



General Terms and Conditions of Purchase of KWS Seeds Inc and affiliated Companies

From: 3/26/2021

- ACCEPTANCE.** Acceptance of any purchase order ("Purchase Order") from KWS-Seeds, Inc. or any of its subsidiaries, divisions affiliates or business units ("KWS") is subject to these exact terms. The delivery by seller or service provider ("Seller") to KWS of any products or services described in the Purchase Order ("Products") shall conclusively be deemed an unconditional acceptance by Seller of KWS' Purchase Order and these terms and conditions ("Terms") notwithstanding any provision in any acknowledgement, invoice, quotation or other document of any kind of Seller. KWS may, in its discretion, revoke its Purchase Order at any time before acceptance by Seller. To the extent there is any conflict or inconsistency between these Terms and any signed, written contract between KWS and Seller regarding the Products, that written contract shall control.
- DELIVERY.** The Products shall be delivered to the destination specified on the Purchase Order no later than the date set forth therein. All Products are to be provided F.O.B. destination. All risk of loss or damage in transit shall be borne by Seller. Any documents necessary to enable KWS to obtain the Products from the carrier when delivered must be delivered to KWS at or prior to shipment. The Seller shall immediately inform KWS in writing of any possible or actual delay in delivery of the Products and provide written detail regarding the nature, cause and expected duration of the delay. In such cases, the Seller shall, at its own expense, take all measures that are necessary and appropriate to prevent an impending delay in delivery or to keep the delay as short as possible. The Seller shall inform KWS in writing of the measures it has and will take to address the delay.
- PACKING AND SHIPPING.** Deliveries shall be made as specified without charge for boxing, crating, carting, or storage unless otherwise specified, and the Products shall be suitably packed to secure lowest transportation costs, in accordance with the requirements of common carriers, and in such manner as to assure against damage from weather or transportation. The Products shall be described on bills of lading in accordance with current Motor Freight or Uniform Freight Classification, whichever is applicable. KWS' Purchase Order numbers must be plainly marked on all invoices, packages, bills of lading and shipping orders. Packing lists shall accompany each box or package shipment. KWS' count or weight shall be final and conclusive on shipments not accompanied by packing lists. Except as consented to by KWS, Seller shall not ship in advance of schedule and shall ship exact quantities ordered.
- WARRANTIES.** Seller warrants to KWS and its customers that all Products (a) will conform to all quotations, specifications, drawings, descriptions, and samples set forth in or referred to in the Terms and any applicable governmental or regulatory standards, (b) will be new, original and not refurbished, (c) will be free from defects in material or workmanship, (d) will conform to any statements made on the containers or labels or advertisements for such Products, (e) will be adequately and properly contained, packaged, marked and labeled, (f) will be merchantable, (g) will be free from design or manufacturing defects, (h) will not infringe any patent, trademark, copyright or other intellectual property rights of any third party, (i) will be delivered with all necessary permits, certifications and licenses (including import/export) in place and (j) will be free from any encumbrance, lien or claim. If Seller knows or has reason to know the particular purpose for which KWS intends to use the Products, Seller warrants that such Products will be fit for such particular purpose. Seller's warranties shall run to KWS, its successors, assigns and customers, and users of products sold by KWS.
- PRICE; TERMS OF PAYMENT.** Seller represents that the prices specified herein for the Products match or are better than prices previously quoted, communicated, or shown on private or public catalogs. Seller warrants that prices shown on the Purchase Order are complete, and that no additional charges of any type (including, but not limited to, charges for shipping, packaging, labeling, custom duties, taxes, storage, insurance, boxing, carting) shall be added without KWS' express written consent. Terms of payment shall be as specified on the Purchase Order and agreed upon prior to initiating the transaction. If unclear, a standard payment term of NET30 from the invoice date will be applied.
- SERVICES BY THIRD PARTIES.** Seller shall not, without KWS' prior written consent, assign, delegate or subcontract any services subject to the Purchase Order.
- INSPECTION.** Upon delivery, KWS shall have a reasonable time within which to inspect the Products before accepting, rejecting or paying for them. If upon inspection KWS determines that the Products do not conform to the description on the Purchase Order or otherwise comply with the Terms, KWS shall have the right to preserve and keep a sample of the Products tendered for the purpose of proving the kind and quality of the Products tendered. In addition, KWS may inspect the Products during production at Seller's facilities during Seller's regular business hours. No inspection, test, acceptance or use of the Products by KWS shall affect Seller's warranties or KWS' rights, and these warranties and rights shall survive any inspection, test, acceptance or use.
- REJECTION.** In the event any Products delivered fail to conform to the Terms, or in the event delivery is not made as herein provided, KWS may, at its option, reject the whole, or accept any unit or units and reject the rest. If KWS rejects any part of the Products delivered or tendered under a Purchase Order, it shall notify Seller in writing. This notice of rejection shall specify all claimed defects and nonconformity in the Products; provided however, that failure by KWS to state a particular defect shall not preclude KWS from relying upon the unstated defect to justify rejection or to establish breach.
