

## TERMS OF TRADING

These are the Terms on which "we" Quivogne UK Ltd agree to sell Goods to you or do work for you, our customer and they include any special terms agreed between you and us. "Goods" means all goods, machinery, spares and equipment (including any instalment or parts) which we supply to you. "Work" means any work which we agree to carry out for you including repairing, servicing or modification of any machinery or equipment. "You" are the person who accepts our quotation for the sale of Goods or the carrying out of Work or whose order for Goods or Work we accept

### 1. BASIS OF THE SALE

- 1.1 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by us shall be subject to correction without any liability on our part
- 1.2 All Goods are offered subject to availability
- 1.3 Our employees are not authorised to make any representations concerning the Goods or Work unless confirmed by us in writing. You, by entering into the Contract, acknowledge that you are not relying on any such representations and you waive any claim you may have for representations not confirmed in writing
- 1.4 Any advice or recommendation given by us, our employees or agents to you or your employees or agents as to the use of the Goods which we do not confirm in writing is followed or acted on by you entirely at your own risk
- 1.5 The copyright, unregistered design right and all other intellectual property rights in any drawings, plans or specifications which we draw up or which we have drawn up in relation to the Contract belong to us

### 2. ORDERS AND SPECIFICATIONS

- 2.1 You are responsible to us for ensuring the accuracy of the terms of any order (including any specification) submitted by you and for giving us any necessary information relating to the Goods or Work within a sufficient time to enable us to perform our part of the Contract. If you do not do this you will indemnify us for all loss (including consequential losses) which we suffer as a result
- 2.2 We reserve the right to make changes in the specification of the Goods or Work without notice (and without an obligation to change Goods previously sold)
- 2.3 If we supply Goods or carry out Work to your specification you will indemnify us against all loss, damages, costs and expenses awarded against or incurred by us in connection with any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person

### 3. PRICE OF THE GOODS

- 3.1 The price of the Goods or Work shall be that on our most recent price list in force on the date of the Contract or, if different, our quoted price. All quoted prices are valid for 30 days (unless we state otherwise in writing) after which the offer to sell the Goods or carry out the Work at the quoted price shall automatically be withdrawn. All Goods are priced ex-works unless we state otherwise in writing. If we agree to deliver the Goods other than at our premises you will be liable to pay our charges for transport and packaging. You will be responsible for the delivery to our premises of any machinery or equipment on which we are to carry out Work and for collecting them.
- 3.2 We may at any time before delivery of Goods or the carrying out of any Work increase the price by giving you notice. You may, within one week of receipt of such a notice, cancel the order for Goods or Work but, if delivery of the Goods or the carrying out of Work is to be made by instalments, you will be entitled to cancel only the undelivered or unperformed part of the order. You will have no other remedy if we vary the price. If you do not make such a cancellation within the one week period the varied price shall apply to the Contract except as regards those of the Goods already delivered or Work already carried out when the variation is made
- 3.3 You must also pay VAT in accordance with UK legislation

### 4. TERMS OF PAYMENT

- 4.1 We may invoice you for the price of Goods or any instalment of Goods before, on or at any time after delivery of the Goods or that instalment of Goods.
- 4.2 We may invoice you for Work on completion of the Work or at any time before completion of the Work.
- 4.3 Unless we have agreed otherwise in writing you will pay the price of those Goods which are spares within 30 days of the date of the invoice even though we may not have delivered the Goods and property in the Goods has not passed to you. You will pay the price of all other Goods and all Work within 14 days of the date of the invoice even though we may not have delivered the Goods and property in the Goods has not passed to you. We may at any time require you to pay in full or part for any Work before we start on it. We may refuse delivery and retain possession of Goods under this and any other contract between us until we have been paid in full in cleared funds. Time shall be of the essence for payment of the price for Goods or Work.
- 4.4 If you do not pay us by the due date then (without prejudice to any other right we may have and without liability to you) we shall be entitled to:
- 4.4.1 cancel the Contract or suspend any Work or further deliveries to you
  - 4.4.2 cancel any other contract we have with you or suspend any other work or further deliveries to you
  - 4.4.3 charge you interest (both before and after any judgment) on the amount unpaid at the rate of four per cent per year above Yorkshire Bank plc's base rate from time to time in force from the date of invoice to the date when payment in full is made and

- 4.4.4 claim from you all legal and other costs (including commission) incurred by us in recovering or attempting to recover any sums due to us and in enforcing any other rights we have under these Terms

