

# NORAMSEED RULES

for the Trade of Seeds for Planting

adopted by the

AMERICAN and CANADIAN

SEED TRADE ASSOCIATIONS

Effective October 1, 1991

## Rule I

### APPLICATION OF THE RULES

1. These Rules shall govern transactions in North America for seeds for planting purposes for members of ASTA and CSTA.
2. However, these Rules may also govern transactions of ASTA and CSTA members with non-members, as well as those of North American firms engaged in the seed industry which are not members of ASTA or CSTA, if so agreed between the parties.
3. Conditions stipulated in a contract which constitute an exception to the NORAMSEED Rules, shall automatically supersede the corresponding parts of these Rules.
4. For transactions within the United States, the UNIFORM COMMERCIAL CODE, in effect at the date of a contract, shall complement the NORAMSEED Rules.

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Transactions with firms outside the USA and Canada should be concluded under the corresponding rules of the Federation Internationale du Commerce des Semences (FIS).

It is advisable to apply FIS Rules to transactions for import or export purposes between North American firms, because NORAMSEED Rules were conceived for trades within North America, while FIS Rules were conceived for international trading.

## Rule II

### DEFINITIONS OF TIME ELEMENTS AND COMMUNICATIONS

1. When the word "hour" is used, hours on Saturdays, Sundays, and statutory holidays are excluded.
2. When the word "day" is used, Saturdays, Sundays, and statutory holidays are included.
3. When the words "working day" are used, Saturdays, Sundays, and statutory holidays are excluded.
4. "Telecommunications" mean all kinds of facsimile, telecopies, teletypes, and telegrams.
5. Communications which arrive on a Saturday, a Sunday or a statutory holiday shall be regarded as arriving on the first working day thereafter.
6. When statutory holidays in Canada and in the United States do not fall on the same day, the holidays of the party concerned shall be considered valid.

## Rule III

### COMPLETION AND CONDITIONS OF CONTRACTS

1. a. Offers/bids by letter shall be considered non-binding.  
b. Offers/bids by telecommunication shall be considered firm for reply by telecommunication within 24 hours after the hour of receipt.
2. If a contract is concluded, the Buyer and the Seller shall, within three working days, unless justified delay can be established, mail to each other a

confirmation of the said contract. If neither of the contracting parties sends a written confirmation, the contract shall be maintained on the basis of the verbal agreement or telecommunication or letter exchange.

3. A contract established by a Broker resulting from an order or an acceptance shall be binding on all parties.
4. A description of the conditions shall be given in the offer/bid/contract /confirmation. Such description shall include:
  - a. Date of transaction;
  - b. Quantity;
  - c. Kind and variety;
  - d. Description of quality (see Rule V);
  - e. Price per unit and freight basis;
  - f. Description of packaging (see Rule IV);
  - g. Time of shipment;
  - h. Terms of payment;
  - i. Any terms or provisions which are not included in or which are contrary to these Rules.
5. Any misprint, error or omission in a confirmation or contract by a Seller, a Buyer or a Broker shall be corrected within 24 hours by telecommunication.

#### **Rule IV**

##### **QUANTITY AND PACKAGING**

1. The contract shall state the total quantity transacted by weight or number of seeds, as applicable (such as: 1 truckload of approx. 40,000 lbs., 200 bags of 80,000 kernels each, 50 cans containing 500 seeds each).
2. The contract shall state the contents by weight or number of seeds, as applicable, for all units of packaging forming one lot. It shall state the type of packaging, such as jute, paper or plastic bags, boxes, cans, bulk, etc.
3. The contract shall express whether the costs of packaging are included in or excluded from the contract price. If excluded, the costs of packaging shall be indicated in the contract.
4. a. In case of a sale by weight, the contract shall state whether gross or net weights apply.

b. If necessary, the following conversions shall apply:

50 kilos ; = 110.25 lbs.  
100 kilos ; = 220.50 lbs.  
1000 kilos ;= 2205 lbs. (one metric ton)  
100 lbs. ; = 45.36 kilos.

