

Canada Purchase Contract

STANDARD TERMS AND CONDITIONS (CANADA)

- (1) If no objection is made to this contract immediately, the same shall be considered final and will signify Seller's acceptance.
- (2) No term or condition of this contract may be altered or superseded without written consent from Buyer's authorized representative. These terms and conditions shall govern in any instance where they conflict with provisions of any forms used by Seller. This Contract contains the entire agreement of the parties, and no prior nor contemporaneous negotiations, correspondence, conversations, prior course of dealing and usage of trade shall be deemed in any way to affect the specific terms hereof.
- (3) This Agreement shall be governed by and construed in accordance with the laws of the Province of Canada in which Buyer's facility is located. The following international conventions will NOT apply to this Contract: (i) the Uniform Law on the Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods; (ii) the United Nations Convention on Contracts for the International Sale of Goods of 1980; and (iii) the United Nations Convention on the Limitations Period in the International Sale of Goods, concluded in New York on 14 June, 1974, and the Protocol Amending the Convention on the Limitations Period in the International Sale of Goods, concluded in Vienna on 11 April, 1980.
- (4) Seller shall not deliver any commodity to Buyer contaminated with any substance that constitutes a food safety hazard or is adulterated within the meaning of the Food and Drugs Act (Canada). Seller warrants that in growing the commodity sold to Buyer hereunder, Seller has only used those pesticides that are lawfully registered under the Pest Control Products Act (Canada), in strict compliance with the procedures recommended by the manufacturer of the pesticide and Pest Management Regulatory Agency. In the event of noncompliance of this warranty by the Seller, Buyer may refuse to accept delivery of the commodity to be delivered hereunder. Buyer will give the Seller prompt notification of refusal and will have the right to report noncompliance and rejection to Agriculture and Agri-Food Canada, Pest Management Regulatory Agency, and/or Canada Food Inspection Agency. Any economic loss to Buyer resulting from such noncompliance shall be the responsibility of the Seller.
- (5) Seller warrants that the commodities or other goods which are the subject matter of this contract ("Commodities" or singular, "Commodity") are and will remain free and clear of any penalty, lien, charge, quota regulation or encumbrance, governmental or otherwise, of any nature whatsoever at the time of its sale to Buyer.
- (6) It is understood that title to the Commodities and the risk of loss of the Commodities pass to Buyer upon acceptance at the Buyer's facility.
- (7) Seller warrants that the Commodities are merchantable and fit for sale to domestic and foreign customers. Seller represents and warrants that the commodity has not been treated with "Manipulator." Seller warrants that no Commodity shall be adulterated or misbranded within the meaning of the Food and Drugs Act (Canada), as amended, and regulations, or include any article or commodity which may not, under the provisions of such act, be introduced into interstate commerce.
- (8) Seller represents and warrants that no water was applied in the handling of the Commodities in this shipment through Seller's loading facility for any purpose except when used as a carrier for residual pesticides at manufacturer recommended levels.
- (9) Seller represents and warrants that Buyer may rely upon the representations and warranties set forth herein in the resale of the Commodities.
- (10) Seller guarantees that all Commodities meet the minimum standards prescribed by the Canada Grain Commission, including a maximum aflatoxin level of 20 parts per billion, and that all Commodities have been free at all times of rotolaria, or any other contamination or adulteration. Furthermore, Seller guarantees that the Commodities will not pose any food safety or quarantine risk to the Buyer. Unless otherwise agreed with Buyer, Seller warrants that all deliveries of the commodity on behalf of the Seller to Buyer hereunder will be of an eligible variety for delivery of that class of commodity as registered by the Canadian Food Inspection Agency pursuant to the Canada Grain Act and the Seeds Act (an "Eligible Variety"). Seller agrees that if a variety of the commodity, other than an Eligible Variety, is delivered to Buyer, Seller shall be in default under this Contract and Seller will be liable to Buyer for all claims, damages and costs that may result from such default. Buyer may cancel this Contract as a result of such default and exchange with the Canadian Grain Commission all relevant materials (including customer name, address, delivery sample information, and a portion of the physical sample) relating to suspected deliveries of varieties, other than Eligible Varieties, by Seller to Buyer. This information will be used to establish responsibility and liability for delivery of a variety, other than an Eligible Variety.