## 5. DELIVERY

- 5.1 Any dates quoted for delivery of the Goods or the carrying out of Work are approximate only and we shall not be liable for any delay in delivery of the Goods or the carrying out of Work however caused. Time for delivery shall not be of the essence
- 5.2 If we fail to deliver the Goods or to carry out Work and we are liable to you then our liability shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of similar Goods, to replace those not delivered, over the price of the Goods or similar Work, instead of that not carried out, over the price of the Work
- 5.3 If we have agreed to deliver goods by instalments then each delivery shall constitute a separate contract. If we fail to deliver one or more instalments, in accordance with these Terms or if you have a claim in respect of one or more instalments this will not entitle you to treat the Contract as a whole as repudiated by us
- 5.4 If you fail to take delivery of Goods or your machinery or equipment or (where we have agreed to deliver Goods or your machinery or equipment other than at our premises) if you fail to give us adequate delivery instructions then without prejudice to any other right we may have we may
  - 5.4.1 store the Goods or your machinery or equipment until actual delivery and charge you for reasonable costs (including insurance) of storage or
  - 5.4.2 sell the Goods or your machinery or equipment at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) send you the excess over the Contract price or charge you for any shortfall below the Contract price
- 5.5 You may not return Goods without our prior written consent. If we do agree to you returning Goods then you must pay transport and packaging costs and we may make a restocking charge

## 6. RISK AND PROPERTY

- 6.1 Risk of damage to or loss of Goods shall pass to you when the Goods leave our premises unless we state otherwise in writing
- 6.2 Notwithstanding delivery and passing of risk in the Goods from us to you
  - 6.2.1 all Goods supplied by us to you will remain our sole and absolute property both in law and in equity until ALL debts (however arising) by you to us have been paid
  - 6.2.2 we will allow you to have possession of all Goods we supply to you solely as our bailee until you have paid us the full agreed price

- 6.2.3 until the property in the Goods is passed to you, we shall be entitled at any time (whether or not payment is overdue) to require you to deliver the Goods to us and if you fail to do so at once to enter upon any of your premises or the premises of any third party where the Goods are stored or we think they are stored for the purpose of repossessing the Goods
- 6.2.4 until in accordance with these terms you have ceased to have the right to retain possession of the Goods or you have acquired the property in them we will allow you to sell the Goods on our behalf as our agent (except that you will not hold yourself out as our agent but shall sell on your own account) and you shall hold the proceeds of sale (together with the proceeds of any insurance on Goods the property of which is not passed to you) on trust for us
- 6.2.5 if you have not received the proceeds of any sale of the Goods then we may revoke the agency referred to in paragraph 6.2.4 and require the person firm or company by whom proceeds are owed to pay us direct or alternatively you will at our request assign to us all your rights against the person firm or company by whom proceeds are owed

## 7. WARRANTIES AND LIABILITY

- 7.1 Subject to these Terms we warrant that Goods we sell will be free from defects in materials and workmanship for a period of six months from the date of delivery to you. If we replace parts under this sub-clause then the replacement parts are similarly warranted for 90 days from the date of replacement or the unexpired initial warranty period, whichever is longer. If we carry out Work we warrant that it will be done with reasonable care and skill
- 7.2 We give the above warranty subject to the following conditions:
  - 7.2.1 we shall be under no liability in respect of any defect in the Goods or Work arising from any drawing, design, instructions (including, without limitation, instructions from you to assemble or configure our Goods in a certain way) or specifications supplied by you
  - 7.2.2 we shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow assembly, operating, maintenance or repair instructions (whether oral or in writing), misuse or using the Goods for a purpose for which they were not designed or alteration or repair of the Goods without our prior approval in writing
  - 7.2.3 we shall be under no liability if you put the Goods to work in conjunction with other equipment or parts with which they were not designed to work by the manufacturer
  - 7.2.4 we shall be under no liability under the above warranty (or any other warranty condition or guarantee) if you have not paid the total price for the Goods or Work by the due date for payment