5. The use of the words "about" or "approximately" shall permit the Seller to deliver, at the contractual conditions, 5% more or less than the contract calls for.
6. If the quantity lies between two figures, delivery shall take place within these stated limits. In the event of non-delivery, the average between the two figures shall serve as the basis of a settlement.
7. The quantity of a lot shall not exceed the one determined by the U.S. Federal and Canada Seeds Acts or by any other applicable official restrictions.

#### **Rule V**

##### **QUALITY DESCRIPTIONS**

1. A description of the quality shall be given, where applicable, as to the purity, germination, weed content, crop year and any other essential points pertaining to the quality of the seed.
2. The seed shall be sound, sufficiently dry, without bad odour, unadulterated and marketable. Seed treatments, including fumigation, and/or artificial staining shall be specifically agreed upon.
3. Each lot and the contents of each of its packages shall be uniform.
4. Special terms pertaining to quality are described as follows:
  - a. "Representative sample" shall mean that such a sample shall be identical to the lot from which it is drawn.
  - b. "Type sample" shall mean that such a sample shall be considered as the basis for comparison as to the essential characteristics of a seed lot, such as purity, size of seed, color, cleanliness

and approximate contents of other seeds, weeds and foreign matter.

- c. "Clear Tag" for any named state or states shall mean that a purity analysis and noxious weed seed examination of a representative sample by a competent analyst, as prescribed in Rule V. 4.h., disclosed no weeds which must otherwise be stated on the label to comply with the seed laws of the named state or states in effect at the date of contract.
  - d. "Tagged to comply" or "legal for" shall mean that the purity, germination, weed and seed contents, as well as any other specifications, shall comply with the minimum quality standards of the seed laws of the named state or states in effect at the date of the contract.
  - e. "Free of" means that no named weeds or other named seeds shall be present in a sample of the minimum weight prescribed for seed examination in the seed testing rules of the Association of Official Seed Analysts of North America in effect on the date of the contract.
  - f. "Canadian Grade" shall be defined by the corresponding regulations and quality standards of the Canada Seeds Act in effect at the date of the contract.
  - g. "Eastern States" comprise the following states: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Virginia, Vermont, West Virginia.
  - h. All tests shall be made by competent analysts in the manner prescribed in the rules and regulations of the Association of Official Seed Analysts in effect of the date of the contract.
5. Terms pertaining to tolerances are described as follows:
- a. Terms such as "minimum," "maximum," "or better," "less than," "not to exceed," et cetera, mean that no tolerances shall apply.
  - b. The Seller shall not apply tolerances at time of shipment.

- c. Tolerances as defined in the U.S. Federal Seed Act or under the Canada Seeds Act, in effect at date of the contract, shall apply based on tests made from samples of the seed lot drawn at destination.
- d. The Seller shall lose the benefit of permitted tolerances if these are exceeded, and it shall give the Buyer the right to refuse the seed.

## **Rule VI**

### **QUALITY DEFICIENCIES**

1. Claims concerning the quality, other than for genetic purity, shall be telecommunicated by the Buyer to the Seller within three working days of learning of the discrepancy, but not later than within 45 days from the date of delivery. This shall give the Buyer sufficient time to have time-consuming tests, such as for germination, completed within this period.
2. Claims regarding genetic purity shall be made not later than within 180 days from the date of delivery. Fields or laboratory plantings used to determine genetic purity shall not be destroyed before the Seller has been notified by telecommunication of any discrepancies and given reasonable time to inspect them.
3. Claims regarding trueness to variety for lots of certified seed shall give the Buyer the right to obtain, upon request, a copy of the official analysis, certifying the identity of the variety. This certificate shall be supplied by the Seller.
4. When variations occur in the tests of the Buyer and the Seller, resulting in a dispute as to the quality of seed delivered, an official sampler, duly authorized by the respective State or Federal Department of Agriculture, shall draw a representative sample in accordance with the sampling procedures of the Association of Official Seed Analysts. This sample shall be divided into a sufficient number of parts and delivered as follows: one part each for information to the Buyer and the Seller, and one part for analysis to such official laboratory agreed upon by the Seller and the Buyer. If the Buyer and the Seller cannot agree on the laboratory, the Executive Vice President of ASTA or CSTA, upon request, shall designate a competent laboratory.

