

General Terms and Conditions for Sale

1. PREAMBLE

1.1

These General Terms and Conditions for Sale (hereinafter referred to as the "Terms") shall apply to all sales from Karmark Int. A/S (hereinafter referred to as "Karmark") notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other communication from the buyer, unless otherwise agreed in writing by Karmark. No such conflicting, contrary or additional terms and conditions shall be deemed accepted by Karmark unless and until Karmark expressly confirms Karmark's acceptance in writing thereof. When used in the Terms "writing" or "in writing" refers to a document signed by both Parties or to a letter, facsimile or e-mail.

1.2

Once a buyer has accepted the Terms, the buyer shall also be deemed to have accepted that the buyer's future purchases from Karmark shall be subject to Karmark's Terms in force at the time in question.

2. CONCLUSION OF A CONTRACT

2.1

Karmark reserves the right to maintain that a final and binding sales contract has not been entered into until Karmark has forwarded to the buyer an order confirmation in writing.

2.2

Unless Karmark expressly in writing has accepted any other conditions, cf. clause 1.1, any sales contract is entered into on the terms and conditions appearing from Karmark's order confirmation and the Terms, see here clause 3.3.

2.3

The purchase price is due without deductions and immediately after delivery of the product unless there is a different written agreement. Deferred terms and sales on credit are possible only if agreed upon in writing by both contract parties prior to the issuance of the product.

2.4

Purchase contracts are not valid until there is a written confirmation by the seller or by way of the delivery of the product specified in the purchase contract.

2.5

The seller reserves the right to cancel the right to sell products subject to reservation and the authorization to collect the claims ceded to the seller, if the buyer is in arrears, files an application for bankruptcy or if any other impairment of performance presents itself. In the event of a cession the seller may demand from the buyer to communicate the ceded claim, and their debtors, to release all data required for collection, to hand over the associated documents and to inform third-party debtors of the cession. Upon seller's request the buyer must issue, at his or her own expense, publically notarized documents regarding the cession.

3. INCORPORATION OF THE RUCIP RULES AND RANK

3.1

To the extent that the individual sales contract and the Terms do not provide otherwise, Inter-European Trade in Potatoes", effective on the day of sale shall apply (hereinafter referred to as the "RUCIP Rules").

3.2

The RUCIP rules are available at www.europatat.org and from Karmark at the buyer's request.

3.3

In the event of any dispute, ambiguity in interpretation or claim between Karmark and the buyer the individual sales contract and its specific terms shall have first rank. To the extent that the individual contract and its specific terms are silent the Terms have second rank. To the extent that the Terms are silent the RUCIP Rules have third rank. If the RUCIP Rules are silent, the ordinary rules of the governing law shall prevail.

4. SHIPPING TERMS, DELIVERY AND RETENTION OF TITLE

4.1

Where a trade term has been agreed, it shall be interpreted in accordance with INCOTERMS (ICC) valid at the time when the sales contract has been entered into. The RUCIP Rules Chapter IV shall not apply. If no trade term is specifically agreed, the delivery shall be Ex Works.

4.2

If Karmark finds that Karmark will not be able to deliver the goods at the agreed time, Karmark shall without undue delay notify the buyer thereof in writing, and if possible the time when delivery can be expected. The time for delivery shall thus be extended by the period notified by Karmark, provided that this is reasonable taking into account all circumstances in the case. Otherwise, subject to clause 7 the RUCIP Rules shall apply. Successive delivery is allowed.

4.3

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. The goods shall remain the property of Karmark until paid for in full, including interest and other costs, to the extent that such retention of title is valid under applicable law. On condition that Karmark can identify the lot of the goods, Karmark shall have the right to take it back as soon as the date of payment has passed.

5. CERTIFICATES

5.1

Official seed testing report shall be final in accordance with the National Rules of the country of origin.

5.2

Other reports/certificates etc. upon buyers request.

6. MULTIPLICATION

6.1

Multiplication of the seed is not permitted unless otherwise agreed in writing by Karmark.

6.2

For all varieties from which the seller sells potatoes for planting purposes and for which there is variety protection benefitting the seller according to variety protection law or the EU decree (EG) no. 2100/94 of the Council regarding EU variety protection date July 27, 1994 or an exclusive user right of the seller pertaining to them, export of the amounts purchased from the seller to a country which is not EU or UPOV member is prohibited.

6.3

The buyer must pay to the seller a contractual penalty in the amount of twice the license for every quintal (100 kg) of seed potatoes exported in violation of number 9.1. The amount of the A-license is determined annually by the seller or his or her representatives. The contractual penalty is due for payment immediately.

7. LIMITATION OF LIABILITY

7.1

Karmark 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 Karmark 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.

7.2

Karmark 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. These limitations of liability apply for all liabilities, including but not limited to, liability for delay, defects and product liability.

7.3

Regardless of the RUCIP Rules, Article 25 and 30, the total aggregate liability of Karmark 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.

7.4

The buyer shall indemnify and hold Karmark harmless to the extent that Karmark incurs liability towards any third party in respect of loss or damage for which Karmark is not liable towards the buyer.

7.5

The seller is not liable for third-party public statements regarding the conditions of the product, especially in advertising or in marketing.

8. FORCE MAJEURE (GROUND FOR RELIEF)

8.1

Force Majeure is regulated by the RUCIP Rules, First Part Article 27. However, Karmark shall in any circumstances be excused from any delay or failure in performance by labour disturbance, strikes and lock-outs and crop failure.

8.2

Any sales contract entered into pre-harvest is subject to a safe crop.

8.3

Karmark shall have the right to substitute any ordered goods with similar goods when due to crop failure, or the inability within reasonable limits for Karmark to acquire the goods sold in the necessary amounts and/or quality.

9. FORUM AND GOVERNING LAW

9.1

All disputes shall be governed by and construed in accordance with the substantive laws of Denmark.

9.2

Subject to clause 9.3, 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).

9.3

If the circumstances indicate that the buyer does not intend to pay or is unable to pay, Karmark 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.