
General Terms and Conditions of Sale and Delivery Wing Seed B.V.

All agreements to which Wing Seed B.V. is a party shall be subject to the General Terms and Conditions of Wing Seed B.V., including the stipulated limitation of liability, arbitration agreement and jurisdiction clause. These general conditions are digitally available at www.wingseed.nl and filed with the Chamber of Commerce for Noordwest Holland, and will be forwarded at no payment upon request. Applicability of the general conditions of Buyer is explicitly rejected.

Article 1 - Definitions

1. The definition in these general terms and conditions of "Wing Seed" shall be Wing Seed B.V., with its registered office in (1601 MH) Enkhuizen, at De Star no. 23H, registered with the Chamber of Commerce for Noordwest Holland under number 36046160.
2. The definition of "Buyer" shall be the natural person or legal entity entering into an agreement with Wing Seed.
3. The definition of these "General Terms and Conditions of Sale and Delivery" shall be "General Terms and Conditions"
4. The definition of "Intellectual Property Rights" shall be all existing and future trade secrets, copyrights, tradenames, trademarks, design rights, variety name, patents, plant patents, plant breeder's rights and/or other or related (intellectual property) rights, globally.
5. The definition of "Order Confirmation" shall be the written acceptance by Wing Seed of an Order, by means of a letter, email or electronically otherwise (internet, app).
6. The definition of "Quote" shall be the particular terms applicable to a specific sale of Products proposed by Wing Seed to Buyer.
7. The definition of "Order" shall be an order for the purchase of Products communicated by Buyer to Wing Seed.
8. The definition of "Parties" shall be Wing Seed and Buyer collectively.
9. The definition of "Plant Material" shall be all crops and (plant) material grown out of, produced or cultivated or derived from the Products, destined for human (or animal) consumption.
10. The definition of "Products" shall be all seeds and planting material delivered by Wing Seed to Buyer.

Article 2 – Applicability of these General Terms and Conditions

1. These General Terms and Conditions shall apply to and shall form an integral part of all agreements regarding Products between Wing Seed and Buyer.
2. Wing Seed reserves the right to change these General Terms and Conditions from time to time. The new version of General Terms and Conditions will then apply as of the first Order from the Buyer and any and all new Orders thereafter.
3. These General Terms and Conditions apply notwithstanding any terms and conditions contained in or referenced in any Order or in any other communication from Buyer, whether in written, electronic, or any other form. Any acceptance of an Order or other communication from Buyer by Wing Seed is expressly conditioned on Buyer's assent to these General Terms and Conditions, including, without limitation, any terms and conditions herein that are different from or not contained in such Order or other communication from Buyer. Any terms and conditions in an Order or in any other communication from Buyer that are different from or in addition to these General Terms and Conditions or any terms in an Order Confirmation are expressly rejected by Wing Seed.
4. Buyer herewith grants in advance permission for transfer by Wing Seed to another third party of any of its rights and receivables against or owned by Buyer.

Article 3 – Quotes, Orders, and Order Confirmations

1. All Quotes made by Wing Seed shall be non-binding and without obligation and shall lapse in each event upon expiration of five business days.
2. All Orders received by Wing Seed are subject to acceptance by Wing Seed in an Order Confirmation. Varieties and quantities confirmed in Order Confirmations are contractual obligations of Buyer. Adjustment thereof shall require written agreement of Wing Seed unless waived.
3. Without limiting the standard harvest- and processing reservation (article 5.3), Wing Seed shall be entitled to withdraw a Quote and/or cancel any Order Confirmation, in writing within five business days without explanation. In such event, no agreement has been concluded between the Parties.
4. In case Buyer cancels the Order after receiving the Order Confirmation, the Buyer is liable to pay a minimum of 10% of the price that Wing Seed would have charged upon delivery, without limiting Wing Seed's rights to demand compensation of its damage and costs in full. Buyer may not cancel after shipment.
5. Buyer shall be obligated to communicate to Wing Seed within a reasonable period, but in any event within thirty (30) days prior to the contemplated date of delivery, all information relevant for (international) shipping of the Products. Buyer shall communicate to Wing Seed information concerning the formalities required to enable import into the country specified by Buyer. Buyer shall communicate to Wing Seed information concerning any (change in) requisite (international) certificates, phytosanitary issues, import documents, (pro forma) invoicing and labelling. If Buyer fails to perform any of these obligations then Buyer shall be in default, without a defaulting notice being required. Buyer shall be liable for loss incurred by Wing Seed as a result of inaccurate or overdue information required by this paragraph.
6. Wing Seed is not liable for delays or non-handling of an Order resulting from or in connection with Buyer's failure to comply with any of its obligations under this article. Buyer shall be liable for any loss or damage incurred by Wing Seed resulting from or in connection with such failure.