- (11) Buyer reserves the right to reject or apply discounts to the contract price, if the quality of the Commodities is less than required under this contract, or to unload the same without first notifying Seller.
- (12) Any Commodity, irrespective of grade, which is tagged, seized, condemned or declared unfit by any Provincial or federal agency may not be applicable on the contract, and ownership of such Commodity will remain with the Seller. Furthermore, any change in the price or other terms of this contract caused by government regulations, will entitle Buyer to cancel any unshipped portion thereof without penalty.
- (13) Immediately upon delivery of the commodity by the Seller, a grade, moisture, and dockage shall be assigned to the commodity; in the event of disagreement, the parties will forward a suitable representative sample of the commodity to the Chief Inspector, Canadian Grain Commission, whose decision shall be final and conclusive.
- (14) Buyer shall not be liable for delay in Buyer's performance or failure to perform when such delay or failure is due to unforeseen causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of the public enemy, governmental action, fires, floods, earthquakes, epidemics, quarantine restrictions, labor difficulties, freight embargoes, plant breakdowns, transportation shortages or unusually severe weather. Buyer shall not be required to pay for or to accept Seller's application of or title to any Commodity when the transportation of such Commodity, upon the terms set forth in this contract, may reasonably be anticipated to be delayed as a result of one or more of the events described in the preceding sentence.
- (15) Buyer's acceptance of any Commodity delivered after Seller's breach of this contract will not waive any rights or remedies accruing to Buyer from such breach.
- (16) Upon breach of this contract by Seller or upon termination of this contract by Buyer, Buyer, at its option may: (1) repurchase the product on the open market for Seller's account, and Seller will pay Buyer any loss and incidental expenses resulting therefrom, or (2) require Seller to pay the difference between the contract price and the market price on the date of cancellation, or (3) without further obligation, cancel the contract in its entirety. Notwithstanding the foregoing, Buyer may pursue any remedy allowed by law, and (i) Buyer will be entitled to collect from Seller reasonable attorneys' fees and costs incurred by Buyer in connection with enforcement of this contract by reason of Seller's breach and (ii) Buyer will be entitled to collect from Seller interest on any amount owing to Buyer by reason of Seller's breach, at the rate of 1½% per month until paid.
- (17) Seller represents that it is not insolvent, as that term is defined in the Uniform Commercial Code. If Seller's financial condition is deemed unsatisfactory to Buyer during the term of this contract, Buyer may terminate this contract and all other purchase contracts from Seller whether or not Seller is in default.
- (18) Seller agrees to indemnify and hold harmless Buyer, its affiliates and their directors, officers, employees, agents, and representatives from and against any and all liability, loss, damage, fine, penalty, cost or expense (including reasonable attorneys' fees) to the extent arising out of or resulting from: (a) any non-conforming good; (b) any alleged or actual, direct or contributory infringement or misappropriation of any patent, copyright, trade secret or other proprietary right arising from the purchase, use or sale of the goods provided by Seller; (c) any leak or spill of any materials, substances or chemicals while being transported or delivered to Buyer or while on Buyer's premises; (d) any breach by Seller of any term or condition contained in the Contract; and/or (e) the negligent acts or omissions, or willful misconduct of Seller, its agents or representatives. Without limiting the foregoing, Buyer may require Seller to re-deliver against any non-conforming goods at Seller's cost and expense.

