



MOERHANDELAARSFORUM VAN SUID-AFRIKA SEEDPOTATO TRADERS FORUM OF SOUTH AFRICA

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SEED POTATOES

SALES AGREEMENT

BUYER : _____

ADDRESS : _____

1 CONTENTS OF AGREEMENT

This agreement specifies the terms and conditions regulating the sale of seed potatoes by a member of the Seed Potato Traders' Forum of South Africa to the buyer as described above (**the Buyer**), and is binding on both the Buyer and the member of the Seed Potato Traders' Forum of South Africa (**the Member**) with whom the Buyer enters into the contract, with effect from the date on which the Buyer signs the order form of the Member.

2 ONCE-OFF SIGNING

This agreement shall be signed only once by the parties, but shall be read together with all seed-potato order forms accepted in writing by the Member, as well as all addenda agreed to from time to time by the Buyer and the Member, and all invoices submitted by the Member in this regard. This is in addition to any credit agreement entered into between the Buyer and the Member, who may permit the purchasing of seed potatoes on credit at his sole discretion.

3 RISKS ASSOCIATED WITH THE HANDLING AND USE OF SEED POTATOES

The Buyer acknowledges and confirms that:

- 3.1 seed potatoes are living organisms that are **highly perishable, unstable and degradable** ;
- 3.2 the handling, storage, transportation and cultivation of seed potatoes **require a high level of expertise**, and the Buyer confirms that he (and any transport company and/or any cold-storage facility acting on his behalf or storing the seed potatoes on his instructions) is suitably qualified to handle, transport or store the seed potatoes;
- 3.3 **guidelines for the handling, storage, transportation and cultivation of seed potatoes** form part of this agreement, as Appendix "A", and that it is the Buyer's responsibility to act in accordance with these recommendations;
- 3.4 since these instructions could never be considered comprehensive and could never take all possible circumstances into consideration, the Buyer shall consult a suitable expert in the case of a situation not addressed by these recommendations;
- 3.5 although the Member shall only sell seed potatoes that are certified in accordance with the rules of the Potato Certification Scheme, in terms of the Plant Improvement Act, 1976 (Act No. 53 of 1976), the certification of seed potatoes and/or plant material **provides no absolute guarantee against all forms of diseases and infections** ;

- 3.6 certification **does not guarantee the marketability, quantity or quality of the crop produced from** certified seed potatoes;
- 3.7 the Buyer accepts the **certification of the seed potatoes, as indicated on the package during the certification process**, although the Potato Certification Service reserves the right to amend the disease status of the seed potatoes following certification and the delivery thereof to the Buyer.

4 **EXCLUSION OF LIABILITY**

The Buyer acknowledges and confirms that:

- 4.1 The Member is not the producer of the seed potatoes and consequently **provides no guarantee or undertaking in any form with regard to the seed potatoes and/or the crop produced from such (including, but not limited to, the certification, quality, disease status and/or maturity of the seed potatoes)**, and the Member shall **not be held liable for any consequential damage (including the loss of profit)**;
- 4.2 should it become apparent that the **Consumer Protection Act, 2008** (Consumer Protection Act) is applicable to the transaction, and the Buyer has a rightful claim, the Member is only liable in terms of that Act, with all residual public liability being excluded, and the Member's liability is limited to the payment made for the seed potatoes;
- 4.3 all orders accepted by the Member are subject to the final harvest yield, as well as the grading and certification of the seed potatoes; consequently, the Member cannot guarantee that any order will be fulfilled on time or at all;
- 4.4 should it not be possible to fulfil a particular order accepted by the Member in writing, all allocations shall be made according to the Member's sole discretion; although the Member undertakes to at all times make every effort to ensure the fair allocation of the available supply of seed potatoes, subject to clause 4.2 above;
- 4.5 The Member shall in no way be liable for any damages that may be incurred as a result of any events/circumstances beyond the Member's control and which may affect or delay the delivery of seed potatoes to the Buyer, including but not limited to drought, excessive rainfall, hail, diseases, heatwaves, or any other type of negligence or delay by any producer of seed potatoes;
- 4.6 the price of seed potatoes (which shall be market related) shall be determined by the Member on the date on which such Member accepts the seed-potato order, and no price indicators/quotations requested by the Buyer prior to this date shall be in any way binding on the Member;
- 4.7 the weight of the seed potatoes shall be determined during packaging, and the Member shall not be liable for any reduction in weight that may occur for any reason whatsoever after packaging; and
- 4.8 irrespective of the fact that seed potatoes are graded as accurately as possible, the Member shall in no way be liable in cases where the seed potatoes delivered are smaller or larger than the size ordered.