Article 4 – Prices

1. All prices that are communicated by Wing Seed to Buyer shall be:
 - a. exclusive of any costs of non-standard treatment, (non-standard) packaging, (quality) certificate costs, transport, shipping and insurance, pre-shipment inspection;
 - b. exclusive of any and all taxes, levies, tariffs and fees imposed by any federal, state, local, or foreign authorities (including, but not limited to, sales, use, excise, and value-added taxes, custom duties, and similar tariffs and fees) ("Taxes");
 - c. a. and b. apply unless specified otherwise;
 - d. Buyer agrees to indemnify Wing Seed in connection with any claim for such Taxes.
2. Wing Seed shall be entitled to pass on to Buyer increases in cost price of one or multiple elements of the quoted sale price.
3. All stated prices are subject to change by Wing Seed. Wing Seed reserves the right to change its prices unilaterally and periodically. Any new prices will be communicated to Buyer by Wing Seed and immediately apply in lieu of earlier listed and/or offered prices.

Article 5 – Delivery

1. Wing Seed shall deliver to Buyer according to the Order Confirmation.
2. Wing Seed shall use its reasonable endeavours to perform according to the Confirmation Order. Nevertheless, delivery with a minor difference in size, packaging, quantity or weight still constitutes full performance of Wing Seed's obligations.
3. All Order Confirmations are subject to standard harvest and processing reservations (including but not limited to non-availability, seed production failure, seed quality issues and/or the like). In the event of aforementioned reservations Wing Seed is not obliged to deliver but will endeavour to deliver pro-rata quantities and/or comparable alternatives, and Buyer shall not be entitled to any compensation of damages or costs.
4. The delivery periods agreed by Parties shall be estimates only and not constitute firm delivery dates. Wing Seed shall not be liable for loss resulting from agreed delivery periods being exceeded. Delivery periods being exceeded shall not in any circumstance entitle Buyer to cancel the agreement.

5. Delivery by Wing Seed shall be Free Carrier (FCA Enkhuizen), according to the Incoterms 2010 of the International Chamber of Commerce in Paris (ICC), or any other Incoterms qualification agreed between Wing Seed and Buyer in the Order Confirmation.
6. Upon delivery Buyer shall be obligated to immediately check the Products delivered, whether or not by engaging the services of the carrier or another person who will be provided by Buyer with the pertinent instructions.
7. Buyer shall inspect the Products immediately upon receipt:
 - a. whether there is any damage of the packaging
 - b. whether the correct Products have been delivered
 - c. whether the quantity of the Products corresponds to the Order Confirmation
 - d. whether the items delivered satisfy all quality requirements expressly agreed to in writing by both Parties.