5. The laboratory to which the sample is mailed shall be instructed to submit, without delay, copies of its analysis to both the Seller and the Buyer.
6. The costs for sampling and the analysis shall be paid by the claimant, but reimbursed if the claimant obtains a decision in his favor.

#### **RULE VII**

##### REMEDIES TO QUALITY DEFICIENCIES

1. Rule V of these Rules describes the numerous, but necessary, quality standards used in contracts concluded for the buying and selling of seed for planting in North America. The diversity of state and federal laws and regulations, in addition to special quality requirements stated in a contract, make it impractical to formulate more detailed Rules pertaining to quality.
2. The following, however, shall apply as guidelines to settle quality deficiencies:
  - a. The Buyer shall accept the seed where tolerances apply (as described in Rule V) as long as tolerances are not exceeded, as determined by a retest (see Rule VI, Para. 4). The Seller shall not be responsible for payment of any price difference. If the quality exceeds the permitted tolerances or tolerances are excluded by contract, the Buyer shall have the right to refuse the seed.
  - b. The Seller shall have the right to replace non-contractual seed as long as the replacement shall take place within the contractual shipping period. The costs, including return freight, handling, etc., shall be borne by the Seller.
  - c. The Buyer and the Seller may agree that the Buyer attempts to recondition the seed at Seller's expense. The costs for reconditioning, however, cannot exceed the costs which would have occurred if the seed had been replaced by the Seller (including the loss of quantity due to reconditioning).
3. If no amicable settlement can be reached, the Buyer

and the Seller shall have the right to submit the case for arbitration in accordance with Rule XVI of these Rules.

#### **Rule VIII**

##### CONTRACTS SUBJECT TO CROP AND MULTIPLICATION CONTRACTS

1. If a contract is concluded "subject to crop," the Seller shall report to the Buyer in the regular course of production all essential information regarding time of planting, conditions and inspections of fields, crop prospects, yields and qualities.
2. a. The Seller shall promptly inform the Buyer of any failure or deficiency in quantity and/or quality of the corresponding field and/or resulting seed crop.
  - b. If the quality is below the contractual specifications, the Buyer shall retain the right to refuse the seed or accept it at a reduced price. If Seller and Buyer cannot agree amicably to a settlement, an arbitration (see Rule XVI) may be initiated to determine an equitable solution.
3. Multiplication Contracts. NORAMSEED Rules may also govern multiplication contracts. Appropriate special conditions agreed to between the parties shall be incorporated in the contract.

#### **Rule IX**

##### SHIPPING TERMS

1. "F.O.B." carrier at named point of shipment. Under this term, the Buyer shall accept title to the goods at the named point and assume the costs and risks of transportation from the named point.
2. "Ex-warehouse," "ex-dock," "ex-wharf," etc., at named location. Under these terms, the Seller shall place the goods at the disposal of the Buyer at the agreed place, on the date or within the period specified, and the Buyer shall accept title to the goods at the named point and assume the costs and risks of the transportation from the named point.
3. "Delivered" at named point of destination. Under this term, the Seller shall assume the costs and risks of transportation to point of destination. Title passes to the Buyer at destination.

4. "Freight and duty paid". Under this term, the Seller shall comply with all import regulations and shall assume the costs and risks of transportation, applicable duty and excise taxes, if any. The Seller shall assume the charges to clear the shipment through customs. Any changes in the import regulations, duty and taxes of the importing country after the date of contract which are not as yet officially announced at the date of the contract, shall be for the Buyer's account.
5. "Freight paid in bond". Under this term, the Buyer shall pay the applicable duty, if any, and all charges to clear the shipment through customs. Apart from this, all provisions of Paragraph 4. above shall apply.

#### **Rule X**

##### SHIPPING PERIODS

1. The following periods for shipment shall be valid if the parties have not previously agreed to other specific conditions:
  - a. "Instant shipment" means shipment within 24 hours;
  - b. "Immediate shipment" means shipment within 3 days;
  - c. "Prompt shipment" means shipment within 10 days;
  - d. "Shipment before a fixed date" means shipment on any day before the fixed date;
  - e. "Shipment within a specific time period" (such as August/September) means shipment on any day within this time period;
  - f. "Shipment at Seller's option" means shipment on any day convenient to the Seller within a given time span, if any is indicated;
  - g. "Shipment at Buyer's option" means shipment within a time span of not less than 10 days, to be indicated by the Buyer.

