

TERMS AND CONDITIONS OF SALE

TERMS OF CONTRACT: Provisions in Buyer's purchase order, confirmation or other writing, of whatever kind, inconsistent with or in addition to the terms and conditions of this contract shall not be binding upon ADM EBS unless expressly approved in writing by ADM EBS making specific reference to the inconsistent or additional term or condition. This Contract supersedes and Constitutes a modification of any and all other agreements of the parties which may be found to have been entered into prior to the date hereof or contemporaneous herewith regarding the subject matter of this contract. The Contract, along with the terms and conditions on the product labels and tags, which are incorporated into the Contract by reference, is a final expression of the entire agreement of Buyer and ADM EBS for ADM EBS' sale of and Buyer's purchase and/or use of the seed included in this Sales Contract Confirmation, and is intended also as the complete and exclusive statement of all of the terms of that agreement. No evidence of any prior or contemporaneous agreement or negotiation, whether oral or written, or any evidence of course of dealing, usage of trade or course of performance may be used to contradict, explain or supplement this Contract, nor may the same be used to establish that because of mistake the writing does not reflect the actual agreement of the parties.

MODIFICATION OF CONTRACT TERMS: No modification of this Contract shall be binding unless such modification shall be in writing consented to by Buyer and signed by ADM EBS expressly assenting to the modification. The requirement that any modification of this Contract be by signed writing shall not be waived by ADM EBS, limited by course of dealing or performance or usage of trade, nor shall ADM EBS be deemed estopped to rely upon the requirement.

BUYER'S RESPONSIBILITY FOR PRICE INCREASES: In addition to the purchase price provided herein Buyer shall be required to pay, as an automatic addition to the purchase price any and all of the following:

any federal, state, or local governmental tax, public charge, duty, excise, fee, tariff or any increase therein assessed or imposed upon this transaction or the goods which are the subject hereof.

- any charge arising from a change in the present customs respecting the said goods or raw materials which are therein to be incorporated.
- any increase in the existing published tariff freight rates or (any charge arising from a change in railway classifications);
- any fuel surcharge ADM EBS may incur in the transportation of the goods; and
- any similar charge ADM EBS may be required to pay with respect to the production, storage, withdrawal, purchase, sale, transportation, exportation, or importation of the goods or any raw materials which are therein to be incorporated.

FORCE MAJEURE: ADM EBS shall not be liable for delay in performance or failure to perform when such delay or failure is due to unforeseen cause beyond its reasonable control and without its fault or negligence, including but not limited to acts of God or the public enemy, governmental action of whatever variety, fires, floods, earthquakes, epidemics, pandemics, quarantine restrictions, labor difficulties, riots, insurrections, freight embargoes, plant breakdown, rail car shortages, unusually severe weather, or similar events outside of ADM EBS' reasonable control.

RISK OF LOSS: ADM EBS' weights are to govern in any dispute or settlement thereof. On sales made F.O.B. delivered basis, no allowance for shortage or damage shall be made by ADM EBS unless Buyer furnishes acknowledgment from the carrier that same occurred in transit. Should ADM EBS utilize its own equipment, rather than a common carrier, in delivering the goods which are the subject of this Contract, risk of loss passes to Buyer upon tender of delivery rather than actual receipt by Buyer. On sales made F.O.B. ADM's plant or warehouse, Buyer will, in the event of loss or damage in transit file its own claim with carrier. In no event shall any risk of loss with respect to the goods which are the subject of this Contract be upon ADM EBS once ADM EBS has placed the goods in the possession of a carrier and made a contract for their transportation.