Article 6 – Payment

1. Buyer shall provide payment in the agreed currency mentioned on the invoice, within the due date on the invoice, unless previously agreed otherwise in writing, through transfer into a Dutch bank account of Wing Seed company, designated by Wing Seed. Buyer shall always thoroughly review any invoice before payment thereof. In case of any change in bank account information or any other suspicion of hacking or fraud, Buyer shall immediately contact, by telephone, the corresponding sales manager of Wing Seed to verify the correct payment details. Buyer has no right to suspend payment or make deductions or set-offs. In case of any hacking or fraud, such payment will not release Buyer from payment to Wing Seed.
2. If on the first day upon the due date of the invoice no full payment has been received by Wing Seed, Buyer shall be in default, without any notice being required.
3. If payment in instalments has been agreed then, if any instalment is not duly paid, Buyer shall, without any notice being required, be in default and the remaining instalments shall immediately be due and payable.
4. Once Buyer is in default, Wing Seed shall be entitled to take, without any further notice, extrajudicial collection measures. Buyer shall be obligated to pay all associated costs. The extra-judicial collection costs shall be at least 15% (fifteen percent) of the collectible amount, at a minimum of € 250 (two hundred and fifty euros) ex VAT. Buyer shall owe compensation of extra-judicial collection costs as from the day that Buyer is in default.
5. Once Buyer is in default, Buyer shall be obligated to pay Wing Seed a contractual interest of the lesser of 1% (one percent) per calendar month or the maximum rate permitted by applicable law. The contractual interest due shall be calculated over the total invoice amount including VAT, increased by the extra-judicial collection costs. The contractual interest shall be calculated from the date that Buyer is in default until the day of full settlement, whereby a portion of a commenced calendar month shall count as a full month. Upon each calendar year end, the amount over which the contractual interest is calculated shall be increased by the contractual interest due over that calendar year.
6. All payments made by Buyer shall serve, regardless of any notices sent by the latter, firstly to reduce the extra-judicial collection costs due at that moment, then to reduce the contractual interest due at that moment, and then to reduce the oldest invoice amount due at that moment. Once Buyer is liquidated or has been granted a moratorium or a decision has been made that it will be liquidated, all receivables of Wing Seed shall be immediately due and payable.

Article 7 - Use of Products / Limited License

1. Buyer may use the Products for the sole purpose of a single commercial production or cultivation and sale of Plant Material as produce only.
2. Buyer may sell or transfer the Products to other parties for the sole purpose of producing a crop for sale of Plant Material as produce, only if such sale or transfer is explicitly subject to the terms and limitations of these General Terms and Conditions and a separate distribution agreement is agreed between Parties.
3. Buyer may not use or cause or permit the use of the Products, Plant Material or any material therefrom such as but not limited hereto: parental lines, derived varieties (e.g. mutants), resultant plant, plant tissue and/or genetics for any research, breeding, molecular or genetic analysis, reverse engineering, seed (re)production, propagation, multiplication and/or for any other purpose other than commercial production or cultivation of Plant Material as described in these General Terms and Conditions.

Article 8 – Default, Suspension and Dissolution of the Agreement

1. If Buyer fails to fulfill one or more of its contractual obligations under the agreement, including but not limited to these General Terms and Conditions, or to do so correctly and/ or in time, Buyer shall be automatically and without formal notice in default and:
 - a. Wing Seed' obligations will automatically and may immediately be suspended; and/ or
 - b. Wing Seed may demand full payment and/or sufficient security from the Buyer, for instance in the form of a bank guarantee to be issued by a reputable banking institution in the Netherlands, with regard to the performance by Buyer; and/or
 - c. without prejudice to any if rights of Wing Seed under the agreement, including but not limited to the right to claim from the Buyer compensation of all its damage and costs resulting from such default.
2. Wing Seed reserves the right to suspend performance under any agreement with Buyer, including but not limited to withholding all deliveries, until such time as all and any outstanding payments (including payments of any interest and/or extra-judicial collections costs) owed by Buyer to Wing Seed under any agreement have been made.
3. Once Buyer is in default, declared bankrupt, in liquidation or has been granted a moratorium, a decision to liquidate has been made, placed under guardianship, and/or the like, Wing Seed shall have the right to suspend performance of all its obligations towards Buyer and to cancel the agreement at its discretion through an extra-judicial declaration, without this resulting in Wing Seed owing any damages, whereby all obligations of Buyer towards Wing Seed shall be immediately due and payable.
4. If Wing Seed has a claim against a company related to Buyer – e.g. a parent, subsidiary, or sister company – and that company is in a state of bankruptcy or liquidation or has been granted suspension of payment, Wing Seed may set off that claim against any claim the Buyer may have against Wing Seed, even if Wing Seed's claim may not have become payable at that time.