#### **Rule XI**

##### DEFAULTS OF SHIPPING INSTRUCTIONS

1. If the Buyer does not give shipping instructions in time, the Seller shall give the Buyer at any time, via telecommunication, a delay of two working days to receive proper instructions.
2. Should the instructions be forthcoming within these two working days, the Seller shall not be entitled to any payment of damages, etc. However, should no instructions be received by the Seller within these two working days, the Seller shall have the right to cancel the contract and shall be entitled to payment of direct and indirect damages, such as interest, warehouse costs, price difference (loss of profit) etc. The Seller shall inform the Buyer of his decision by telecommunication.
3. Should the Seller accept shipping instructions after expiration of the contract period, payment of damages, if any, shall be agreed upon before shipment.
4. The provisions contained in Paragraphs 1., 2., and 3. of this Rule shall not apply where "instant" or "immediate" shipment (see Rule X.) is agreed to, because shipping instructions shall have been expressed at the conclusion of the contract.

#### **Rule XII**

##### DEFAULTS OF SHIPMENT

1. If the Seller does not ship within the agreed time period, the Buyer shall, at any time, grant the Seller by telecommunication a delay of two working days to make shipment. No such delays apply to shipments as described under Rule X, 1.a. and 1.b.
2. Should shipment take place within the two days, the Buyer shall not be entitled to any damages, etc. However, should no confirmation be received by the Buyer that the shipment was made within this delay, the Buyer shall have the right to cancel the contract and shall be entitled to payment of direct and indirect damages, such as interest, warehouse costs, price difference (loss of profit) etc. The Buyer shall inform the Seller of his decision by telecommunication.

3. If the contract specifies "without extra time limit" or "latest" or in similar terminology expresses that there is no extension implied, the Buyer shall have no obligation to grant an extra time limit.

**Rule XIII**

EXPIRATION OF A CONTRACT

If neither party has issued or received a request for shipment within 30 days of the last day of the permitted shipping period, the contract shall be considered lapsed without the Buyer or the Seller being entitled to any damages.

**Rule XIV**

PAYMENT

1. Terms of payment shall be specified in the contract.
2. In all cases, payment shall be made in full and immediately when due. Every portion of a shipment shall be paid for separately, as soon as payment falls due.
3. The charges for collection of payment shall be for the Seller's account unless the Buyer does not pay in full and immediately when due, in which case they shall be for the Buyer's account.
4. a. If the Buyer does not pay within three working days of the due date of payment, or from the date on which he can legally do so, he shall pay the charges for collection, as well as interest at a rate of 5% per annum above the official bank rate in the Seller's country at the time the invoice was due for payment.  
  
b. This penalty of 5% is not due if the Buyer can prove that the delay in payment was due to circumstances over which he had no control.
5. It shall not be permissible to withhold payment to offset claims.
6. If the Buyer has not paid for the seed or not taken delivery upon arrival, or stated that he will not do so, he shall be liable for all damages, including expenses as well as loss of profit to the Seller.

7. If the circumstances indicate that the Buyer does not intend to pay or is unable to pay, the Seller shall have the right to seek collection of the outstanding debt through the intermediary of a court of law, without going to arbitration.

**Rule XV**

FORCE MAJEURE

1. The interpretation of "Force Majeure" as published by the International Chamber of Commerce at the date of contract shall be guiding. (See Addendum 1)
2. The party invoking "Force Majeure" shall inform the other party as soon as practical by telecommunication of the impossibility of delivery or the necessity of postponing delivery, indicating the reasons for the alleged Force Majeure.

**Rule XVI**

ARBITRATION

1. a. With the exception of the differences mentioned in Rule XIV, Paragraphs 6 and 7, all differences which cannot be amicably resolved, even if only one of the parties declares that there is a difference, arising from a contract started or concluded under these Rules, shall first be decided by arbitration before it can be submitted to a court of law.

