



## **GENERAL TERMS AND CONDITIONS**

### **DANESPO A/S**

#### **1 APPLICABILITY**

- 1.1 These terms (the "Terms") shall apply to any purchase of goods (seed potatoes, ware potatoes and/or other services) between a buyer (the "BUYER") and DANESPO A/S, CVR no. 10 44 08 31 ("DANESPO") notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other communication from the BUYER, unless otherwise expressly accepted by DANESPO.
- 1.2 By ordering or by accepting any delivery from DANESPO, the BUYER agrees and accepts that these Terms apply.
- 1.3 The applicability of any general purchase conditions of the BUYER is explicitly excluded, unless the Parties agree otherwise.

#### **2 ORDERING, INVOICING, PAYMENT AND TAXES**

- 2.1 No order from a BUYER in pursuance of any quotation or otherwise is binding on DANESPO, unless and until it is accepted by DANESPO in the order confirmation. The purchase price shall be the price set out in the order confirmation or the price otherwise specified in the contract.
- 2.2 Unless otherwise specified in the contract or the order confirmation, payment of the purchase price shall be due 14 days after the BUYER's receipt of DANESPO's invoice.
- 2.3 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, invoice or other document or information issued by DANESPO shall be subject to correction by DANESPO without any liability of DANESPO.
- 2.4 Unless specified otherwise in the contract or the order confirmation, all prices quoted are exclusive of VAT, which the BUYER shall be obliged to pay in addition to the quoted price.
- 2.5 DANESPO reserves the right to require payment at any time before or after delivery of the goods.
- 2.6 Payment shall be made by the BUYER without deduction or set-off of any kind.

#### **3 INCORPORATION OF THE RUCIP RULES AND RANK**

- 3.1 To the extent that the contract, the order confirmation and the Terms do not provide otherwise, RUCIP rules shall apply on any purchase of goods.
- 3.2 The RUCIP rules are available at [www.europatat.org](http://www.europatat.org) and from DANESPO upon the BUYER's request.
- 3.3 In the event of any dispute, ambiguity in interpretation or claim between the BUYER and DANESPO, the contract shall have first rank. To the extent that the contract is silent, the order confirmation has second rank. To the extent that the contract and the order confirmation are both silent, the Terms have third rank. To the extent that the Terms also are silent, the RUCIP Rules have fourth rank. If the RUCIP Rules also are silent, the ordinary rules of the governing law shall prevail.

#### **4 QUALITY AND CERTIFICATE**

- 4.1 DANESPO guarantees that delivered seed potatoes and/or ware potatoes conform with the contract and/or the order confirmation, and that

they meet the quality, requirements and specifications set therein.

- 4.2 Any issued certificates (report, label or other documents issued by the official control or classification service or equivalent body of the country of origin stating the classification of the potatoes) shall be final in accordance with the national rules of the country of origin and forwarded from DANESPO to the BUYER upon the BUYER's request.
- 4.3 DANESPO expressly warrants that a certificate has been issued in respect of the seed potatoes. This certificate shall be deemed to be conclusive evidence as to the purity and health of the seed potatoes. Likewise, DANESPO expressly warrants that if a certificate has been issued in respect of the ware potatoes, this certificate shall be deemed to be conclusive evidence as to the purity and health of the ware potatoes.
- 4.4 Without prejudice to the contract, the order confirmation and the terms in respect of disease, pest, damage, defects and size, the tolerances specified in or to be implied from the terms of the certificate shall be allowed.

#### **5 SHIPPING AND DELIVERY TERMS, RETENTION OF TITLE AND RISK**

- 5.1 Any trade term agreed between the parties shall be interpreted in accordance with INCOTERMS (ICC) 2020. The RUCIP Rules Chapter IV shall not apply. Unless otherwise agreed in writing the agreed trade terms is Ex Works (EXW).
- 5.2 If DANESPO will not be able to deliver the goods at the agreed time, DANESPO shall without undue delay notify the BUYER thereof in writing, and if possible the expected time of delivery. The time for delivery shall thus be extended by the period notified by DANESPO, provided that this is reasonable taking into account all circumstances in the case. Otherwise, subject to clause 5 the RUCIP Rules shall apply. Successive delivery is allowed.
- 5.3 If the goods have been furnished on credit, the BUYER shall not be authorised to dispose of it, as long as the BUYER has not paid for it.
- 5.4 The goods shall remain the property of DANESPO until paid for in full, including interest and other costs, to the extent that such retention of title is valid under applicable law.
- 5.5 On condition that DANESPO can identify the lot of the goods, DANESPO shall have the right to take it back, as soon as the date of payment has passed.
- 5.6 The BUYER is required to check in detail the particulars of the delivery and satisfy themselves that weight and number of packages were delivered as per delivery note and without damage. Any discrepancies should be noted on all copies of delivery note, and photographs should be taken pre and post unloading. DANESPO shall not be liable for any claim in respect of the number of containers delivered or any loss or damage, however sustained, to a delivery or part of a delivery or a package or container unless, time being of the essence, DANESPO is notified by phone or by e-mail within 6 (six) working hours on discovery of a discrepancy, and in writing of the BUYER's claim within 2 (two) days of the arrival of the goods at the destination (excluding the day of delivery but not the day of notification), and the goods are still in their sealed containers.
- 5.7 DANESPO shall not be liable for any claim for short weight unless, time being of the essence, DANESPO is notified by telephone within 6 (six) working hours and subsequently in writing as soon as reasonably possible of the BUYER's claim within 2 (two) days of the arrival of the goods at the destination (excluding the day of delivery but not the day of notification), and the goods are still in the sealed containers.

