



# **International Seed Federation**

## **Rules and Usages for the Trade in Seeds for Sowing Purposes**

### **NOTE:**

These ISF Rules and Usages for the Trade in Seeds for Sowing Purposes were adopted by the General Assembly in Rio de Janeiro (Brazil) on 27 June 2012. They become effective on 01 January 2013 and replace all previous ISF Trade Rules and Usages.

The English text is the only original version.



# **ISF RULES & USAGES FOR THE TRADE IN SEEDS FOR SOWING PURPOSES**

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## **PART A. GENERAL PROVISIONS**

### **Section I. Scope of application and other general provisions**

#### **Art. 1**

- 1.1** The Rules and Usages for the Trade in Seeds for Sowing Purposes -"ISF Rules"- shall apply in national and international seed trade contracts when expressly agreed by the parties.
- 1.2** The term "seed" as used in these Rules implies all categories and classes of seed for sowing purposes, and, where appropriate, other reproductive plant material.
- 1.3** The "Terms and Definitions" as provided in the Annex are regarded as included in these Rules.
- 1.4** Contracts for the sale of seeds still to be produced are considered sales.
- 1.5** These rules consist of General and Specific Rules. The former apply to all species; the latter to specific groups of species sharing similar characteristics.
- 1.6** All parties shall respect the Intellectual Property Rights involved.

#### **Art. 2**

- 2.1** When the words "ISF Rules" have been embodied in a contract or in any other agreement, including Terms and Conditions of Sales pertaining to seeds, the present Rules shall apply in full and parties agree to solve any kind of disputes by ISF arbitration as mentioned in Art. 87.
- 2.2** The Vienna Convention (UN CISG 1980) does not apply under these Rules.
- 2.3** Any exceptions to these Rules or specific and/or additional provisions agreed by the parties shall prevail over the present Rules.

#### **Art. 3**

- 3.1** The Rules that apply in case of dispute are those in effect at the date of signature of the contract, unless otherwise agreed by the parties.
- 3.2** If the application of national laws renders one or several provisions of the present Rules null and/or void, the validity of all other provisions will not be affected by it.

## **PART B. FORMATION AND CONCLUSION OF A CONTRACT**

### **Section II. Offer and Firm Offer**

#### **Art. 4**

- 4.1** A quotation for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite; such an offer shows the intention of the Offeror to be bound in case of acceptance.
- 4.2** A quotation is sufficiently definite if it indicates or makes provisions for determining at least: the date, the name of the parties, the quantity, the price per unit, the species, the variety and the shipping terms. If the price is not fixed, a provision to determine the price is sufficient.
- 4.3** A quotation other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the quotation.

#### **Art. 5**

**5.1** An offer becomes effective when it reaches the Offeree. A new offer made by the Offeror before acceptance implies a withdrawal of the previous offer.

**5.2** Any offer, even if it is firm or irrevocable (hereinafter mentioned as firm), may be withdrawn if the withdrawal reaches the Offeree before or at the same time as the offer.

**5.3** Unless otherwise indicated, a firm offer is only valid 24 hours.

#### **Art. 6**

**6.1** Until a contract is concluded an offer may be revoked if the revocation reaches the Offeree before he has dispatched an acceptance.

**6.2** However, an offer cannot be revoked if it indicates that it is irrevocable whether by stating a fixed time for acceptance or otherwise.

**6.3** An offer, even if it is firm, is terminated when a rejection reaches the Offeror.

### **Section III. Acceptance**

#### **Art. 7**

**7.1** A statement made by or other conduct of the Offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

**7.2** An acceptance of an offer becomes effective at the moment the indication of assent reaches the Offeror. An acceptance is not effective if the indication of assent does not reach the Offeror within the timeframe of validity of the offer unless another timeframe has been fixed by the Offeror.

**7.3** An oral offer must be accepted immediately unless the circumstances indicate otherwise.

#### **Art. 8**

A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications constitutes a counteroffer and is a rejection of the offer.

#### **Art. 9**

**9.1** A period of time of acceptance fixed by the Offeror begins to run from the moment that the offer reaches the Offeree.

**9.2** Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the Offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the Offeror, the period is extended until the first business day which follows.

#### **Art. 10**

**10.1** A late acceptance is nevertheless effective as an acceptance if without delay the Offeror orally so informs the Offeree or dispatches a notice to that effect.

**10.2** If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the Offeror in due time,

the late acceptance is effective as an acceptance unless, without delay, the Offeror orally informs the Offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

**10.3** An acceptance may be withdrawn if the withdrawal reaches the Offeror before or at the same time as the acceptance would have become effective.

