

GENERAL CONDITIONS (Applying in all Contracts)

1. The Grower is an independent Contractor and shall not be deemed to be the agent or employee of Midlands for any purposes under this Contract.
2. The crop may be controlled by the Plant Variety Rights Act 1973 and subsequent amendments. All clauses of this contract must be strictly adhered to. Seed controlled by the Plant Variety Rights Act 1973 cannot be bought sold or graded without the permission of Midlands.
3. Midlands will at all times endeavour to supply seed that is true to type, purity and germination. Midlands shall not be responsible for any loss, failure or misdescription of crop due to any seed not conforming to type, purity or germination or any representation, act or omission on the part of Midlands. The costs of such seed shall be payable to Midlands on the 20th of the month following purchase. Default in such payment shall attract interest at the rate of 2% per month from the due date to the date of actual payment.
4. The Grower will sow the seed in a proper and careful manner in properly prepared soil and will harvest and thresh the crop in good order and condition and will ensure that all machinery is clean and free from contamination, disease, other grain and noxious seeds before and during use. All costs of production including sowing, weed control, harvesting and threshing shall be paid by the grower.
5. If for any reason the grower is unable to sow the Crop, he shall immediately advise Midlands in writing and will return the seed and this contract will terminate from the date all the seed is returned to Midlands and any payments due to Midlands have been satisfied.
6. The Grower agrees to use the seed supplied to him by Midlands for the sole purpose of sowing the area the subject of this contract. Any seed not sown shall be returned to Midlands within 21 days from the date on which the seed was supplied.
7. Midlands shall in no way be deemed responsible for any certified crop being rejected by The National Certification Authority because of contaminants. It is the responsibility of the Grower to enter his crop for certification.
8. The crop shall be fair average for district and season and be free of wild oats, chemical pollutants, noxious and undesirable weed species, disease, vermin and insect free.
9. Midlands shall have the right to inspect the crop at any time before or after harvest and the Grower shall permit Midlands access to the crop upon demand during the continuance of this agreement. The Grower shall comply with all reasonable instructions from Midlands as to crop husbandry. Midlands shall also have the right of inspection and rejection at any store to which the crop is delivered. If rejected, all transport, processing and storage costs shall be borne by the Grower and no storage increment will be payable.
10. All screening and/or drying to meet minimum standards shall be at the expense and risk of the Grower. Crops artificially dried, must be declared as such before delivery.
11. Where dressing loss or maximum screenings exceeds the figure(s) on the face of this agreement, Midlands shall at its option be entitled to purchase the excess at its market value.
12. All soil, weeds and foreign matter (in this clause collectively called "foreign matter") shall be deducted from calculation of weight. In the event of foreign matter exceeding acceptable standards then Midlands may, at its option elect to:
 - (i) have the said crop(s) cleaned of foreign matter at the grower's expense in all things.
 - (ii) accept the said crop(s) at its weight net of such foreign matter.
 - (iii) reject the said crop(s) or any part thereof.
13. When delivery is stated "prompt after harvesting" the crop shall be held by the Grower until Midlands gives instructions for delivery. Goods are at Grower's risk until accepted by Midlands in accordance with clause 17.
14. While every endeavour will be made by Midlands to pay the grower in accordance with its usual terms of trade (for forward contracts, the 20th day of the month following acceptance and for agency and remultiplication contracts upon receipt of payment by the company from its principal) Midlands will be under no liability for delay in payment caused by delay/default in receipt of payment by it on the resale of the product.
- 14a. The Grower authorises Midlands to apply, without prior notice, all moneys held by Midlands on behalf of the Grower, in payment of any amount owed by the Grower to Midlands whether pursuant to this Agreement or otherwise howsoever.
15. In the event of adequate or suitable storage not being available to Midlands at expected time of delivery or of unavoidable delays in shipping Midlands may require the Grower to store the crop on his own property at the Grower's cost pending availability of storage or of shipping.
16. Notwithstanding sampling of the harvested crop by Midlands, the Grower shall be responsible for maintaining condition and quality as sampled so long as the crop remains on the Grower's property or under his care.