<b>6</b>	<b>INTELLECTUAL PROPERTY RIGHTS AND MULTIPLICATION</b>	<b>7.4</b>	Regardless of the RUCIP Rules, Articles 25 and 30, the total aggregate liability of DANESPO shall not exceed the invoiced sales price for the goods giving rise to such claim – irrespective of the nature of the claim(s), whether in contract, tort, warranty or otherwise.
6.1	All intellectual property rights regarding DANESPO and the goods shall belong to and remain the property of DANESPO unless otherwise expressly agreed in the contract.	7.5	The BUYER shall indemnify and hold DANESPO harmless to the extent that DANESPO incurs liability towards any third party in respect of loss or damage, for which DANESPO is not liable towards the BUYER.
6.2	Unless otherwise expressly agreed in the contract, any licence to intellectual property rights shall only be granted, if this is expressly agreed in the contract.	<b>8</b>	<b>FORCE MAJEURE (GROUND FOR RELIEF)</b>
6.3	Multiplication of the seed subject to Plant Breeders Rights is not permitted unless otherwise expressly agreed in writing by DANESPO.	8.1	Force Majeure is regulated by the RUCIP Rules, First Part Article 27. However, DANESPO shall in any circumstances be relieved from any delay or failure in performance by labour disturbance, strikes and lockouts, breakdown of plant or machinery, failure of energy sources, disease outbreaks, including pandemics and epidemics, natural disasters, extreme adverse weather conditions, and crop failure.
6.4	Seed potatoes can solely be planted in the country of destination agreed in the contract.	8.2	Unless otherwise mutually agreed, DANESPO is entitled to an extension in case of an event as described in Clause 8.1 of 30 days after the cessation of the said event.
6.5	Upon the DANESPO's request, the BUYER is required to provide DANESPO or an independent third party designated by DANESPO with all the names and addresses of parties to whom the BUYER has delivered or sold the seed potatoes, including details of quantity, variety, class and size.	8.3	Any contract entered into pre-harvest is subject to a safe crop.
6.6	The BUYER grants DANESPO and its representatives the right to inspect, test and check all fields planted with seed potatoes bought from DANESPO. The BUYER, if so requested by DANESPO and/or its representatives, must point out all fields planted with seed potatoes originating from DANESPO.	8.4	DANESPO shall have the right to substitute any ordered goods with similar goods when due to crop failure, or the inability within reasonable limits for DANESPO to acquire the goods sold in the necessary amounts and/or quality.
6.7	The BUYER is obliged to grant supervisory powers carrying out inspections on behalf of DANESPO direct access to its business and the potatoes, either in the field or stored, in respect of a protected variety delivered to the BUYER. If so requested, the BUYER must also provide direct access to its administrative records that are relevant to the investigation, including invoices.	<b>9</b>	<b>SEVERANCE AND WAIVER</b>
6.8	If seed potatoes are sold under a name, the BUYER is obliged to use only the variety name or brand name adopted by DANESPO.	9.1	If any court or competent authority find that any provision of the contract or these Terms or any part of any provision is invalid, illegal or unenforceable that provision or part provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions shall not be affected.
6.9	In the event of resale of seed potatoes that are subject to DANESPO's rights, the BUYER is obliged to stipulate with its customer(s) the provisions set out in Clause 6. The BUYER is at all times responsible for the compliance with these obligations by its customer(s).	9.2	A waiver of any right or remedy under the contract is only effective, if given in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the contract or by law shall constitute a waiver of any other right or remedy.
6.10	In case the BUYER does not comply with above-mentioned conditions, DANESPO has the right to demand compensation, including loss of profit.	<b>10</b>	<b>LAW AND VENUE</b>
<b>7</b>	<b>LIMITATION OF LIABILITY</b>	10.1	All disputes shall be governed and construed in accordance with Danish law (disregarding its rules on conflicts of law).
7.1	DANESPO shall have no liability for damage caused by the goods to any person or property, or consequential loss due to such damage. However, the limitations of liability shall not apply, if DANESPO has been acting intentionally or with gross negligence in relation to damage caused by the goods, or if the agreed limitation of liability is (partly) invalid due to mandatory legislation for that (invalid) part of the limitation of liability.	10.2	Subject to Clause 10.4, disputes arising out of or in connection with the contract shall be settled in accordance with the RUCIP Rules, First Part Chapter VII and VII, Second Part (Expert Assessment) and Third Part (Rules for Arbitration).
7.2	DANESPO shall not be liable for any indirect, special, incidental, consequential or punitive damages of any nature, including, but not limited to, business interruption costs, loss of production/growth, loss of contracts, loss of profit, injury to reputation or loss of customers, or for any other consequential or indirect loss whatsoever.	10.3	The arbitral tribunal shall have its seat in Vejle, Denmark.
7.3	These limitations of liability apply for all liabilities, including but not limited to, liability for delay, defects and product liability.	10.4	If the circumstances indicate that the BUYER does not intend to pay or is unable to pay, DANESPO shall have the right to seek recovery of the outstanding debt by proceedings brought in a competent court of law, without having recourse to arbitration.