## **Section IV. Conclusion and form of the contract**

### **Art. 11**

**11.1** A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of these Rules.

**11.2** For the purposes of these Rules an offer, declaration of acceptance or any other indication of intention "reaches" the addressee when it is made orally to him or delivered by any other means to him, to his place of business or mailing address.

### **Art. 12**

**12** A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

### **Art. 13**

**13.1** A contract established by a broker shall be binding on both parties when they have received a communication of the broker with the contractual conditions mutually accepted, unless one of the parties refuses the other. In such a case, the refusal shall be declared by Telecommunication to the broker within maximum 48 hours after the receipt of the communication of the broker.

## **PART C. MAIN OBLIGATIONS OF THE PARTIES AND GENERAL CONDITIONS**

### **Section V. Main obligations of the parties**

#### **Art. 14**

**14.1** The Seller must deliver the seeds, hand over any documents relating to them and transfer the property in the seeds, as required by the contract and these Rules.

**14.2** The Seller must deliver seeds which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract or, failing an express agreement, as required by these Rules.

**14.3** The Buyer must pay the price for the seeds and take delivery of them as required by the contract and these Rules.

**14.4** The Buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made. The Buyer must pay the price on the date fixed by or determinable from the contract and these Rules without the need for any request or compliance with any formality on the part of the Seller.

**14.5** The Buyer's obligation to take delivery consists: (a) in doing all the acts which could reasonably be expected of him in order to enable the Seller to make delivery; and (b) in taking over the seeds.

## **Section VI. Quantity**

### **Art. 15**

**15.1** The contract shall indicate the total quantity of the transaction either by seed count, weight or volume.

**15.2** In case of seed count, the seller may be required by contract to specify the number of kernels contained in the standard unit. The tolerance shall be +/- 2%, if not stated "minimum" or "maximum".

**15.3** In case of seed weight, it shall clearly be indicated in the contract if the quantities are expressed in kilograms (kg), or in pounds (lb). If necessary, the following conversions shall apply:  
1 kg = 2.205 lb; 1 lb = 0.4536 kg.

### **Art. 16**

**16.1** The addition of the word "about" or "approximately" or similar, shall authorize the Seller to deliver, at the conditions of the contract, a quantity up to +/- 5% than the quantity agreed to in the contract.

**16.2** In case of non-delivery or partial delivery, the quantity indicated in the contract shall serve as basis for the accounting.

### **Art. 17**

If the quantity agreed to in the contract ranges between two figures, the Seller shall deliver within these limits. In case of non-delivery or partial delivery, the average of the two figures shall serve as basis for the accounting.

## **Section VII. Quality**

### **Art. 18**

**18.1** At the time of shipment, the seed shall be sound, sufficiently dry, without bad odor, unadulterated and marketable.

**18.2** Any treatment of the seeds shall be expressly agreed upon.

**18.3** Each lot, as well as the contents of each of the packages, shall be homogeneous.



#### **Art. 19**

**19.1** If a description of the quality is missing in the contract and if the standards are indicated in an annex of these rules corresponding to the designated species, these standards shall apply<sup>1</sup>.

**19.2** Except if otherwise specifically agreed by the parties, vigor characteristics are excluded from ISF arbitration. If vigor characteristics are included in the contract at the request and with the agreement of both parties, then arbitrators will have to take them into account in case of arbitration<sup>2</sup>.

**19.3** If the contract contains a provision relating to the content of weed seeds or the content of seeds of other cultivated plants or both, the Official classification of weed seeds or seeds of other cultivated plants shall be precisely stated in the contract as well as all particular description agreed upon.

**19.4** If the classification of weed seeds or seeds of other cultivated plant is not precisely stated, the Official classification in the Seller's country at the date of conclusion of the contract shall prevail.

#### **Art. 20**

**20.1** The term "maximum" means that the moisture content and the impurities (weed seeds, seeds of other cultivated plants, inert matter, etc.) shall not be higher than specified. The term "minimum" means that the purity, the germination, etc. shall not be lower than specified. No tolerance shall be applied to the figures of the contract.

**20.2** A seed testing report presented by the Seller that shows inferiority in quality specified in the contract as a "maximum" or "minimum" shall give the Buyer the right to refuse the seed.

**20.3** When the terms "maximum" and "minimum" are not mentioned the tolerances provided in the tables A, B, C and D shall apply, except for the provisions in the Specific Rules in Part B on the assessment of damages.

### **Section VIII. Packaging**

#### **Art. 21**

**21.1** The seeds shall be put in single packages of good quality, sound and suitable for export; for contracts of sale by weight they shall correspond to conventional multiples of weight units in kilograms or in pounds. Packaging in double bags shall be expressly agreed upon. The contract shall specify the unit of weight or a predetermined number of seeds, as well as the type and material of the packages, such as bag, box, container, of jute, paper, plastic, cardboard, metal, etc. Unless specified in the contract, the Seller decides on the packaging.