- (19) The waiver of any of the terms of this contract to be performed by Seller will not be a waiver of any subsequent failure of Seller to comply fully with or perform the same or any other term of this contract.
- (20) Without limiting BUYER'S other rights and remedies, BUYER has the right, as permitted under applicable laws, to set off and/or net its obligations under this Contract against any debts, claims or obligations owed to SELLER hereunder or any other agreements between the parties.
- (21) If more than one contract is open, shipments are to be applied on contracts in order of each contract's delivery date beginning with the oldest Purchase Contract.
- (22) It is understood that this contract is not completed until all shipments are received, graded, weighed and unloaded at destination.
- (23) Buyer may designate any reasonable alternate delivery points if necessary to expedite Seller's performance of this contract, but Buyer shall have no obligation to do so.
- (24) BUYER reserves the right to refuse to accept any order not fulfilled in accordance with its purchase requirements. If SELLER requests and BUYER agrees to amend a Contract, BUYER may, at its option, charge to SELLER any and all additional costs, expenses or charges related to the amendment, and all additional costs, expenses or charges related to the amendment.
- (25) BUYER shall have the right, upon reasonable grounds for insecurity with respect to SELLER'S performance under this Contract, to demand adequate assurance of SELLER'S full performance. SELLER shall provide such adequate assurance within forty-eight (48) hours of the receipt of the demand therefor. SELLER'S failure to provide adequate assurance as demanded by BUYER shall constitute SELLER'S repudiation of this Contract, and BUYER shall have the right to all legal and equitable remedies available, including but not limited to those stated in this contract, and losses and damages.
- (26) If there are unpriced Commodities subject to this contract, and Buyer advances funds to Seller prior to final pricing (whether required under Federal or Provincial legislation or otherwise, which if applicable will be made at the time of delivery), then the parties agree as follows: Buyer at its discretion shall have the right, in the event the market declines, to require the Seller to refund to Buyer a portion of the amount Buyer had so advanced to Seller. This amount to be refunded will be equal to the decline in the market (that is, the difference between the then current market price and the market price of the grain on the date Buyer so advanced funds to Seller), in order to maintain the margin to the market as agreed upon in this contract. Buyer shall notify Seller of the amount so requested for refund, and upon receipt of same, Buyer shall retain such amount in a separate escrow account for the benefit of Seller. Buyer may at its discretion and without prejudice to other legal remedies treat Seller's failure to refund the full amount so requested within 48 hours after such demand as a breach of this contract or as a breach of all open contracts and pursue Buyer's legal and equitable remedies.
- (27) Buyer and Seller recognize that the market price when delivery is required under this contract may differ substantially from the contract price, and each party agrees not to assert such a difference as an excuse for non-performance hereunder or as a defense for damages for failure to perform in whole or in part.
- (28) If this contract calls for delivery beyond 14 days from the date of the contract, Buyer may at any time demand from Seller a marginal deposit of 10% of the purchase price to be returned to Seller when the product is delivered, and Buyer may demand such further deposit payments from Seller as may be necessary to maintain a deposit on the contract of 10% of the contract price plus an amount equal to the difference between the contract price and the prevailing market price, if the market price is above the contract price. Seller agrees to make such deposits so demanded within three days of such demand.
- (29) Except: (i) as otherwise stated in this Contract; or (ii) for obvious error, BUYER'S weights, analysis and condition, at receipt, will govern and control.
- (30) It is agreed that this contract will be binding upon the heirs, administrators and executors of the respective parties. This contract cannot be assigned by Seller without the written consent of Buyer. This contract can be assigned by Buyer without the consent of Seller.
- (31) If any provision of this Contract is held to be invalid, illegal or unenforceable, either in whole or in part, that holding will not affect the validity, legality or enforceability of the remaining provisions of this Contract.
- (32) Confidentiality: SELLER agrees to keep confidential the terms and conditions of this Contract and all proprietary information disclosed by or on behalf of BUYER or otherwise learned or obtained by SELLER in connection with this Contract or the performance hereof. SELLER will not use any of this information other than in connection with the performance of this Contract and will not disclose any of this information except to the extent required by law and then only after prior notice to BUYER.

