

## **ZAP General Conditions**

### **1. Definitions**

- 1.1 ZAP: ZAP B.V.
- 1.2 Other Party: Any party that has entered into an agreement with ZAP and/or submitted an offer to ZAP and/or whom ZAP has submitted an offer to.
- 1.3 ZAP General conditions: The foregoing form the general conditions.
- 1.4 RUCIP conditions: the coherent whole of the Règles et Usages du Commerce Intereuropeen des Pommes de Terre 2017, as well as the 2017 Expertise and Arbitration Regulations of the European Committee.
- 1.5 AHP conditions: General Trading conditions for seed potatoes 2018, with corresponding Arbitration Regulations of June 2018.
- 1.6 AHV conditions: General Trading Conditions for the potato wholesale trade with corresponding Arbitration Regulations of 1 September 1986.
- 1.7 VAVI potatoes: 2009 purchase conditions of the potatoes in the industry/trade and Arbitration Regulations.

### **2. Applicability**

- 2.1 The ZAP General Conditions exclusively apply to all offers and quotations to and by ZAP and all agreements entered into by ZAP and all related obligations.
- 2.2 In addition to the ZAP General Conditions, the following apply, depending on the legal relationship between ZAP and the Other Party:
  - a. RUCIP conditions: if the agreement is entered into with an Other Party outside the Netherlands;
  - b. AHP conditions: if the agreement concerns seed materials and is entered into with an Other party in the Netherlands;
  - c. AHV conditions: if the agreement concerns ware potatoes and is entered into with an Other Party in the Netherlands;
  - d. VAVI conditions: if the agreement concerns the sale of potatoes by ZAP to the potato processing industry in the Netherlands;
- 2.3 In the event of conflicts between the ZAP General Conditions and the applicable RUCIP, AHP, AHV or VAVI conditions, the ZAP General Conditions prevail.
- 2.4 The applicability of the general terms and conditions, by whatever name, of the Other Party, is hereby explicitly excluded.
- 2.5 Such terms and conditions varying from the ZAP General Conditions and the applicable RUCIP, AHP, AHV or VAVI conditions can only be agreed in writing and are subject to the explicit written confirmation thereof by ZAP.

### **3. Applicable law and arbitration**

- 3.1 All legal relationships between ZAP and its Other Party are governed by Dutch law, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods; Vienna, 11 April 1980 (Vienna Sales Convention / CISG).

- 3.2 Arbitration occurs according to the Arbitration Regulations that are included in the applicable RUCIP, AHP, AHV or VAVI conditions via Article 2.2 of the ZAP Trade Terms & Conditions. All disputes shall be submitted for arbitration at Wageningen, the Netherlands as the explicitly agreed place of arbitration, and the Stichting Geschillen in de Landbouw c.a. shall function as the arbitration agency
- 3.3 Without prejudice to the stipulations in article 3.2, ZAP shall be entitled to submit to the competent Court in the district in which ZAP is located claims in respect of monies due, of which the liability to pay is not disputed within four weeks of the invoice date. ZAP shall further be entitled to submit to the competent Court in the district in which ZAP is located claims that are urgent in nature. All collection costs, both judicial and extrajudicial, shall be at the expense of the buyer. Judicial costs include actual costs incurred by ZAP due to charges by lawyers, bailiffs and experts. The extrajudicial costs payable are 15% of the principal sum, subject to a minimum of two hundred and fifty (€250) Euros.

#### **4. Liability**

- 4.1 Any shortages, flaws and damage must be reported by the Other Party to ZAP in writing. Notwithstanding the provisions in the RUCIP conditions, ZAP cannot be held liable for defects, if the complaint is submitted to ZAP at a time that the seed materials had already been planted or were cut. Notwithstanding the provisions in the AHP conditions, ZAP cannot be held liable for defects, if the complaint is submitted to ZAP at a time that the seed materials had already been planted or were cut, or has crossed the Dutch land or sea border.
- 4.2 In all cases, and notwithstanding the provisions in the RUCIP, AHP, AHV or VAVI conditions, ZAP's liability is limited at all times to direct loss or damage (i.e. loss or damage to all or a portion of the goods themselves and transport costs, storage and/or preservation costs incurred insofar as these costs relate to the goods or portion of the goods for which a well-founded complaint has been lodged) and is limited at all times to the invoice amount of the goods for which a well-founded complaint has been lodged, or which are the subject of the loss or damage. ZAP is never liable for any indirect loss, including but not limited to consequential loss, loss of profit and stagnation loss. The limitations of liability in this article do not apply if the loss or damage is the result of intentional misconduct or gross negligence on the part of ZAP.
- 4.3 In the event of damage, the Other Party is obliged to limit this to a minimum.
- 4.4 If the Other Party fails to fulfil any of its obligations, the Other Party shall be obliged to fully compensate ZAP for the damage suffered by them due to this non-performance, including any loss of profits.

#### **5. Payment and retention of title**

- 5.1 Payment must be effected by the Other Party within 30 days of the invoice date, unless otherwise agreed in writing, regardless of the fact whether the goods were lost and/or sustained damage during transit. In the event of non-payment within the agreed term, the Other Party shall owe interest of 12% per year, in which part of a month shall be deemed a full month, without the need for a notice of default.
- 5.2 At any time during the term of the agreement, ZAP may demand security or additional security for payment by the Other Party, provided the Other Party gives reasonable rise to this. If the Other Party fails to comply with a reasonable request for security, ZAP shall be entitled to suspend its obligations or to terminate the agreement and claim compensation.