**21.2** The contract shall indicate whether the gross or net weight shall apply.

**21.3** The contract shall indicate if the costs of the packages are included in or excluded from the price indicated in the contract. If excluded, the costs of the packages shall be indicated in the contract. Without any indication in the contract, they shall be considered as included.

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<sup>1</sup> The description of the quality may include the percentages of purity, of germination, of seed vigour, of hard and fresh un-germinated seeds, of moisture content; the presence of seeds of other cultivated plants, of weed seeds, of inert matter; in the case of certified seeds, the category of certification; the crop year and other indications which can determine the quality of the seeds.

<sup>2</sup> Seed Vigour is not a single measurable property like germination. It may be tested directly or indirectly, and vigour testing is always very delicate and slight fluctuations in test conditions may significantly affect the reliability of results. Seed vigour may also increase or decrease extremely rapidly.

**21.4** The packages shall: (i) be closed in such a way that it shall be impossible to open them without destroying the fastening or without leaving traces showing clear evidence that the contents could have been altered or changed; (ii) be marked or labeled so that they can be identified based on the documents; and (iii) comply with the phytosanitary regulations of the transit and importing countries.

In case of shipment of GM seeds and of treated seeds the packages shall also comply with relevant additional national and international packaging requirements.

## **Section IX. Shipping**

### **Art. 22**

**22.1** Incoterms® published by the International Chamber of Commerce are used; the definitions that are in force at the date of conclusion of the contract shall apply.

**22.2** If not otherwise agreed in the contract, the costs incurred by implementation of bio-security and phytosanitary rules during trans-shipment shall be at the cost of the Buyer.

**22.3** Any additional provisions concerning container shipment must be specified in the contract.

## **Section X. Documents**

### **Art. 23**

**23.1** The documents to be presented by the Seller as part of the contract may be specified in the contract. Unless otherwise agreed they shall contain at least the delivery note, the invoice and a declaration of the quality (for example by a certificate of analysis).

**23.2** In case of GM seed, documentation as required by the bio-safety protocol according to national regulations in the country of the Buyer must be included.

### **Art. 24**

**24.1** The Seller shall take all appropriate measures so that the documents arrive at their destination before the arrival of the seeds.

**24.2** If the seeds arrive prior to the receipt or the presentation of the complete documents, the Buyer shall take all appropriate and practical measures in his power to avoid undue costs, such as demurrage, which might arise at the point of unloading. The complete set of documents shall be received or presented not later than one month after the arrival of the seeds. After the expiry of this time limit the Buyer has the right to withdraw from the contract if the Seller does not fulfill this duty within 48 hours after a last notice by the Buyer.

**24.3** The Buyer shall be authorized to take delivery of the seeds if he can identify them and give a satisfactory guarantee to the transport company.

**24.4** The costs incurred following a default to furnish the documents in time are at the Seller's charge.

## **Section XI. Insurance**

### **Art. 25**

**25.1** If the contract requires insurance by the Seller, the insurance certificate issued by a reputable insurance company shall cover 110% of the amount of the invoice in the currency specified in the contract, warehouse to warehouse, all risks, free of deductible, with indemnification payable in the Buyer's country in the currency stated on the insurance certificate.

**25.2** For trans-ocean shipment, at the request of the Buyer the Seller will insure for "war risks", including mine and torpedo risks, the premiums for which shall be at the Buyer's charge.

## **PART D. SPECIAL CONDITIONS**

### **Section XII. Contract subject to import or export authorization**

#### **Art. 26**

**26.1** If a contract is concluded "subject to an import or export authorization" the party requiring the said authorization shall take all reasonable steps to obtain the authorization from the relevant authorities without delay.

**26.2** Notification of the decision by the authorities, granting or refusing or imposing conditions on the authorization sought, shall be given by the party requesting it to the other party within 2 working days of its receipt by Telecommunication.

**26.3** If a party cannot reasonably fulfill the imposed conditions, it shall inform the other party by Telecommunication within two working days. The contract will then be considered as null and void without indemnification to any party.

#### **Art. 27**

If the authorization has not been granted within 30 days prior to the agreed date of shipment, either party shall have the right to cancel the contract without indemnification.

If the authorization has not been granted, the party affected shall prove to the other party that it has done its best reasonable efforts to obtain the authorization.

### **Section XIII. Contract subject to seed certification**

#### **Art. 28**

**28.1** Since not all producing countries have a compulsory certification system in place for all crops, the contract must state clearly whether the seed shall be certified or not.