5 **TRANSPORTATION COSTS**

The costs associated with the delivery of seed potatoes to the Buyer are not included in the price of the seed potatoes and are payable by the Buyer. If expressly requested by the Buyer during the ordering process, the Member shall assist the Buyer in terms of arranging the necessary transportation and insurance on behalf of the Buyer. In such a case, the Member acts as an agent on behalf of the Buyer, and all costs incurred in this regard shall be payable by the Buyer, and the transportation agent shall be the transportation agent of the Buyer.

6 **DELIVERY AND RISK**

The delivery of any order of seed potatoes shall occur upon the collection of such seed potatoes by the Buyer or his nominated transportation agent from the premises of the seed-potato producer, at which point all risks associated with said seed potatoes are transferred to the Buyer.

7 **COMPLAINTS RELATING TO SEED POTATOES**

Given the nature of seed potatoes, the Buyer undertakes to notify the Member in writing of any complaints relating to seed potatoes, within 7 days from the delivery thereof to the Buyer himself or any transportation agent or cold-storage facility leased by the Buyer (or as soon as possible thereafter), but in any event before the planting of said seed potatoes. The Buyer hereby authorises the Member (or any person properly authorised by the Member) to access the Buyer's premises in order to inspect the seed potatoes and to take samples thereof in an effort to investigate or address the Buyer's complaint.

8 **RETURNING OF SEED POTATOES**

Seed potatoes that have been purchased **are only returnable by the Buyer within 10 days** after delivery thereof to the Buyer himself or his transportation agent or the storage facility leased by the buyer, or to the extent to which he is entitled thereto in terms of the Consumer Protection Act, should the Act be applicable to the transaction in question.

9 **PLANT BREEDER'S RIGHTS**

The Buyer acknowledges the rights specified in terms of the Plant Improvement Act, Act 15 of 1976. The Buyer undertakes not to cultivate or retain for his own use any seed potatoes of a licensed variety, unless with the express written permission of the Member who supplied said variety. A retention fee shall be agreed upon in the approval. The trading of any licensed variety by the Buyer is expressly prohibited and is in contravention of the Plant Improvement Act, Act 15 of 1976.

10 **CREDIT PROVISION**

The provision of credit to the buyer is at the Member's discretion and shall only occur in accordance with a credit agreement in a format acceptable to the Member and which is properly signed by the Buyer.

11 **JURISDICTION**

In addition to any forum that has jurisdiction in terms of the Consumer Protection Act in relation to any dispute that may arise from this agreement, both parties hereby agree, as per Section 45 of the Magistrates' Courts Act, 1944, to the non-exclusive jurisdiction of any magistrate's court that has jurisdiction in terms of Section 4 28 of said Act, notwithstanding the fact that the value of the claim or the matter in dispute may otherwise exceed the jurisdiction of the magistrate's court.

12 **AMENDMENT OF THE AGREEMENT**

This agreement may be amended in full or in part by the Member, provided that the Member shall notify the Buyer in writing of said amendment. This agreement has no fixed term, and the Member shall be under no obligation to accept any order of seed potatoes placed by the Buyer, and the Buyer shall be under no obligation to order any seed potatoes from the Member, particularly where the amendment is not acceptable to the Buyer.

13 **WAIVING OF RIGHTS**

Any negligence or delay by the Member in the exercising of his rights in terms of this agreement does not constitute the waiving of such rights and shall have no effect on any further or future exercising of said rights.

14 **DOMICILIUM CITANDI ET EXECUTANDI**

The *domicilium citandi et executandi* of the Buyer, for purposes of this agreement, is as follows:
(Residential Address)

We agree to the terms and conditions of this agreement as specified above, and we acknowledge receipt of the instructions pertaining to the handling, storage, transportation and cultivation of seed potatoes, as specified in Appendix "A" below, and we acknowledge that we had adequate opportunity to understand said provisions, and that the details, nature and consequences of those provisions in bold print were brought to our attention.

Signed by or on behalf of the Buyer at on this day of
201..

For:
Signee, who guarantees that he is properly authorised to act as such.

Signed by or on behalf of the Member at on this day of
..... 201..

For: A member of the Seed Potato Traders' Forum of South Africa:
Name of signee, who guarantees that he is properly authorised to act as such.
Please return the signed document to :

APPENDIX “A”

RECOMMENDATIONS FOR THE HANDLING AND STORAGE OF CERTIFIED SEED POTATOES

Please note that it is the responsibility of the Buyer to act in accordance with these recommendations, and since such recommendations could never be considered comprehensive and could never take all possible circumstances into consideration, the Buyer shall consult a suitable expert in the case of a situation not addressed by these recommendations and/or in extraordinary circumstances and/or in cases of doubt.