Article 9 – Complaints

1. Buyer shall be obligated to check the delivered Products and the packaging materials immediately upon delivery in accordance with article 5.7. If Buyer is of the opinion that Wing Seed has failed in the performance of its obligation to make delivery, Buyer shall present in writing stating reasons the pertinent complaint to Wing Seed within 2 (two) days upon delivery. If Buyer is of the opinion that the situation involves defects not visible at the time of delivery then it shall present in writing the pertinent complaint to Wing Seed no later than within 2 (two) days upon discovery of the alleged defect, but in any event within 6 (six) months upon delivery.
2. The written notice shall provide the Order- and batch-number, the basis for any complaint as well as supporting evidence (photo's, expert statements etc.) in such a manner that Wing Seed or a third party expert can verify the complaint. Subsequently within 14 (fourteen) days upon having ascertained the alleged defect, Buyer shall present to Wing Seed documentary evidence proving (the nature and scope of) the defect.
3. Buyer is required to limit as much as possible the damages in respect of which the Buyer submits a complaint to Wing Seed.

4. Upon expiration of the periods specified in the preceding sub-clause 1, all rights and defences of Buyer relating to the cause(s) of the complaint shall lapse and it shall be established fact between Parties that Wing Seed has adequately performed its obligation to deliver. As from that moment, furnishing counterproof by Buyer shall be precluded.
5. Notwithstanding the preceding sub-clauses of this article, it shall be established fact between Parties, without any option of furnishing counterproof, that Wing Seed shall have adequately performed its obligation to deliver, if Buyer has used, processed or manipulated the Products or has resold the same to a third party.
6. Under no circumstances shall Buyer have any right to return the Products delivered by Wing Seed, except with the written permission of Wing Seed while observing further conditions possibly imposed by Wing Seed.
7. Although Buyer has filed a claim in time, this will not suspend Buyer's obligation to pay any outstanding amount.
8. If any complaint is acknowledged by Wing Seed then it shall be competent at its discretion to either replace the relevant goods and compensate for the cost of freight, or credit Buyer for the relevant portion of the delivery. The foregoing shall be Buyer's sole and exclusive remedy, and Wing Seed' sole and exclusive obligation and liability, in the event of any complaint by Buyer under this Article 9 or any alleged default, shortage, or defect of Products.
9. The dimensions and weights as specified in the Order Confirmation prepared by Wing Seed shall be deemed to be accurate, unless Buyer proves a variance in excess of 3% (three percent) in which event the amount payable shall be adjusted accordingly.
10. If there exists a difference of opinion between the Parties as to whether the delivered Product is defective in terms of germination, genuineness and/or pureness of a variety, technical pureness and health then the Parties shall in mutual consultation, and failing consensus at own initiative, appoint an expert to conduct an investigation. Both Parties shall afford the expert(s) their cooperation to enable him/them to conduct this investigation. The Parties shall bear their own costs for this investigation.

Article 10 – Reservation of Title

1. Title to the Products delivered by Wing Seed shall transfer to Buyer only after the latter shall have performed all its obligations towards Wing Seed including payment of contractual interest and extra-judicial collection costs due, if any. Risk of loss or damage shall nonetheless transfer to Buyer upon delivery as set forth in article 5.5.
2. Buyer shall be permitted to resell or process the Products delivered by Wing Seed only in the context of its normal business operations, subject to the restrictions in Article 7. If the Products are resold, the Buyer is obliged to demand a retention of title from its buyers.
3. Buyer shall not be permitted to pledge the Products or to create any other (security) right with regard to the Products other than with the prior written permission of Wing Seed.
4. If the legislation of the country of destination of the Products delivered by Wing Seed affords farther reaching options to stipulate reservation of title than provided in the preceding sub-clause then Parties herewith agree that these farther reaching options shall be stipulated in favour of Wing Seed, such with the understanding that where it cannot be objectively established to which farther reaching rules this stipulation relates, the provisions in the preceding sub-clause shall remain applicable.
5. On demand of Wing Seed, Buyer shall vest a (non-possessory) right of lien in all goods into which the Products delivered by Wing Seed have been processed, or of which these form a part.