WARRANTIES: ADM EBS WARRANTS THAT THE SEED IT SELLS WILL CONFORM TO THE SEED CONTAINER/LABEL DESCRIPTION AS REQUIRED UNDER STATE AND FEDERAL SEED LAWS, WITHIN RECOGNIZED TOLERANCES. OTHER THAN THE WARRANTY EXPRESS STATED IN THE PREVIOUS SENTENCE, **ADM EBS MAKES NO (AND AFFIRMATIVELY DISCLAIMS ANY) WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PRODUCTIVENESS OR ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE SEED PURCHASED, AND ADM EBS' MAXIMUM LIABILITY, IF ANY, SHALL BE LIMITED TO THE PURCHASE PRICE OF THE SEED. ADM EBS DOES NOT GUARANTEE THE CROP.**

BUYER'S EXCLUSIVE REMEDY FOR A CLAIMED ISSUE WITH THE SEED: Buyer's sole and exclusive remedy, and the sole liability of ADM EBS, for any and all claims, losses, injuries, or damages (including, but not limited to, claims based on breach of warranty, contract, negligence, tort, strict liability or otherwise) resulting from the sale or use of the seed, shall be, at the option of ADM EBS, the replacement of the seed or a refund of the original purchase price of the seed. **IN NO EVENT SHALL THE LIABILITY OF ADM EBS EXCEED THE PRICE PAID FOR THE PRODUCT.**

BUYER'S EXCLUSIVE REMEDIES ON ADM EBS' DEFAULT: Failure on the part of ADM EBS to deliver or non-conformity of any installment or installments of this Contract shall not be considered to substantially impair the values of the whole contract and shall not be a breach of the entire contract. Should ADM EBS repudiate this Contract or fail to make delivery hereunder Buyer shall have as its exclusive remedy damages measured by the difference between contract price and the lowest market price of the goods between the time when Buyer learned of ADM EBS' breach and the time at which replacement goods are purchased by Buyer or judgment against ADM EBS is obtained.

ADM EBS shall not be liable under any circumstances for consequential or incidental damages, of whatever kind and amount incurred by Buyer. Buyer shall be barred from any and all claims or rights based upon the quality of the goods delivered unless within (10) days after Buyer learns by use or otherwise the defect complained of, but in any event within twenty (20) days after receipt of notice of arrival of said goods at destination Buyer sends ADM EBS, at ADM EBS' office listed on the face hereof, a letter by registered mail clearly specifying the nature of the complaint. Any action on behalf of Buyer for breach of this Contract must be commenced within one (1) year after the cause of action has accrued.

DEFAULT BY BUYER. ADM EBS' REMEDIES: The occurrence of any of the following events shall constitute a default by Buyer and a breach of the entire contract between the parties: Failure by Buyer to fulfill any of its obligations specified in this Contract, including but not limited to the obligation to accept and pay for any installment of goods delivered or to be delivered; Buyer generally not being able to pay its debts as they become due; Buyer admitting in writing its inability to pay its debts; Buyer making an assignment for the benefit of creditors; the commencement of any case, proceeding, or other action, whether by Buyer or any other person or entity, seeking to have an order for relief entered on its behalf or against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of it or its debts under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors or seeking appointment of a receiver, trustee, custodian, or other similar officer for it or for all or any substantial part of its property; Buyer taking any of the actions set forth in this paragraph; Buyer becomes "insolvent" as that term is defined by any law of any jurisdiction or Buyer's financial condition is found to be or becomes unsatisfactory in ADM's opinion during the term of this Contract; Buyer's failure to provide requested deposits in accordance with Article 9 of this Contract; the issuance of execution process against any property of Buyer or any condemnation, levy, forfeiture, or similar action against the goods which are the subject of this Contract or any portion thereof, and default by Buyer under any other contractual undertaking between the parties. In the event of a default, ADM EBS may cancel this Contract and all other contracts covering purchase by Buyer of ADM EBS' products, whether or not Buyer may otherwise be in default thereunder, and may, if Buyer defaults as to any installment of this Contract, declare all subsequently maturing installments due and then cancel the entire contract. No rights shall accrue to Buyer against ADM EBS on account of any such cancellation, nor shall ADM EBS' failure to cancel other contracts with Buyer or to accelerate subsequently maturing installments be construed as a waiver of any subsequent default of Buyer. ADM EBS shall have all rights to pursue any remedy allowed by law; Buyer also agrees that ADM EBS shall have the contractual right to recover attorney's fees and litigation expenses. Under no circumstances shall ADM EBS be required to tender all or any portion of the goods which are the subject of this contract in order to qualify Buyer's event of default as a breach of contract.