**28.2** In the case the contract stipulates the delivery of certified seed the Buyer shall check whether the type of certification adopted in the country of production is valid for and accepted in the country of destination. The validity of certification in the country of destination is at Buyer risk. In the case the country of production may deliver more than one type of certification, the Buyer must clearly state what type of certification he needs.

## **Section XIV. Contract subject to crop**

### **Art. 29**

If a contract is concluded "subject to crop", the Seller shall keep the Buyer informed, at the Buyer's request or as per the contract, of the development of the crop, and shall notify him as soon as possible in case the crop deviates significantly from the expected.

### **Art. 30**

**30.1** The Seller shall, without delay, inform the Buyer by Telecommunication and immediately furnish proof of any shortage or deficiency of quantity and quality, including, as far as the quality is concerned, the exterior appearance, as well as the result of an analysis that provides evidence of the inferiority in quality.

**30.2** If the quality is inferior to the contractual specifications, the Buyer shall have the right to refuse the seeds or to accept them at a reduced price. Specific Rules in Part B provide rules for assessing damages for Field Crops and Forage & Turf Crops.

**30.3** The Buyer shall notify its decision by Telecommunication to the Seller within 14 days after the date of receipt of the result of the analysis carried out by an Official laboratory. Without answer within 14 days, the Seller shall be discharged from his obligation to deliver the contracted seeds.

## **Section XV. Multiplication or growing contract from stock seed of the contracting party**

### **Art. 31**

**31.1** Multiplication Contract means a contract for the production of seed, between a Multiplier and a Multiplication Orderer.

**31.2** Contracts may be arranged: a) - for an acreage or for a specified number of plants; b) - for the multiplication of a quantity of stock (basic) seed; or c) - for a quantity fixed in advance.

### **Art. 32**

**32.1** - For a contract arranged according to 31.2(a) or 31.2(b), the total yield must be delivered by the seed Multiplier and be accepted by the Multiplication Orderer if corresponding with the norms stipulated in the contract.

**32.2** - In case the contract has been concluded according to 31.2(c) the conditions determining the acceptance of any surplus must be established at the time of contracting.

**32.3** - The Multiplier must: (i) indicate to the Multiplication Orderer the quantity he will deliver; (ii) on his request, send the Multiplication Orderer a representative sample of the surplus; (iii) ask for shipping instructions.

### **Art. 33**

The contract may specify all necessary technical details, which include the designation of the parental lines for hybrids and the method to be used for crossing. These technical details may be communicated separately. All technical details shall remain confidential.

#### **Art. 34**

**34.1** - Parties decide whether to charge for stock seed

**34.2** - The Multiplication Orderer is and remains the owner of stock seed not sown. Any stock seed must be returned to the Multiplication Orderer at his request and cost.

**34.3** - When a domestic law of the country of one of the contracting parties requires an invoice, this invoice shall not be considered as final but will be noted as due by the Multiplication Orderer and taken into account by the seed Multiplier at the time of delivery.

#### **Art. 35**

**35.1** - The Multiplication Orderer is responsible for the quality of his stock seed, in regard to purity, germination, trueness to type, seed health and the uniformity of parental lines in case of hybrid seed. In case of quality defaults, the Multiplication Orderer must inform the Multiplier. Normal roguing will be done by or on behalf of the Multiplier at his expense. For seed lots with quality defaults originating from the stock seed the Multiplier must immediately notify the Multiplication Orderer, who may either cancel the order against payment of an indemnity, or order roguing for which he will bear the cost and the damages resulting there from.

**35.2** - The Multiplier has the right to test before sowing the stock seed for seed-borne diseases or noxious weeds stated in the contract and he has the right to cancel the contract if these seed-borne diseases or noxious weeds are found to occur in the stock seed.

**35.3** - The Multiplier undertakes to use only the stock seed supplied by the Multiplication Orderer for seed production. The supplied stock seed will be used only for its intended purpose.

#### **Art. 36**

**36.1** - The Multiplier undertakes: (i) to observe sufficient isolation distances and take other precautions as prescribed in technical norms or in the contract in order to avoid all danger of inter-varietal crossing or mixing; and (ii) to give all necessary expert care to the crop and harvested seed.

**36.2** - The Multiplier shall convey to the Multiplication Orderer throughout the various stages of production, all essential information regarding time of sowing, the conditions and the inspections of fields, and prospects for the yield and quality of the crop and shall notify him immediately in case the crop deviates significantly from the reasonable expectations. In all the cases the Multiplier is obliged to inform the Multiplication Orderer immediately of the reason for the deviation.