Article 11 – Intellectual Property

1. Wing Seed reserves all Intellectual Property Rights in and to, and Buyer agrees and acknowledges that Wing Seed has the exclusive, right, title to and interest in all Intellectual Property Rights on or related to, the Products and Plant Material and any mutations, (derived) varieties or any (biological) material obtained therefrom or included therein, including but not limited to parental lines, traits, genetics, technology and/or all its other (geno- and/or phenotypical) characteristics and designations. In the event any new Intellectual Property Rights are created, Buyer hereby assigns and transfers and agrees to assign and transfer such Intellectual Property Rights – without undue delay – to Wing Seed, which accepts such transfer. Buyer hereby authorizes Wing Seed to register and otherwise effect or complete such transfer under the applicable law and Buyer shall assist Wing Seed in carrying out all actions necessary to register, effect, evidence, and complete such transfer.
2. Buyer shall not register any trademark, trade name, company name, domain name, symbol or variety designation which is identical or confusingly similar to the trademarks, trade names, company names, domain names, symbols or variety designations owned by Wing Seed.
3. Buyer shall not be permitted to use trade names and trademarks owned or used by Wing Seed, except in its regular process of selling Products packed and delivered by Wing Seed, and then only in accordance with Wing Seed' directions and trademark usage guidelines.
4. Buyer shall not use the Products, Plant Material or any mutations, (derived) varieties or any (biological) material obtained therefrom or included therein, including but not limited to parental lines, traits, genetics, technology and/or all its other (geno- and/or phenotypical) characteristics and designations for the propagation or reproduction of source material. Nor shall Buyer apply treatments for the purpose of propagation or reproduction of source material.
5. In the event Buyer finds, observes or discovers a derived variety, including but not limited to any mutation in the production and cultivation of the Plant Material:
 - a. Buyer shall immediately notify Wing Seed and make sure Wing Seed is informed thereof;
 - b. Buyer will provide Wing Seed with test material at Wing Seed' first request;
 - c. Buyer shall not – without the prior written permission of Wing Seed - exploit the mutant or harvested material thereof, nor in this respect:
 - i. register for sale
 - ii. (re)produce or propagate, condition, offer for sale, sell or otherwise introduce into the market;
 - iii. export, import and/or
 - iv. store for one of the previous mentioned purposes
6. Buyer shall afford Wing Seed, or persons authorised by the latter, on demand immediate access to its enterprise(s) and (commercial) grounds and premises for the purpose of enabling verification of compliance with the provisions in this article. If the Products are being held for Buyer by third parties, or title to them has been transferred to third parties, then Buyer shall ensure that said third party is bound by Wing Seed' rights defined in the preceding sentence.
7. If Buyer violates any provision in this article, to the extent permitted by applicable law, it shall owe an immediately due and payable penalty to Wing Seed in the amount of € 5,000 (five thousand euros) for each violation for each subsequent day that the violation continues, notwithstanding Wing Seed's right to recover additional damages.

Article 12 – Product Information

1. Illustrations, catalogues, drawings and notices made available by or on behalf of Wing Seed regarding quality, composition, weight, dimensions, treatment in the broadest sense, cultivation-related information, and applications and properties of the Products shall be merely illustrative without the Products being required to be a match.
2. Cultivation-related recommendations preceding and during the cultivation of crops shall be made by or on behalf of Wing Seed without obligation and in a general sense, without any guarantee, representation or warranty regarding purpose of performance, and shall not affect the personal responsibility of Buyer to (cause to) evaluate such recommendations as to specific fitness for Buyer and other factors (potentially) affecting the cultivation of the crop.