ADM EBS' OPTIONS TO REQUIRE CASH IN ADVANCE OR MARGINAL DEPOSITS: Notwithstanding the right of ADM EBS to cancel this Contract or demand other adequate assurance of performance by Buyer, ADM EBS may, at any time Buyer's credit or financial responsibility becomes unsatisfactory in ADM EBS' opinion, require cash payment in advance of or on delivery. Additionally, if this Contract calls for delivery beyond fourteen (14) days from the date of this Contract, ADM EBS may at any time make demand upon Buyer requiring Buyer to provide a marginal cash deposit amounting to ten percent (10%) of the purchase price which shall be considered as part payment when the product is delivered, and ADM EBS may demand such further payments from Buyer as may be necessary to maintain a deposit on the contract of 10% of the purchase price plus an amount equal to the difference between the purchase price and the prevailing ADM EBS' market price, if ADM EBS' market price is below the purchase price, and Buyer agrees to make such deposits so demanded, Buyer shall provide any deposit requested by ADM EBS within two (2) business days of receipt of such demand.

NONWAIVER OF PROVISIONS BY ADM EBS: ADM EBS' failure to insist on full performance of any item or condition of this Contract or ADM EBS' waiver of any breach hereunder shall not be considered waiver of that term or condition in the future or any other terms, conditions or rights of ADM EBS under this Contract.

ATTORNEY'S FEES AND LITIGATION EXPENSES: In the event that any action is brought to enforce or interpret, or for Buyer's breach of, any provision of this Contract, ADM EBS shall be entitled to recover its attorney's fees, costs, and expenses, or whatever amount and variety, incurred in contemplation of, preparation for, prosecution of, or defense of litigation in any trial or reviewing court of any jurisdiction.

INDEMNIFICATION: Buyer agrees to release, defend, indemnify and hold ADM EBS harmless from and against all liabilities, claims or demands whether arising in tort, contract, or otherwise for injuries or damages to any person or property arising out of or in connection with this Agreement. This indemnification obligation shall apply without regard to cause or causes, including without limitation, the negligence of any party, whether such negligence be sole, joint or concurrent, active or passive and under any theory of liability, including without limitation, theories in contract, tort or strict liability. This indemnification obligation shall be supported by adequate liability insurance coverage.

EMPLOYMENT DISCRIMINATION: For the limited purpose of providing Buyer with a defense to any claim that it resold goods which were manufactured by ADM EBS in violation of certain laws or regulations on employment discrimination, ADM EBS assures to Buyer that the goods delivered under this contract will have been produced in compliance with the Fair Labor Standards Act of 1938 as amended.

NONASSIGNABILITY: Buyer shall not assign this contract or any right of interest herein nor may Buyer delegate any duty or obligation hereunder without the express written consent of ADM EBS.

HEADINGS: The headings of the several articles of this Contract are for convenience only and shall not be considered a part of this Contract.

SEVERABILITY: The invalidity or unenforceability of any particular provisions of this Contract shall not affect the remaining provisions thereof, and this Contract shall be construed in all respects as if such invalid or unenforceable provision had been omitted, however, in any such event ADM EBS shall have the option to cancel any unshipped portion of the goods sold hereunder without liability.

GOVERNING LAW: The validity, enforceability, and construction of all portions of this contract shall be governed by the substantive law of the State of Illinois.

MISCELLANEOUS: ADM EBS shall be under no obligation to load Buyer's vessel, nor shall laytime commence for ADM EBS' account, whether or not the vessel has filed at the loading elevator, unless and until the Letters of Credit are in accordance with this contract and are operable.