- 5.3 All goods supplied remain the property of ZAP until full payment has been received for all that the Other Party owes by virtue of the agreement. If, in the event of late payment, a moratorium on payment or insolvency, ZAP will rely on its retention of title, ZAP shall be entitled to repossess the goods delivered by them and access the grounds and buildings where the goods are stored.

## **6. Sale of seed materials subject to plant breeder's right**

- 6.1 Seed material of varieties subject to plant breeder's rights may not be used for further propagation of those varieties, unless a written agreement to that effect, containing a provision for fair payment, has been concluded with ZAP.
- 6.2. Seed materials subject to plant breeder's right can solely be planted in the agreed country of destination.
- 6.3 Upon ZAP's request, the Other Party is required to provide a third party designated by ZAP with all the names and addresses of parties to whom the Other Party has delivered or sold ZAP seed potatoes, including details of quantity, variety, class and size.
- 6.4 The Other Party grants ZAP and its representatives the right to inspect, test and check all fields planted with seed potatoes bought from ZAP. The Other Party, if so requested by ZAP and/or its representatives, must point out all fields planted with seed potatoes originating from ZAP.
- 6.5 The Other Party is obliged to grant supervisory powers carrying out inspections on behalf of ZAP direct access to its business and the potatoes, either in the field or stored, in respect of a protected variety delivered to the Other Party. If so requested, the Other Party must also provide direct access to its administrative records that are relevant to the investigation, including invoices.
- 6.6 In the event ZAP is drawn into proceedings in respect of plant breeder's rights or other industrial property rights, the Other Party is obliged to render all assistance as desired by ZAP, including assistance in the collection of evidence.
- 6.7 In the event of resale of seed materials of varieties that are subject to plant breeder's rights, the Other Party is obliged to stipulate with its customer(s) the provisions of articles 6.1 to 6.7. The Other Party is at all times responsible for compliance with these obligations by its customer(s).
- 6.8 In case the Other Party does not comply with the provisions in sections § 6.3, 6.4, 6.5, 6.6 and/or 6.7 it forfeits a penalty of EUR 10.000 per day or occasion – such in the sole discretion of ZAP – to ZAP, without prejudice to ZAP's right to claim damages, including loss of profit.

## **7. Quality standards**

- 7.1 ZAP supplies seed potatoes subject to the standards the class of seed potatoes to be delivered must meet as stipulated in the inspection regulations of an officially certifying body. No additional guarantees are given by ZAP, unless explicitly agreed otherwise. ZAP reserves the right to apply more stringent standards than the officially certifying organisations.

## **8. Force majeure**

- 8.1 If, due to force majeure, ZAP is unable to fulfil any obligation it has towards the Other Party and, in the opinion of ZAP, the force majeure event is of a temporary nature or a passing phase, ZAP shall be entitled to suspend performance of the agreement until the circumstance, reason or event causing the force majeure situation has ceased to exist.

- 8.2 If after a force majeure event as referred to in this article the circumstances have changed to the extent that ZAP cannot reasonably be expected to perform the agreement anymore, ZAP shall be entitled to dissolve the agreement. If the force majeure event with regard to potatoes grown in any year still exists on 15 July of the subsequent year, the agreement shall be dissolved by operation of law on that date, without the right to compensation.
- 8.3 Notwithstanding the force majeure clauses in the RUCIP, AHP, AHV and/or VAVI conditions, force majeure applies, but is not limited to, in all of the following events: strikes; walkouts; government measures and/or regulations preventing, delaying or otherwise impeding the fulfilment of obligations; lack of means of transport; any possible routes or means of transport being impassable or unusable; interruptions in the supply of energy, raw materials, semi-finished or end products; insufficient stock due to weather conditions and quarantine diseases, technical breakdowns and/or defects, pandemics / epidemics including associated restrictions on the movement of goods.

### **9. Restricted Harvest Clause**

- 9.1 All sales of ZAP are subject to harvest. If due to a disappointing harvest in terms of quantity or quality of the potatoes fewer products are available, which includes rejects by bodies competent to that effect, than was reasonable to expect upon conclusion of the agreement, ZAP has the right to reduce the quantity it sells accordingly. The above also applies if the products bought through cultivation contracts prove to be insufficient to satisfy all customers of ZAP. By supplying this reduced quantity ZAP thus fully meets its obligations to deliver. In that instance, ZAP is not obliged to supply replacement products, nor can ZAP be held liable for any damage.

### **10. Right of Retention**

- 10.1 Towards anyone who demands surrender thereof, ZAP has a right of pledge and a right of retention on all goods, documents and monies of the Other Party, regardless of their destination, held by ZAP, for as long as the Other Party has not fulfilled all its obligations towards ZAP, in respect of all current and future claims ZAP has against the Other Party.
- 10.2 ZAP can also exercise the rights granted to them in paragraph one of this article in respect of everything else the Other Parties owes ZAP in respect of previous instructions.

### **11. Validity**

- 11.1 If any stipulation in the ZAP General Conditions should prove partially or wholly invalid and/or unenforceable, the validity of the remaining stipulations of the ZAP General Conditions shall remain unaffected.

The ZAP General Conditions can be consulted at [www.zappotato.com](http://www.zappotato.com) . A copy shall be sent upon first request, free of charge. In the event of conflicts between the Dutch wording of the ZAP General Conditions and versions of these conditions in languages other than the Dutch language, the Dutch text shall prevail.