(1) This confirmation evidences the contract between Seller and Buyer for the sale of the goods (the "Goods") identified herein. If no objection is made to this contract immediately, the same shall be considered final and will signify Buyer's acceptance.

(2) Except as explicitly set forth below, these Standard Terms and Conditions set forth the entire understanding between Seller and Buyer and supersede: (i) all other prior agreements, written or oral, between Seller and Buyer with respect to the subject matter of these Standard Terms and Conditions; and (ii) any additional, inconsistent or conflicting terms contained on Buyer's acknowledgement, confirmation, invoice or similar documents. Any additional, inconsistent or conflicting terms will have no effect. If trading rules are referenced in these Standard Terms and Conditions but those trading rules are inconsistent or conflict with these Standard Terms and Conditions, the terms and conditions set forth herein shall govern. If Buyer has completed a credit application, the terms and conditions of that credit application are also incorporated herein apply to any sales made pursuant to these Standard Terms and Conditions. If Buyer and Seller have signed a written sales agreement that expressly overrides the pre-printed terms and conditions set forth herein, the terms and conditions in that written sales agreement will control. No term or condition of this contract may be altered or superseded without written consent from Seller's authorized representative. Seller hereby objects to the inclusion of any terms proposed by Buyer that are different from or additional to the terms of this contract, and Seller's delivery of any Goods shall not constitute any assent to any such terms proposed by Buyer.

(3) Except as otherwise expressly provided for herein, this contract is subject to National Grain & Feed Association ("NGFA") trade rules in effect on the date hereof. If, for whatever reason, the NGFA trade and arbitration rules are determined to be unenforceable by a court of competent jurisdiction, this contract shall be governed by and construed in accordance with the laws of the State of Colorado. The following international conventions will not apply to this contract: (i) United Nations Convention on Contracts for the International Sale of Goods, including without limitation, 1980; (ii) the United Nations Convention on the Limitations Period in the International Sale of Goods, concluded in New York on 14 June, 1974, and the Protocol Amending the Convention on the Limitations Period in the Sale of Goods, concluded in Vienna on 11 April, 1980; or (iii) the Uniform Law on the Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods shall not apply to this contract. Jurisdiction for any court proceedings arising out of or related to this contract shall lie exclusively in the courts of Denver County, Colorado. Seller is entitled to recover all costs of collection, including reasonable attorney's fees and costs.

(4) Unless otherwise specified herein or on the face of the contract, Buyer shall pay the purchase price herein not more than 15 days following delivery. All payments shall be made in U.S. dollars. If payment is not timely, Seller, in addition to other legal rights, shall be entitled to the lower of either interest at the prime rate as published in the then-current *Wall Street Journal* plus 2% or the highest non-usurious interest rate chargeable to Buyer on any unpaid balance.

(5) The term "delivered" or the designation of a rate, or rate point, when shown under the terms of this contract indicates only that transportation costs are included in the price. Risk of loss shall pass to Buyer at the time each shipment hereunder is directed to Buyer, or if the Goods are in transit at the time this contract is made, at the time the shipment is redirected to Buyer; provided, however, title to such Goods shall convey to Buyer only upon Seller receiving payment in full.

(6) Buyer's receipt of any Goods delivered hereunder shall be an unqualified acceptance of, and waiver by Buyer of any and all claims with respect to, such Goods unless Buyer gives Seller notice of claim within ten (10) days after such receipt. Buyer shall be liable for any shortages of Goods delivered hereunder unless Buyer gives Seller notice of such shortages within twenty-four (24) hours from receipt of shipment by Buyer. Buyer assumes all risk and liability from the results obtained by the use of any Goods delivered hereunder, or in manufacturing processes of Buyer or in combination with other substances.

(7) Buyer represents and warrants to Seller that Buyer is a merchant as that term is defined by the Uniform Commercial Code.

(8) Seller may choose the carrier and route of shipment.