**36.3** - The Multiplication Orderer or a representative has the right of personally visiting the crops growing in a multiplication contract, but the seed Multiplier is not obliged to disclose the names and addresses of the growers entrusted with the multiplication. The Multiplication Orderer must inform the Multiplier of the visit at least two weeks in advance. The Multiplier may accompany the Multiplication Orderer on this visit; if not, he is obliged to provide the name and address of the growers.

**36.4** - When signing the contract an agreement must be made for the situation where the seed produced is not of the contracted quality and the Multiplication Orderer is not willing to buy the seed. If there is not such an agreement the Multiplication Orderer must pay to the Multiplier a reasonable compensation for the production cost and the seed will remain property of the Multiplication Orderer.

### **Section XVI. Import regulations**

#### **Art. 37**

**37.1** - If a contract has been concluded "guaranteed to pass" or "subject to passing", the seed regulations of the named countries of transit and final destination in force at the date of conclusion of the contract shall apply. In the case where the delivery or a part of the delivery of the seed, whereas

the seed fulfils the contractual requirements, is not admitted as a result of a seed test and/or phytosanitary objections, the Buyer shall have the right:

a) in the case of "guaranteed to pass", to demand replacement of the seed or to cancel the contract.

In both cases the Buyer shall have the right to claim for damages;

b) in the case of "subject to passing", to refuse the delivery. In this case, the Buyer has no right to demand replacement of the seed and neither the Buyer nor the Seller has the right to claim for damages.

**37.2** - In the case no clause or no Incoterms have been agreed upon, it is to be considered 'subject to passing'.

**37.3** - If the seed can be brought up to the standards required to satisfy the regulations of the importing country: (i) In case of "guaranteed to pass", the Buyer will have carried out the necessary operations to bring the seed into conformity at the cost of the Seller, except if the Seller is able to send another lot fulfilling the import conditions in the specified time. (ii) In case of "subject to passing", the parties may agree to have carried out the necessary operations to bring the seeds into conformity. The involved costs shall be on the Buyer.

**37.4** - Any modification of the regulations referred to in the first paragraph of this Article after the date of conclusion of the contract shall be at the Buyer's risk.

**37.5** - When an import permit is required it must be sent by the Buyer to the Seller at least 30 days in advance of the shipment unless otherwise agreed.

#### **Art. 38**

**38.1** Pending the decision on the admission or non-admission, the seeds shall remain at the port of discharge or at the border station. However, if the contract states "subject to passing", the Buyer may, after the agreement of the Seller, have the seeds transferred under customs control to one or several specific inland places of the country, on the condition that in case of non-admission, the Buyer must pay the return costs to the arrival port or the border station.

**38.2** If the contract is "guaranteed to pass", the transport costs and warehousing shall be at the Seller's charge provided that he shall have had the possibility to accept or to refuse the specific place or places.

## **PART E. EXECUTION**

### **Section XVII. Notification of intent to ship and shipping instructions**

#### **Art. 39**

**39.1** The Seller shall inform the Buyer by letter or Telecommunication of his intention to ship the seeds.

**39.2** When the transaction is not concluded for shipment "at Buyer's option" and shipment is scheduled before a "fixed date" or within a "predetermined period", the Seller shall indicate the date of shipment and the means of transport scheduled a minimum of 30 days prior to the "fixed date" or before the end of the "predetermined period" in the case of trans-oceanic shipments. In all the other cases, a minimum of 10 days is required.

#### **Art. 40**

If shipping instructions have not already been specified in the contract, the Buyer shall convey them to the Seller within the following time limits:

- a) for "immediate shipment", within 5 days from the date of conclusion of the contract;
- b) for "prompt shipment", within 10 days from the date of conclusion of the contract;
- c) for shipment before a "fixed date" or within a "predetermined period", within 5 working days after the receipt of notification of intention to ship expressed by the Seller;
- d) for shipment at the option of the Buyer before a "fixed date" or at a "predetermined period": 30 days for trans-oceanic shipment and 10 days in all the other cases before the "fixed date", or the end of the "predetermined period" provided for in the contract.

### **Section XVIII. Default of shipping instructions**

#### **Art. 41**

**41.1** If the Buyer does not convey shipping instructions in accordance with the previous article and the Seller does not wish the contract be declared null and void, the Seller must grant an extension of time to the Buyer by Telecommunication.

**41.2** This extension of time shall not be less than:

- for "immediate shipment": 3 days
- for "prompt shipment": 5 days
- for longer term shipments, in case of trans-oceanic shipment: 10 days and for all other shipments: 7 days from the last date provided for in Article 40.

#### **Art. 42**

**42.1** If shipping instructions arrive within the extension of time, the Seller shall not have the right to claim for damages.