1. Prior to cold storage

- Seed potatoes must be handled with the utmost care in order to prevent or minimise damage.
- Seed potatoes must be fully ripened prior to cold storage – that is, the skin must be set. Should this not be the case, an expert must be consulted.
- Tubers infected with late blight, Fusarium or soft rot (*Erwinia*) should not go into storage, as infected tubers can contaminate other tubers.
- Seed potatoes must go into cold storage as soon as possible after harvesting, before they are allowed to sprout.
- Where immersion is used as a method of treating diseases in seed potatoes (a practice that is to be avoided where possible), such treatment must occur after cold storage. Treatment with powdered chemicals may occur at any time, however.
- The exposure and handling of seed potatoes must be limited at:
 - high temperatures (no higher than 25°C)
 - low temperatures (no lower than 10°C)
 - low humidity (particularly cultivars with a thin skin).

2. During cold storage

The potato tuber is a living organism. The tuber requires oxygen for respiration, producing heat, carbon dioxide and water. The condition of the tubers when entering cold storage largely determines how well they perform during storage and their quality upon removal therefrom.

2.1 Temperature

- Temperature is the single most important factor during storage. The ideal storage temperature is between 3.5°C and 4.5°C. Temperature fluctuations of more than 5°C for long periods of time must be avoided. Excessive temperature fluctuations are physiologically destructive to the tuber due to the conversion reactions that occur within the tuber.
- Temperature and relative humidity must be monitored at various locations in the cold-room and within the crates on a daily basis.
- Correct cold-storage practices require particular expertise and should preferably be left to professional service providers.
- Elite-class seed potatoes and early-generation seed potatoes should not be stored together with older-generation seed potatoes in the same cold-room, so as to prevent contamination.
- It is important that there is an agreement in place between the cold-storage facility and the owner of the seed potatoes.

Initialed by the Buyer

2.2 Ventilation

Besides temperature, ventilation is the most important factor. Seed potatoes produce CO² + moisture + heat, which must be removed by means of effective ventilation and air circulation. Care must be taken to ensure that cool air circulates through the containers in which the seed potatoes are stored and that it is not allowed to escape through openings or passageways, thus never reaching the potatoes. Where the seed potatoes are stored in crates, such crates must be packed in blocks with ventilation gaps 300 – 400 mm wide. Crates must be packed in such a way that air is able to circulate around the potatoes in the crates. To prevent the build-up of CO² where there is no regular intake of fresh air from outside through the ventilation system, the doors may be opened for short periods of time once or twice per week. This will provide the necessary oxygen to facilitate the healing of wounds and to inhibit sprouting. The following points are of importance:

- The ventilation system should only be activated where the ventilation air is cooler than the seed potatoes, so as to prevent the condensation of free moisture on the surface of the potatoes, which is to be avoided at all costs.
- The ventilation air must be humidified at 90% to 95%.
- A constant airflow must be maintained.
- The temperature of the ventilation air may not be below 3,5°C.
- Care must be taken to ensure that seed potatoes stored directly beneath the ventilators are protected from moisture.
- Condensation must be avoided.
- Low humidity causes seed potatoes to crack and be crushed.
- Seed potatoes must at all times be kept in a clean and disease-free environment.
- A battery-/gas-powered forklift should preferably be used in the cold-room.
- Plastic sheets in the doorways will help to prevent cool air from escaping while moving seed potatoes in and out of the cold-room.

2.3 Storage periods

Seed potatoes can be kept in cold storage for up to six months, depending on the aforementioned conditions, as well as the cultivar. Storing seed potatoes for excessively long periods will affect the vigour of the plants.

3. Following cold storage

3.1 Warming

Under no circumstances should cold seed potatoes (prior to warming/acclimatisation) be offloaded or handled. Warming must occur gradually. The warming of seed potatoes must take place over a period of at least 4 to 5 days. The rapid warming of seed potatoes to 15°C will cause condensation to form and thus encourage rotting. Condensation on the surface of seed potatoes must be avoided. As the temperature of the tuber starts to rise, the respiration process accelerates. If warming occurs too quickly, the tuber is deprived of oxygen and the cell walls collapse.

Seed potatoes should only be transported once the warming/acclimatisation process is complete.