- TERMINATION.** KWS shall have the right to terminate, cancel or suspend, by written notice, in whole or in part, any Purchase Order. Except in case of termination by KWS for breach by Seller of the Terms, allowance will be made for normal and reasonable expenses incurred by Seller prior to receipt of notice of cancellation, but KWS will not be liable for any charges or expenses incurred by Seller in advance of the normal or reasonable lead time necessary to meet scheduled delivery dates nor for any expenses, charges or liability incurred subsequent to notice of cancellation.
- FORCE MAJEURE.** Failure of Seller to make, or of KWS to take, all or any part of any delivery hereunder, if such failure is due to acts of God, war, labor difficulties, breakdowns or damage to Seller's facilities or KWS' facilities, embargoes, shortages of transportation equipment, pandemic, epidemic or any other cause beyond a party's control, shall not subject such party to any liability to the other party; provided however, that in the event Seller is unable to meet the delivery schedule provided by KWS due to conditions beyond Seller's control, KWS may, if it chooses and without liability to Seller, refuse shipment or any other schedule unless such schedule has been submitted to and approved by KWS in writing prior to shipment.
- NONCONFORMING PRODUCTS.** Seller will not substitute nonconforming or refurbished Products, or back order Products without first obtaining KWS' prior written consent.
- PROPRIETARY INFORMATION – CONFIDENTIALITY.** All information furnished by KWS shall be confidential and Seller shall not disclose any such information to any other person, or use such information itself for any purpose other than performing under the Purchase Order. Seller shall not advertise or publish the fact that KWS has contracted to purchase Products from Seller, nor shall any information relating to the Purchase Order be disclosed without KWS' prior written permission.
- INDEMNIFICATION.** Seller shall defend, indemnify and hold KWS harmless from and against any and all losses, claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees and other costs of defending any actions, sustained or incurred by KWS in connection with (i) the breach of any representation, warranty or undertaking made by Seller of the Terms, (ii) the enforcement of these Terms, and (iii) the design, development, manufacture, application, distribution, sale, use, or repair of the Products, regardless of the legal theory upon which the claim may be based including, but not limited to, allegations of intellectual property infringement, except to the extent caused by the gross negligence of KWS.
- NON-WAIVER.** Waiver by either Seller or KWS of a breach by the other of any provision of the Purchase Order shall not be deemed a waiver of future compliance therewith, and such provision shall remain in full force and effect.
- MODIFICATION.** With the exception of express warranties made by Seller to KWS, the Terms are intended by the parties as a final and complete expression of their agreement as to the subject matter hereof, and shall supersede all prior oral or written negotiations, understandings or informal agreements with respect thereto. The Terms shall not be varied by any course of dealing, performance or usage of trade. Any different, conflicting or additional terms in any invoice, sales acknowledgment, or other document provided or offered by Seller are hereby expressly rejected.
- ASSIGNMENT.** The Purchase Order may not be assigned by Seller, nor may Seller delegate its duties under it, without the prior written consent of KWS.
- GOVERNING LAW/FORUM SELECTION.** The Purchase Order shall be construed and interpreted in accordance with the laws of the State of Minnesota without reference to the principles of conflict of laws. Any proceedings arising from or related to breach or enforcement of the Terms shall be brought only in the state or federal courts located in the State of Minnesota. Seller hereby consents to the personal jurisdiction of such courts over any such actions.
- GRATUITIES.** Seller warrants that neither it nor any of its employees, agents or representatives has offered or given any gratuities to KWS employees, agents or representatives with a view toward securing the Purchase Order or securing favorable treatment.
- HAZARDOUS SUBSTANCES.** Seller shall notify KWS of any Products that contain or constitute a hazardous substance or material and shall comply with all applicable laws, including obtaining any and all required permits and approvals, relating to the manufacturing, reporting, handling, packaging and transportation of such Products. Hazardous substances or materials means any substance or material defined in or governed by any federal, state or local environmental, health or safety law or regulation as a dangerous, toxic, explosive, reactive or hazardous pollutant, contaminant or waste of any kind, or which might pose a threat to human health or welfare or the environment.
- COMPLIANCE WITH LAW.** Seller shall, in the performance of the Purchase Order, comply with all applicable laws, executive orders, regulations, ordinances, proclamations, demands and requisitions of any federal, state or local governmental authority which may now or hereafter govern performance hereunder. Seller, in accepting the Purchase Order, represents that the Products to be furnished hereunder were or will be produced or performed in full compliance with all applicable laws.
- ACCESS TO SELLER'S FACILITIES.** KWS, its agents, representatives and its customers, shall have the right upon reasonable notice to Seller, to inspect the facilities, equipment and processes used by Seller to produce the Products purchased and to inspect the Products at Seller's facilities. Any such inspections shall occur during normal business hours at mutually convenient times and shall be performed in a manner reasonably designed to limit any disruption to Seller's operations.