(9) Seller represents and warrants that as of the time and place of delivery as stated on the front of the contract, (1) Seller has the right to convey good title to the Goods; (ii) the Goods will conform to agreed-upon specifications, if any; and (iii) to the best of Seller's knowledge, the Goods are free and clear of any and all liens. **SELLER MAKES NO OTHER WARRANTIES, GUARANTEES, OR REPRESENTATIONS, EXPRESS OR IMPLIED,**

THAT EXTEND BEYOND THE DESCRIPTION ON THE FACE OF THIS CONTRACT. WITHOUT LIMITING THE PRECEDING, SELLER EXPLICITLY DISCLAIMS ALL WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND TO BUYER, EITHER EXPRESS OR IMPLIED, OR BY USAGE OR TRADE, STATUTORY OR OTHERWISE, WITH REGARD TO THE GOODS SOLD, INCLUDING, BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE AND ELIGIBILITY OF THE PRODUCT FOR ANY PARTICULAR TRADE USAGE.

(10) Subject to paragraph 6 and the rest of these Standard Terms and Conditions, Buyer's exclusive remedy and Seller's exclusive liability for shipment of non-conforming Goods, breach of warranty or any other cause or claim is expressly limited, at Seller's option to: (i) replacement, within a reasonable period of time, of the non-conforming at no additional cost to Buyer; or (ii) refund of the purchase price. All non-conforming Goods must be returned to Seller at its expense, or, at Seller's direction, disposed of by Buyer in a manner mutually acceptable to Buyer and Seller with all reasonable costs of such disposition to be paid by Seller. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES OF ANY KIND ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY TO BUYER ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE PURCHASE PRICE OF THE GOODS. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM OF ANY CLAIM BY BUYER HEREUNDER, WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OR CONDITION OF THIS AGREEMENT OR ANY REALTED ENGAGEMENT LETTER OR OTHER WRITING, FOR NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY, OR OTHERWISE.** Buyer will indemnify Seller and hold Seller harmless for any loss, cost, damage or expense that Seller may incur that (in aggregate) exceeds the purchase price, including without limitation, reasonable attorneys' fees, as a result of Buyer's use, storage, transportation, or sale of the Goods whether alone or in combination with other goods.

(11) Buyer shall pay all taxes, duties, fees, or other charges of every nature, now or hereafter imposed by federal, state, or local governments upon the Goods or upon the shipment, storage, sale, use or inspection thereof, it being understood that the sales price is exclusive of all said taxes, fees and charges. Buyer shall furnish Seller with satisfactory exemption certificates where any exemption from taxes is claimed.

(12) Any advance in applicable freight rates, fuel, energy and transportation surcharges, taxes, duties or other assessments or fees on this Contract or the production, processing, sale, delivery, storage, shipment, transportation or use of the goods, services and/or the raw materials sold hereunder, taking effect after the date of this Contract but before the fulfillment of this Contract may, at Seller's option, be added to the Price(s) set forth in this Contract. Seller will also have the right, at Seller's option, to add to the Price(s) any increase in the cost of production because of any legislation passed or regulations issued after the date of this Contract.

(13) Once a Contract has been issued, if Seller has communicated its order requirements (e.g., the minimum time period between order and desired shipment) to Buyer, Buyer must follow those order requirements to place orders against this Contract. Seller reserves the right to refuse to accept any order not placed in accordance with its order requirements. If Buyer requests and Seller agrees to amend a Contract, Seller may, at its option, charge to Buyer any and all additional costs, expenses or charges related to the amendment.

(14) Seller shall not be liable for delay in Seller's performance or failure to perform when such delay or failure is due to unforeseen causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of the public enemy, governmental action, fires, floods, earthquakes, epidemics, quarantine restrictions, labor difficulties, freight embargoes, plant breakdowns, transportation shortages or unusually severe weather. Should any of the foregoing occur, at Seller's option and upon notice to Buyer, Seller shall be (1) relieved of further performance under this contract, or (2) Seller's performance may be extended for a time equivalent to the delay.

(15) Buyer's acceptance of any Goods delivered after Seller's breach of this contract waives any and all rights or remedies accruing to Buyer from such breach.