**42.2** If the requested shipping instructions do not arrive within the extension of time, the Seller shall have the right to cancel the contract and to claim for direct damages such as interest, costs of warehousing and price difference.

**42.3** The Seller shall inform the Buyer of his decision by Telecommunication.

#### **Art. 43**

If a contract specifies "without delay" or "latest", or if a similar terminology stipulates that there is no extension implied in the terms of the contract, the Seller shall have no obligation to grant an extension of time.

## **Section XIX. Time frames for shipment**

### **Art. 44**

The Seller shall ship on receipt of shipping instructions from the Buyer or, if shipping instructions are already provided for in the contract on receipt of the import permit, when relevant:

- a) in case of "immediate shipment":
  - by rail or by road or by air, within 7 days;
  - by ship, within 14 days;
- b) in case of "prompt shipment":
  - by rail or by road or by air, within 14 days;
  - by ship, within 28 days;
- c) in case of shipment before a "fixed date" or within a "predetermined period":
  - on any day before the fixed date,
  - or on any day within the limits of the pre-determined period;
- d) in case of shipment at "the option of the Buyer", after receipt of instructions of the latter:
  - by ship, within 28 days;
  - for all the other cases, within 14 days.

### **Art. 45**

If, according to the conditions of the contract, the Seller is responsible for transport of the seeds, he can ship by container. If the means of transport planned by the Seller is unavailable or is deferred, the Seller shall immediately inform the Buyer by Telecommunication, and shall ship by the next available means of transport unless the parties can mutually agree to reasonable alternatives.

## **Section XX. Notification of shipment**

### **Art. 46**

**46.1** The Seller shall inform the Buyer by Telecommunication of the means of transport and date planned (by sea: name of vessel; by rail and by road: name of transport company, by air: name of airline and flight number).

**46.2** In case of trans-oceanic shipment, this information shall be in possession of the Buyer before the departure.

## **Section XXI. Default of shipment**

### **Art. 47**

**47.1** If the Seller does not ship during the period indicated in article 44, and the Buyer does not wish the contract to be declared null and void, the Buyer shall grant an extension of time to the Seller by Telecommunication. This extension of time shall be granted at the latest within the 30 days which follow the expiration of the deadline for shipment stipulated in the contract.



**47.2** The extension of time shall not be less than:

- for "immediate shipment": 3 days
- for "prompt shipment": 7 days
- for shipment at longer term: 14 days

#### **Art. 48**

**48.1** If the shipment takes place during the extension of time, the Buyer shall not have the right to claim for damages.

**48.2** If the shipment does not take place during the extension of time, the Buyer shall have the right to cancel the contract and to claim for direct damages, such as interest and price difference. The Buyer shall convey his decision to the Seller by Telecommunication.

#### **Art. 49**

If the Buyer accepts the shipment after the expiration of the extension of time, all incurred damages shall be agreed to by mutual consent before the actual shipment.

#### **Art. 50**

If the contract specifies "without delay" or "latest", or if a similar terminology stipulates that there is no extension implied in the terms of the contract, the Buyer shall have no obligation to grant an extension of time. The same applies, if the Seller has definitely denied fulfilling the contract.

### **Section XXII. Passing of risk**

#### **Art. 51**

Loss of or damage to the seeds after the risk has passed to the Buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the Seller.

#### **Art. 52**

**52.1** If the contract of sale involves carriage of the seeds and the Seller is not bound to hand them over at a particular place, the risk passes to the Buyer when the seeds are handed over to the first carrier for transmission to the Buyer in accordance with the contract of sale. If the Seller is bound to hand the seeds over to a carrier at a particular place, the risk does not pass to the Buyer until the seeds are handed over to the carrier at that place. The fact that the Seller is authorized to retain documents controlling the disposition of the seeds does not affect the passage of the risk.

**52.2** Nevertheless, the risk does not pass to the Buyer until the seeds are clearly identified to the contract, whether by markings on the seeds, by shipping documents, by notice given to the Buyer or otherwise.

#### **Art. 53**

**53.1** The risk in respect of seeds sold in transit passes to the Buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the Buyer from the time the seeds were handed over to the carrier who issued the documents embodying the contract of carriage.

**53.2** Nevertheless, if at the time of the conclusion of the contract of sale the Seller knew or ought to have known that the seeds had been lost or damaged and did not disclose this to the Buyer, the loss or damage is at the risk of the Seller.

#### **Art. 54**

**54.1** In cases not covered by Articles 52 and 53, the risk passes to the Buyer when he takes over the seeds or, if he does not do so in due time, from the time when the seeds are placed at his disposal and he commits a breach of contract by failing to take delivery.