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\* This publication, entitled "Force Majeure and Hardship" is available from: ICC Publishing Corporation, Inc., 156 Fifth Ave., New York, NY 10010

- b. Subject to any written clear and unambiguous agreement to the contrary, notice of the intention to arbitrate and application for arbitration shall be made in conformity with the provisions of the Commercial Arbitration Rules of the American Arbitration Association (AAA - See Addendum 2).
2. Such applications for arbitration shall be made within 30 days either:
  - a. from the occurrence of the event, or first possible recognition of the deficiency giving rise to the claim -or
  - b. after the date of telecommunication or delivery of a registered letter attempting to enter into

friendly negotiations, which remained without positive reply,

or

- c. from the date of breaking-off of negotiations to settle the case amicably.

3. Extension of time for application. The parties may modify this period of time by mutual agreement. The AAA, for good cause, may extend a period of time established by its Rules, except the time for making the award. The AAA shall notify the parties of any such extension of time and its reason therefor.

4. According to the by-laws of ASTA, Article IV, (as amended April 14, 1989), and of CSTA, Article VIII (as amended November 14, 1989), oral hearings shall be waived and all disputes shall be submitted in writing in accordance with the appropriate Section of the AAA Arbitration Rules.

5. The AAA Rules do not provide for an appeal. Therefore, the decision by an AAA Arbitration is final. However, it does not exclude the right of a party to re-submit the case to a competent court of law after the decision has been rendered by the AAA.

### ADDENDUM I

#### FORCE MAJEURE (EXEMPTION) CLAUSE:

Grounds of relief from liability:

1. A party is not liable for a failure to perform any of his obligations insofar as he proves:
  - that the failure was due to an impediment beyond his control; and
  - that he could not reasonably be expected to have taken the impediment and its effects upon his ability to perform into account at the time of the conclusion of the contract; and
  - that he could not reasonably have avoided or overcome it or at least its effects.
2. Any impediment within paragraph 1. above may result from events such as the following, this enumeration not being exhaustive:
  - a. war, whether declared or not, civil war, riots and revolutions, acts of piracy, acts of sabotage;
  - b. natural disasters such as violent storms, cyclones, earthquakes, tidal waves, floods,

destruction by lightning;

- c. explosions, fires, destruction of machines, of factories and of any kind of installations;
- d. boycotts, strikes and lockouts of all kinds, slowdowns, occupation of factories and premises, and work stoppages which occur in the enterprise of the party seeking relief;
- e. acts of authority, whether lawful or unlawful, apart from acts for which the party seeking relief has assumed the risk by virtue of other provisions of the contract; and apart from the matters mentioned in paragraph 3. below.

3. For the purposes of paragraph 1. above, and unless otherwise provided in the contract, impediment does not include lack of authorizations, of licenses, of entry or residence permits, or of approvals necessary for the performance of the contract and to be issued by a public authority of any kind whatsoever in the country of the party seeking relief.

Duty to notify:

4. A party seeking relief shall, as soon as practicable after the impediment and its effects upon his ability to perform become known to him, give notice to the other party of such impediment and its effects of his ability to perform. Notice shall also be given when the ground of relief ceases.
5. The ground of relief takes effect from the time of the impediment, or if notice is not timely given, from the time of notice. Failure to give notice makes the failing party liable in damages for loss which otherwise could have been avoided.

Effects of grounds of relief:

6. A ground of relief under this clause relieves the failing party from damages, penalties and other contractual sanctions, except from duty to pay interest on money owing as long as and to the extent that the ground subsists.
7. Further, it postpones the time for performance for such period as may be reasonable, thereby excluding the other party's right, if any, to terminate or rescind the contract. In determining what is a reasonable period, regard shall be had to the failing party's ability to resume performance, and the other party's interest in receiving performance despite the

delay. Pending resumption of performance by the filing party, the other party may suspend his own performance.

8. If the grounds of relief subsist for more than such period as the parties provide (the applicable period to be specified here by the parties), or in the absence of such provision for longer than a reasonable period, either party shall be entitled to terminate the contract with notice.

9. Each party may retain what he has received from the performance of the contract carried out prior to the termination. Each party must account to the other for any unjust enrichment resulting from such performance. The payment of the final balance shall be made without delay.

## ADDENDUM 2

### AAA OFFICES

Atlanta (30309-3214) ; India Johnson  
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