(16) Upon breach of this contract by Buyer, including without limitation, for Buyer's failure or inability to take delivery of any or all of the Goods or upon termination of this contract by Seller, Seller, at its option may: (1) sell the



product on the open market for Buyer's account, and Buyer will pay Seller any loss and incidental expenses resulting therefrom, (2) require Buyer to pay the difference between the contract price and the market price on the date of cancellation, (3) without further obligation, cancel the contract in its entirety, (4) extend the delivery period for contracted volumes; (5) assess Buyer carrying charges and/or penalties as deemed appropriate or necessary by Seller; or (5) exercise any other right or remedy provided by law. Buyer shall pay interest on any amount owing to Seller by reason of Buyer's breach, until paid, at the rate of 1 1/2% per month (or, if less, the highest rate permitted by applicable law).

(17) Failure of Seller to ship any installment hereunder when due shall not constitute a total breach of the contract. In the event this contract calls for multiple shipments or deliveries, Seller's failure to timely make any shipment or delivery will not constitute a breach of (i) Seller's obligations to many any other shipment or delivery; or (ii) this contract as a whole.

(18) Buyer represents that it is not insolvent, as that term is defined in the Uniform Commercial Code. If Buyer's financial condition is deemed unsatisfactory to Seller, Seller may (1) terminate this contract and all other contracts with Buyer whether or not Buyer is in default, and no rights shall accrue to Buyer as a result of termination pursuant to this section, or (2) demand adequate assurance of due performance, including requiring that Buyer deposit a suitable security to insure Buyer's performance of this contract and others which Buyer is a party, or (3) make deliveries to Buyer on sight draft or C.O.D. basis, or (4) require cash in advance of delivery.

(19) The waiver of any of the terms of this contract to be performed by Buyer will not be a waiver of any subsequent failure of Buyer to comply fully with or perform the same or any other term of this contract.

(20) Official loading weights and grades govern unless otherwise specified.

(21) Buyer and Seller recognize that the market price when delivery is required under this contract may differ substantially from the contract price, and each party agrees not to assert such a difference as an excuse for non-performance hereunder or as a defense in any action for damages for failure to perform in whole or in part.

(22) All disputes and controversies of any nature whatsoever between Seller and Buyer with respect to this contract, or any other commodity contract between the parties, must be arbitrated according to the arbitration rules of the NGFA. The decision and award determined under any arbitration will be final and binding on Seller and Buyer. Judgment upon any arbitration award may be entered and enforced in any court having jurisdiction.

(23) If Buyer is located in South Dakota, the parties shall submit any dispute arising under this contract to non-binding mediation if required by S.D. CODIFIED LAWS § 37-4A-2 prior to the initiation of NGFA arbitration in accordance with paragraph 19. If S.D. CODIFIED LAWS § 37-4A-2 ceases to be controlling at any time that this contract is in effect, this provision should be treated as though it never existed and the parties shall proceed directly to NGFA arbitration.

(24) Buyer may not assign this contract without the written consent of Seller. Seller may assign its rights and obligations under this contract without the consent of Buyer.

(25) If any provision of this contract is held to be unenforceable under applicable law, such provision will be excluded from this contract and the balance of the contract will be interpreted as if such provision were so excluded and will be enforceable in accordance with its terms.

(26) If Buyer redirects Goods during transit, those Goods are irrevocably deemed satisfactory from the point of redirection, and Buyer waives the right to examine those Goods after redirection.

(27) Buyer shall obtain and furnish all permits (including elevator and port permits) necessary for the shipment and sale contemplated hereby.

(28) Without the express written consent of Seller, Buyer may not use Seller's trade names, trademarks, logos, service marks, or other proprietary marks for any purpose (including, without limitation, use on any of Buyer's packaging and labeling, regardless of whether the packaging or labeling is for reselling the good either alone or in combination with other goods).

(29) Buyer agrees to keep confidential the terms and conditions of this Contract and all proprietary information disclosed by or on behalf of Seller or otherwise learned or obtained by Buyer in connection with this Contract or the performance hereof.