**54.2** However, if the Buyer is bound to take over the seeds at a place other than a place of business of the Seller, the risk passes when delivery is due and the Buyer is aware of the fact that the seeds are placed at his disposal at that place.

**54.3** If the contract relates to seeds not yet identified, the seeds are considered not to be placed at the disposal of the Buyer until they are clearly identified as in the contract.

#### **Art. 55**

If the Seller has committed a fundamental breach of contract, Articles 52, 53 and 54 do not impair the remedies available to the Buyer on account of the breach.

### **Section XXIII. Expiration of a contract**

#### **Art. 56**

If within 30 days of default of shipping instructions or default of shipment, neither of the parties has sought an extension of time under Sections XVIII, XXII of these Rules (except Article 50), the contract shall be deemed null and void, and neither the Seller nor the Buyer may claim for damages.

### **Section XXIV. Payment**

#### **Art. 57**

**57.1** Unless otherwise specified in the contract, the payment shall be made net against documents at first presentation, on the date fixed by or determinable from the contract and/or these Rules without the need for any request or compliance with any formality on the part of the Seller.

**57.2** The Buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

**57.3** The bank transfer costs shall be at the Buyer's account.

**57.4** It shall not be permitted to retain all or part of a payment for any compensation.

**57.5** The Seller is entitled to demand full payment and/or sufficient security for payment by the Buyer before performing, if there is a valid reason to believe that the Buyer will not or cannot fulfill its obligations correctly and/or in time.

#### **Art. 58**

The total payment shall take place when due according to the contract. Every portion of a shipment shall be paid for separately as soon as it falls due.

#### **Art. 59**

**59.1** If the Buyer does not settle within three working days from the due date, he shall pay the costs of collection and an interest charge at an annual rate of 5% higher than the official rate of central bank interest in the country of the Seller.

**59.2** This penalty of 5% is not due if the Buyer can prove that the delay of payment was caused by circumstances beyond his control.

**59.3** If the Buyer fails to fulfill one or more of its obligations or to do so correctly and/or in time: the Seller's obligations will automatically and immediately be suspended until the Buyer has paid all amounts due (including payment of any extrajudicial costs).

#### **Art. 60**

If the Buyer has not paid for the documents or has not taken delivery of the seeds on arrival or has declared that he will do neither, he shall be liable for all damages, including the expenses as well as the loss of profit caused to the Seller due to the immobilization of the seeds.

#### **Art. 61**

**61.1** If the seeds have been furnished on credit, they remain the property of the Seller as long as the invoice remains unpaid.

**61.2** As soon as the date of payment has passed the Seller has the right to take back the seeds from the Buyer at Buyer's costs. As long as the seeds are unpaid, the payments of the subsequent sales made by the Buyer are automatically assigned to the Seller up to the amount of unpaid invoice.

**61.3** The Buyer is not permitted to create any other right with regard to the seeds.

#### **Art. 62**

**62.1** If the circumstances indicate that the Buyer does not intend to pay or is unable to pay, the Seller shall have the right to seek recovery of the outstanding debt either by (i) proceedings brought in a competent court of law, without having recourse to arbitration as provided for in the present Rules; or (ii) an expedited arbitration procedure as provided for in Article 21 of the ISF Arbitration Procedure Rules.

**62.2** If the Buyer is liquidated, declared bankrupt or granted a suspension of payments, the Buyer's payment obligations will fall due immediately and the Seller will be entitled to suspend the further performance of the agreement or to declare the contract and the possible other running contracts terminated without prejudice to the Seller's right to claim damages.

**62.3** If payment in installments has been agreed, the entire amount will fall due immediately without notice of default being required in the event of late payment of an installment.

## **PART F. QUALITY CHECKS AND ANALYSES**

### **Section XXV. Quality control**

#### **Art. 63**

**63.1** The Seller shall declare the quality of the seeds at the time of the shipment. With the exception of the provisions of Article 77.2, the tolerances provided for in Tables A, B and C do not apply to the figures of a contract or a seed testing report. These tolerances apply only in case of retesting of the same or another sample by the same or another laboratory.

**63.2** If the contract does not otherwise specify, this declaration can be made by one of the following ways: (a) by the furnishing of an Official seed testing report; (b) by the furnishing of a seed testing report other than an official one, issued by a governmental or a private laboratory; or (c) by a simple declaration.

**63.3** If the seed testing report agreed upon is not available at the time of shipment, the Seller shall furnish to the Buyer all the pertinent and available testing results that shall conform to the provisions of the contract.

#### **Art. 64**

Any duly accredited sampler and/or any Official seed testing laboratory shall be acceptable and the seed testing results obtained shall be evidence for all commercial and litigation processes.