17. Midlands shall not be deemed to have accepted any part of the crop until after Midlands has actually inspected the crop and ascertained that it is in accordance with the agreement. Inspection shall include all required weighing, testing (certificate of analysis), drying, cleaning, screening and grading. Weights from weighbridge nominated by Midlands shall be final. Midlands may by notice in writing to the Grower prior to acceptance reject the crop, or any part of it, which is not in accordance with the specifications until a reasonable time after delivery and for the purposes of the section, the parties agree that a reasonable time is eight (8) weeks after delivery of the crop to Midlands. Midlands may set off against any payment due to the Grower (whether under this agreement or otherwise) the price of such crops. Unless within a reasonable time of receipt of written notice of rejection the Grower collects such crop, Midlands may dispose of it as Midlands shall think fit (provided that if Midlands sell such crop Midlands shall account to the Grower for the net proceeds of such sale). For the avoidance of doubt, any payments made by Midlands to the Grower prior to acceptance does not signify Midlands approval or acceptance of the crop. The timing of the payments is immaterial to ascertaining the intention of the parties. Where Midlands, by notice to the Grower prior to acceptance, rejects any part of the crop which is not in accordance with the specifications, then any payment made shall be refunded by the grower to Midlands within seven (7) days of receipt of notice of rejection. Midlands' rights under this clause 17 are without prejudice to its rights under the agreement, at law or equity. In particular, Midlands may, at its discretion, elect not to reject the crop (or any part thereof) and make a claim against the Grower for any loss or damage suffered by Midlands as a result of the non-compliant crop.
18. The Grower acknowledges that in the normal course of business Midlands may enter into contracts for the future sale of the product described herein. Should the Grower refuse or fail or be unable to deliver part or all of the product described Midlands may purchase a similar quantity of the same crop(s) at prices current at expected time of delivery and recover any resultant loss from the Grower. Notwithstanding the foregoing, Midlands may, at its sole discretion, permit the Grower to replace the crop with crop complying strictly with the contract specifications.
- 18.2 For the avoidance of doubt it is agreed and declared that in event of the product being sold to a third party buyer ["the Buyer"] the price payable by Midlands specified on the face hereof is subject to adjustment, on the basis that the price to be paid to the Grower will be based upon the Buyer's test results and interpretations of quality.
19. With the exception of a crop security in favour of Midlands, the Grower shall not without the prior written approval of Midlands grant any crop lien or security over the crop.
20. Any dispute between Midlands and the Grower shall be settled by the arbitration of two Arbitrators and their umpire in accordance with the Arbitration Act 1996 and amendments.
- 20a. The person who signs this Agreement on behalf of a partnership or company, warrants that he has the authority to do so, but shall remain personally liable for the obligations of the Grower herein.
- 20b. In the event of the Grower stating an intention to enter into the Contract herein and having received a copy of this Contract, but not having physically signed the Contract, he shall be deemed to be bound by the conditions herein.
21. Exclusion of liability - Midlands shall not be liable in any circumstances for any losses attributable to technical advice given by it to the Grower AND the Grower admits that should any representation or warranty made by Midlands become or deemed to become a term of this Contract by reason of s6 of the Contractual Remedies Act 1979 or any other rule of law then the Grower agrees to accept and shall be entitled only to, the sum of \$10.00 in full satisfaction of any damage or loss arising out of such representation or warranty AND that not withstanding the provisions of ss 7 - 9 inclusive of the Contractual Remedies Act 1979 the Grower shall have no right or power to cancel this Contract on the grounds of any representation or warranty made by Midlands or any agent thereof.
22. The grower acknowledges that the crop grown pursuant to this agreement may be required for human consumption and therefore agrees:
 - (i) That Midlands has the right to reject all or any part of the crop which it, in its absolute discretion, considers to be unfit for human consumption; and
 - (ii) To indemnify Midlands from and against any liability which might be incurred in any way howsoever by reason of the crop being unfit for human consumption in any respect.
 - (iii) To indemnify Midlands from and against any liability which might be incurred in any way howsoever by reason of the presence of pesticide residues on the crop.
23. All seed or other products produced or derived from seed supplied by Midlands Seed Limited must be returned to Midlands Seed Limited or delivered to any third party or parties only on the written instructions of Midlands Seed Limited and may not in any circumstances be used for reproductive purposes in any form.