- 7.3 For the avoidance of doubt we do not warrant the performance of our Goods in the field as this is subject to too many variables beyond our control such as the skill and attentiveness of the operator, seed or plant type, seed or plant quality, land type, seed bed type, seed bed quality, weather conditions, other components not of our manufacture with which our Goods are set to operate, assembly of our Goods in configurations not recommended by us or not within our experience
- 7.4 Except as expressly provided in these Terms all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. For the avoidance of doubt we are not liable for any errors or omissions in any users guide or instructions manual we supply with any Goods
- 7.5 Any claim by you which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by you) be notified to us within fourteen days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within fourteen days (or such earlier time as is reasonable) after discovery of the defect or failure. If delivery is not refused and you do not notify us you shall not be entitled to reject the Goods and we shall have no liability for such defect or failure and you shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract
- 7.6 Any claim by you which is based on any defect in the quality of Work shall be notified to us within fourteen days of the return to you of the equipment or goods on which we had carried out work or (where the defect was not apparent on reasonable inspection) with 14 days (or such earlier time as is reasonable) after discovery of the defect. If you do not notify us we shall have no liability for such defect and you shall be bound to pay the price as if the Work had been done in accordance with the Contract
- 7.7 If you claim that we have failed to deliver Goods and are in breach of contract you must notify your claim to us in writing within 14 days of the date of the related invoice
- 7.8 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to us in accordance with these Terms we shall be entitled to replace or repair the Goods (or the part in question) free of charge or at our sole discretion refund to you the price of the Goods (or a proportionate part of the price) but we shall have no further liability to you
- 7.9 Where any valid claim in respect of the quality of Work is notified to us in accordance with these Terms we shall be entitled to redo the Work or (at our sole discretion) refund to you the price of the Work but we shall have no further liability to you
- 7.10 If we are liable to you for a defect in the quality of Goods or Work you will allow us a reasonable time in which to rectify the defect. You will allow us to inspect the Goods or the equipment on which we have done Work. You will not dispose of Goods or equipment on which we have done Work which is the subject of a claim without our agreement
- 7.11 We may require you to return all Goods or equipment on which we have done Work in respect of which a claim is made at your expense. If you prove your claim is valid we will refund the reasonable costs of returning the Goods or equipment.

- 7.12 Except in respect of death or personal injury caused by our negligence (liability for which we cannot exclude because of section 2 Unfair Contract Terms Act 1977) we shall not be liable to you because of any representations or any implied warranty, condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit, damage to reputation or goodwill, loss of anticipated savings or otherwise) costs, expenses or other claims for consequential compensation whatsoever (and whether caused by our negligence or that of our employees or agents or otherwise) which arise out of or in connection with the carrying out of Work by us or the supply or use of the Goods or their resale by you except as expressly provided in these Terms
- 7.13 We shall not be liable to you or be deemed to be in breach of the Contract because of any delay in performing or any failure to perform any of our obligations in relation to the Goods if the delay or failure was due to any cause beyond our reasonable control

## 8. INSOLVENCY

If:

- 8.1 you make any voluntary arrangement with your creditors or become subject to an administration order or (being an individual or firm) become bankrupt or (being a company) go into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or
- 8.2 an encumbrancer takes possession or a receiver is appointed of any of your property or assets or
- 8.3 you cease or threaten to cease to carry on business or
- 8.4 we reasonably think that any of the events mentioned above is about to occur in relation to you and we notify you of this

then without prejudice to any other right available to us we shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to you and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary

## 9. EXPORT TERMS

- 9.1 Where the Goods are supplied for export by us or you from the United Kingdom the provisions of this clause 9 shall (subject to any special terms agreed between you and us) apply notwithstanding any other provision of these Terms
- 9.2 You will be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on the Goods
- 9.3 We shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979

- 9.4 You are solely responsible for ensuring that the Goods comply with any legislation or regulations governing their use and you will fully indemnify us for any loss (including costs) we incur if they do not
- 9.5 You shall be responsible for all payments relating to freight handling charges, the payment of all duties and insurance. You should arrange for Goods to be inspected and tested at our premises before shipment. We shall not be liable to you for any claim in respect of a defect in the Goods which would be apparent on inspection and reasonable tests and which is made after shipment or in respect of any damage during transit.

## 10. YOUR EQUIPMENT OR GOODS

- 10.1 If we carry out Work on your machinery or equipment we may retain possession of that machinery or equipment until all money we are owed by you for whatever reason is paid in full. If you do not pay us by the due date we may dispose of the machinery or equipment as we think fit and use the net sale proceeds to pay ourselves. We shall account to you for any balance
- 10.2 We shall take reasonable care of your machinery or equipment. If we are in breach of this duty we shall be liable only for the cost of replacing or repairing your machinery or equipment and shall not be liable for any consequential loss or damage (whether for loss of profit or otherwise) costs, expenses or other claims for compensation whatsoever (and whether caused by our negligence, that of our employees or otherwise). We give no other warranty and accept no other obligations in respect of your machinery or equipment and all other warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law

## 11. GENERAL

- 11.1 "Contract" means the Contract for the purchase and sale of the Goods or the carrying out of Work
- 11.2 Any reference in these Terms to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time
- 11.3 The headings in these Terms are for convenience only and shall not affect their interpretation
- 11.4 Any notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified (in accordance with this provision) to the party giving the notice. "Writing" includes fax
- 11.5 We will not lose any right we have under these Terms if we do not use that right or we delay in using it. Using a right or part of one will not prevent us using that right again or any other right
- 11.6 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected
- 11.7 The Contract shall be governed by the laws of England and you and we submit to the jurisdiction of the English courts