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3. As used in the information supplied by Wing Seed, the following terminology shall mean:
 - a. Susceptibility means ‘the inability of a plant variety to restrict the growth and development of a specified pest.’
 - b. Resistance means ‘the ability of a plant variety to restrict the growth and development of a specified pest and/or the damage they cause when compared to susceptible plant varieties under similar environmental conditions and pest pressure. Resistant varieties may exhibit some disease symptoms or damage under heavy pest pressure’.
 - c. Two levels of resistance are defined:
 - i. High resistance (HR): plant varieties that highly restrict the growth and development of the specified pest under normal pest pressure when compared to susceptible varieties. These plant varieties may, however, exhibit some symptoms or damage under heavy pest pressure.
 - ii. Intermediate resistance (IR): plant varieties that restrict the growth and development of the specified pest but may exhibit a greater range of symptoms or damage compared to high resistant varieties. Intermediately resistant plant varieties will still show less severe symptoms or damage than susceptible plant varieties when grown under similar environmental conditions and/or pest pressure. It is to be noted that if a resistance is claimed in a plant variety it is limited to the specified biotypes, pathotypes, races or strains of the pest. If no biotypes, pathotypes, races or strains are specified in the resistance claim for the variety, it is because no generally accepted classification of the cited pest by biotype, pathotype, race or strain exists. New biotypes, pathotypes, races or strains that may emerge are not covered by the original resistance claim.
 - d. Immunity means ‘when a plant is not subject to attack or infection by a specified pest.’ Also regarding this terminology Wing Seed communicates without any guarantee, representation or warranty regarding purpose of performance and shall not be held liable for any information provided in relation hereto.
 4. Any and all warranties shall lapse and Wing Seed shall not be liable for any Product that has been repacked, treated, conditioned and/or manipulated in any way by Buyer or by Wing Seed or a third party at Buyer’s request.
 5. Except for any limited warranties expressly stated herein, Wing Seed hereby expressly disclaims any and all other warranties, whether express, implied, or statutory, including, without limitation, any implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, and any and all warranties that may arise from course of dealing, course of performance, or usage of trade.

Article 13 – Indemnification and Liability

1. Buyer shall indemnify Wing Seed against any and all claims of third parties for compensation of damage (all defects in the Products delivered either by Buyer directly or through Buyer as intermediary), or for infringements of (intellectual) property rights. Buyer shall for this purpose, on demand of Wing Seed, take legal action or institute arbitration proceedings. Buyer shall be liable for all legal representation costs being incurred by Wing Seed.
2. The terms and provisions of this agreement are intended solely for the benefit of each party hereto and their respective successors and permitted assigns, and the Parties do not intend to confer third-party beneficiary rights upon any other person. Buyer will indemnify and hold harmless Wing Seed to the extent that third parties assert that they derive rights from or allege a receivable on Wing Seed resulting from the agreement entered into between the Parties.
3. To the extent permitted by applicable law, in no event shall Wing Seed be liable for any indirect, special, incidental, or consequential damages of any kind, or any loss of profits, or loss or interruption of business, in connection with the Products or this agreement, or the Parties’ activities relating hereto, even if Wing Seed has been advised of the possibility of such damages. This exclusion of liability for loss can also be invoked by the (former) personnel, directors and supervisory directors of Wing Seed, by third parties engaged by it/them, including heirs and legal successors.
4. If, the preceding sub-clause notwithstanding, a liability for loss is established at law then liability of Wing Seed shall be limited to the payout made in the concrete case by its insurance company under its (business) liability insurance policy.

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5. If, the preceding sub-clause notwithstanding, a liability for loss is established at law, and in the concrete case no payout results under a (business) liability insurance policy then Wing Seed' liability shall be limited to the invoice amount, less any granted discounts and reductions and transport costs and VAT involved in (the pertinent portion of) the delivery.
 6. Buyer hereby explicitly understands and agrees to this limitation of liability of Wing Seed.