24. Varietal Purity Clause - To be included in Agreements made by Midlands Seed Limited (MSL) with its supplier farmers ("the supplier").
The supplier hereby covenants with MSL that:
 - (a) The supplier will take all reasonable precautions to ensure and safeguard the varietal purity of seed specified by and supplied to MSL in terms of this Agreement.
 - (b) The supplier will at all times indemnify MSL against all losses claims and actions whatsoever suffered by MSL arising from the failure of any seed supplied by the supplier to MSL in accordance with the specification of MSL to conform to the varietal purity tests and standards relating to such seed.
 - (c) The word "seed" or "seeds" where used in this clause shall include seeds, bulbs, plants, roots, tubers or other similar means of plant propagation.
25. The Grower authorises Midlands to deduct from the amount payable to the grower any regulatory charges incurred by Midlands including, but not way of limitation, Customs and MPI levies and other costs which may be imposed after the date of this agreement and payable in respect of the crop.

SPECIAL CONDITIONS (Applying to Multiplication Contracts)

26. The price payable by Midlands for the crop is that specified on the face hereof (hereinafter referred to as "the payment price"). The payment price is conditional upon the crop satisfying the minimum purity and germination levels and not exceeding other crop seed and weed levels specified on the face of this agreement. If the quality of the Crop is below the minimum so specified and unacceptable to Midlands and rejected, Midlands shall be under no obligation to purchase. Midlands may however enter into negotiations with the Grower for the purchase of the Crop if it so wishes. The Grower may not without the written consent of Midlands sell or otherwise dispose of any crop not purchased by Midlands nor shall he retain any part of the Crop for his own use, whether for seed or otherwise but must deliver the whole crop to the plant. Any crop not purchased by Midlands, or with its prior authorisation sold to a third party, must be destroyed.
 27. The price payable by Midlands for the second and ensuing production years (if applicable) shall be determined by the parties hereto prior to the forthcoming production year. The price payable, once determined shall be recorded in writing, signed by both the parties hereto and attached to this agreement.
 28. Upon harvest, the Crop shall be delivered to a plant approved by Midlands in writing for dressing. The Grower shall pay all transportation charges in delivering the crop to an approved plant. Dressing shall be carried out under the direction and supervision of Midlands and the Crop shall be packaged as specified by Midlands. The Crop shall be sound, unadulterated, marketable and without bad odour so that it may be kept in bags during the normal foreseeable transport to the country of destination so specified. The Grower shall pay all dressing charges, together with the costs for sacks, testing, certification and buried seed counts (if required).
 29. Notwithstanding that the crop may be in an approved plant, it shall remain at the growers risk from fire or any other loss until it is accepted by Midlands in accordance with clause 17.
 30. At the expiration of the contract and in the absence of written agreement between the parties for an extension of the growing period or upon its earlier termination, the crop shall be ploughed under by the grower. Midlands shall have the right of inspection to ensure that the crop has been ploughed under.
 31. The Grower acknowledges that:
 - (i) In the normal course of its business, Midlands enters into contracts before harvest for the future sale of the resulting produce and
 - (ii) Midlands has entered into contracts in anticipation of and/or in reliance on this agreement and
 - (iii) Should the crop not be produced in the specified quantity or not produce at all Midlands may suffer loss.
- Accordingly the Grower Covenants:
- (i) That should he anticipate leasing or selling his farm property, he shall immediately advise Midlands thereof and shall make any agreement of lease or sale and purchase subject to this agreement and the entry into an identical agreement by the intended lessee or purchaser; and
 - (ii) That if without the prior written agreement of Midlands he removes the crop or any part thereof out of production he shall be legally responsible for all reasonably foreseeable losses (including exchange losses and loss of profits) sustained by Midlands.
32. Midlands shall not be liable for any loss damage injury shortages delay late delivery or non delivery whatsoever due to any cause or circumstances beyond its control. Without limiting the generality of the foregoing, such cause or circumstances shall include non availability of, late departure, non delivery, part delivery or late delivery by shipping or any other freight, acts of Government, strikes, lockouts, fire, accidents, acts of war, terrorism, riots, civil commotions, malicious mischief or theft.