one of this article in respect of everything else the Other Parties owes Agrico in respect of previous instructions.

#### **11. Validity**

- 11.1 If any provision of the Agrico Trading Conditions is partly or fully invalidated and/or is unenforceable, the validity of all other provisions of the Agrico Trading Conditions shall remain unaffected.

The Agrico Trading Conditions can be consulted at [www.agrico.nl](http://www.agrico.nl). A copy shall be sent upon first request, free of charge. In the event of conflicts between the Dutch wording of the Agrico Trade Conditions and versions of these conditions in languages other than the Dutch language, the Dutch text shall prevail.