Article 14 – Force Majeure

1. If Wing Seed is faced with a circumstance due to which it cannot perform and which cannot be attributed to Wing Seed if and insofar as this circumstance makes performance impossible or unreasonably complicated (force majeure) then it shall be competent to suspend performance of all obligations towards Buyer and at its discretion dissolve the agreement through an extra-judicial declaration, without consequently coming to owe any damages to Buyer.
2. In addition to paragraph 1 and as variance with article 6:75 BW (BW = Burgerlijk Wetboek = Dutch Civil Code), the definition of a force majeure situation shall be: any circumstance not attributable to and reasonably not to be foreseen by Wing Seed as well as any foreseeable circumstance not dependent on the will of Wing Seed that temporarily or permanently prevents performance of the agreement. Force majeure situations shall in any event include: war, threat of war, civil war, riot, severe storm, hurricane, flood, water damage, other severe weather conditions, epidemics, fire, transport difficulties, unforeseen technical complications, business interruptions, work strikes at Wing Seed or at third parties whose services it has engaged, blockades, import and export bans whether or not ordered by phyto sanitary authorities, full or partial seizure or confiscation of stock at Wing Seed or at its suppliers by civil or military authorities, lack of transport capacity, non or untimely delivery by suppliers of Wing Seed, machine malfunctions, destructions and other standstills in the enterprises of Wing Seed or suppliers, as well as a shortage, whether or not resulting from price increases of the products or from government measures, which completely or temporarily impede or hinder delivery.

Article 15 – Dispute Settlement

1. In so far as the preceding provisions do not provide for a shorter period, Buyer shall submit any complaints to Wing Seed in writing no later than within 2 (two) months after the moment when Buyer could reasonably have been apprised of the reason for the complaint. After this period, all pertinent rights and defences of Buyer shall lapse. All rights of action and other rights or competences on any account towards Wing Seed and/or third parties in connection with any (non) performance or any acts of commission or omission on the part of Wing Seed shall become prescribed upon expiration of a period of 12 (twelve) months after the moment when Buyer could reasonably be aware of the existence of these rights of action or other rights or competences.
2. Any and all disputes arising from these General Terms and Conditions is agreement, or from further agreements resulting from it, shall be settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (NAI) in Rotterdam. The Arbitral Tribunal shall comprise of one arbiter. The venue of arbitration shall be in Amsterdam. The proceedings shall be conducted in the Dutch language, unless Parties agree to conducting the proceedings in another language. Joining the arbitral proceedings with other arbitral proceedings as provided in art. 1046 of the Dutch Code of Civil Procedure ('Wetboek van Burgerlijke Rechtsvordering') is excluded.
3. Wing Seed shall be entitled, if it chooses to disregard the arbitration agreement concluded between Parties, to submit disputes to the competent court in Alkmaar or another court outside the Netherlands that would have been competent without arbitration agreement and/or choice of law. Notwithstanding anything to the contrary, Wing Seed may seek injunctive or other preliminary relief, and enforce any of its Intellectual Property Rights, in any court of competent jurisdiction without being required to submit the matter to arbitration.

Article 16 – No Genetic Modified Organisms (GMO)

The seeds of the varieties delivered to the Buyer were obtained without making use of techniques of genetic modification that lead to genetically modified organisms to which Directive 2001/18 of the European Parliament and the Council of the European Communities dated 12 March 2001 on the deliberate release into the environment of genetically modified organisms applies. Since it cannot be ruled out that approved GM plants are also cultivated by third parties in the seed production areas, it is not possible to prevent the accidental presence of GM materials completely and to guarantee that the seed lots delivered are free from any traces of GM plants.

Article 17 – Conversion

Any provision of these General Terms and Conditions found to be void or voidable, and subsequently declared void, shall be replaced by a provision of a nature and purpose most approximating and with economic implications for Parties comparable to those of the void or voided provision. Invalidity or voiding of one of the provisions shall not affect the remaining provisions agreed between Parties.

Article 18 – Applicable Law

These General Terms and Conditions shall be governed by and construed in accordance with the laws of the Netherlands. Applicability of the Vienna Sales Convention (CISG) (in Dutch: 'Weens Koopverdrag') is explicitly excluded.