3.2 Delivery after warming

- Following cold storage and the subsequent warming process, the seed potatoes must be stored in a well-ventilated, covered pack-house.
- The seed potatoes should under no circumstances be exposed to direct sunlight for longer than one hour.
- Trucks should preferably be parked under cover while being loaded. The exposure of seed potatoes to high temperatures must be avoided [for example, seed potatoes should not be packed near the roof, walls or windows of the pack-house].
- Prior to loading the truck, care must be taken to ensure that the truck bed is clean and cool, especially after having been parked in the sun.
- Under no circumstances may seed potatoes be loaded onto a wet truck bed.
- Seed potatoes should not be offloaded or transported at the hottest time of the day.
- Where possible, trucks should be fitted with shade-nets (approximately 80%) rather than solid canopies so as to allow for better ventilation of the load while also preventing sunburn. (It is important to take note of the weather conditions, as seed potatoes should not be exposed to rain or extreme temperatures).
- Seed potatoes should preferably be transported under cool conditions (late evening or early morning).

4 Delivery of Seed

- A bag of seed potatoes is deemed certified only if sealed with a PCS label.
- It is important for the quality of the seed-lot to be confirmed prior to offloading. During the load inspection, particular care must be taken to check for signs of mechanical damage, wet rot, silver scurf, anthracnose, etc. The Member and the supplier in question must be contacted with respect to the condition of the seed-lot prior to the offloading and intake of the load.
- It should be kept in mind that there are several factors that can affect the quality of the seed potatoes between the time of certification and the time of planting.
- **Any problems that are observed with regard to the seed potatoes must be reported without delay to the Member and the supplier in question, within seven (7) days after delivery or as soon as reasonably possible thereafter, but in any event prior to the planting of said seed potatoes.**

5 Planting of Seed

- Seed potatoes should only be planted a minimum of 14 to 20 days after being removed from cold storage. Thirty days after being removed from cold storage, seed potatoes start to experience a drastic decline in vigour and yield.
- Seed potatoes must be stored in a well-ventilated, covered pack-house at a moderate temperature, preferably not exceeding 25°C, until the time of planting.
- Where seed potatoes are stored for periods of longer than two (2) weeks, they must be regularly inspected for the presence of moths, which can damage the eyes of the seed potatoes. If moths are detected, the necessary control measures must be applied.
- It is important to ensure that seed potatoes are mature (with sprouts approximately 0,5 centimeters in length appearing at several eyes) before commencing with the physical planting thereof. Different varieties have different dormancy periods, and the Buyer is responsible for ensuring that he is fully aware of these periods in order to reduce the risk of significant loss.
- Planting should be done during the recognised timeslots applicable to the respective regions of the country. Extremely cold or hot conditions during the planting or growing process will have a negative effect on production.

- Seed potatoes should not be exposed to direct sunlight for long periods of time. A temperature of 35°C and higher can cause damage to seed.
- It is recommended that the seed be protected with shade-nets during the planting process in order to prevent sunburn.
- The seed must be protected from moisture of any sort.
- It is important that the seed is planted at the correct depth, and the Buyer is responsible for ensuring that he is familiar with the respective depths. Planting at the wrong depth can result in significant losses in terms of yield.
- Cultivar, tuber size, climatic conditions and soil type are among the factors that determine the planting depth.
- In cases where it is necessary to cut seed, the following recommendations apply:
- The cutting and planting of seed potatoes should be avoided in hot weather conditions and should only be done in winter.
- Knives used in the cutting of seed potatoes must be disinfected throughout the process in order to prevent or limit the transmission of disease.
- There must be confirmation that the planter has the capacity for larger cuts of seed potatoes, since failure to do so could have a negative effect on the plant stand.
- Seed potatoes should not be cut within at least seven (7) days after removal from cold storage, so as to ensure optimal emergence.

6. Dipping or treating of seed for the prevention of seed or early sprouting

- It must be ensured that the cultivar to be planted is suited to the intended treatment.
- The use of powdered chemicals and high-pressure hoses on the sorting line is recommended. Immersion is not recommended. If immersion is unavoidable, it is recommended that it be done during winter only.
- Immersion can cause rotting and the transmission of disease.
- Seed should be treated with registered products only. A chemical advisor should be consulted in respect of the proper usage.
- All equipment used in the application process must be thoroughly rinsed in order to remove any chemical residue.

7 Growing practices

- A good crop rotation system is essential in the cultivation of potatoes in order to prevent soil diseases.
- Only registered chemicals should be used.
- The soil must be properly prepared so as to ensure good soil aeration, amongst other things.
- It should be kept in mind that crusting and/or compaction of the soil may occur following high rainfall.
- Adequate irrigation is essential, as the moisture content of the soil is an important factor in terms of optimal yield.
- Fertilisation programmes must be followed as per the exact specifications.
- Seed must be handled with the utmost care at all times. Rough handling of the seed can cause internal damage or cracking.
- All seed packaging must be properly aerated.
- If, for any reason, mechanical processing should be necessary after planting, care must be taken not to damage the roots of the plants, as this would have a negative effect on yield.