### **Section XXVI. Contract with an Official Seed Testing Report**

#### **Art. 65**

When the present Rules mention an Official Seed Testing Report, it shall be an ISTA Orange International Seed Lot Certificate or an AOSA seed lot testing report or a seed lot testing report issued by a seed testing laboratory accredited by an OECD National Designated Authority.

#### **Art. 66**

When the contract provides for the furnishing of an Official Seed Testing Report, it can only be contested by the Buyer in the case where: (a) a manifest error has been made in which case it shall be incumbent upon the Buyer to establish proof; or (b) the presented Official Seed Testing Report does not correspond with the provisions of section XXVIII; or (c) except when the contract provides for the testing report as final, the Buyer can furnish an Official Seed Testing Report made on an officially drawn sample and analyzed in accordance with ISTA or AOSA Rules, results of which do not match the specifications of the contract and are outside the relevant tolerance levels. The official drawing of a sample for these certificates shall have taken place within 30 days after the arrival of the seeds at the first point of destination and provided that the Buyer is able to access the seed.

#### **Art. 67**

**67.1** If, in conformity with Article 66 the Buyer has the right to contest the official seed testing report called for in the contract and this leads to a dispute between the Seller and the Buyer which cannot be settled amicably, the Seller shall send the sample which is evidence to a seed testing laboratory agreed upon by the two parties for analysis.

**67.2** If the Buyer and the Seller cannot reach an agreement regarding the seed-testing laboratory, the Secretary General of the ISF shall designate that laboratory. That decision shall be final.

#### **Art. 68**

If the result of the analysis provided for in article 75 is outside the tolerances as defined in the Annexes of the present Rules, this result shall be final. If this is not the case, the analysis of the Seller shall be deemed valid.

#### **Art. 69**

If, on the basis of the verification, the Buyer has the right to claim an allowance or damages, the costs of the verification shall be at the Seller's charge. In any other cases, the costs shall be at the Buyer's charge.

### **Section XXVII. Contract without Official seed testing report**

#### **Art. 70**

**70.1** At the time of shipment the Seller should have a sample drawn and sealed by a government or accredited duly qualified sampler, divided in sufficient parts according to the methods and procedures provided by AOSA or ISTA Rules. The sample, referred to as an Official Sample, will be evidence in the event of a difference.

**70.2** To protect his interests, the Buyer may have an Official Sample of the seeds drawn on arrival according to the provisions indicated above. The sample of the Buyer must be drawn within 30 days after the arrival of the seeds at the first point of destination and provided that the Buyer is able to access the seed.

**70.3** In both cases, the body that has drawn the sample shall keep one part of it.

#### **Art. 71**

**71.1** If the seed testing carried out at the request of the Buyer shows a difference which cannot be settled amicably, a new analysis of the sample which is evidence, as indicated in article 70, shall be carried out by a laboratory agreed to by the parties and located in a country other than that of the Buyer or the Seller.

**71.2** If the Buyer and the Seller cannot reach an agreement regarding the laboratory to carry out this final analysis, the Secretary General of the ISF shall designate this laboratory. Its decision shall be final.

#### **Art. 72**

If the result of the analysis provided for in article 71 is outside the tolerances defined in the Annexes of the present Rules, this result shall be final. If this is not the case, the analysis of the Seller shall be deemed valid.

#### **Art. 73**

If the Buyer has the right to claim an allowance or damages on the basis of the analysis referred to in Article 71 the costs of this analysis are at the Seller's charge. In any other case, the costs are at the Buyer's charge.

### **Section XXVIII. Seed testing**

#### **Art. 74**

If, in accordance with the present Rules, an analysis is to be made, the sample shall be drawn, marked and sealed and the analysis carried out in accordance with the ISTA or AOSA Rules.

**Art. 75**

The sample shall be sent for analysis within 8 days after the date of drawing it, except in the case where the test concerns trueness to variety and in the case of tree and shrub seeds for which the sample shall be sent within 15 days.

**Art. 76**

The related seed testing report should be not older than 90 days for forage and turf seed and 180 days for other crops prior to date of shipment from the warehouse of the shipper.

**Art. 77**

**77.1** If the contract refers to a specific lot, the seed testing report furnished by the Seller shall not indicate any inferiority relating to the contract specifications. The non-conformity of a certificate of analysis presented by the Seller shall give the Buyer the right to refuse the seeds.

**77.2** If the contract does not refer to a specific lot, the seed testing report shall indicate figures within the limits of the tolerances, except in the case where the contract stipulates "minimum" or "maximum".

**Section XXIX. Control of trueness to variety**

**Art. 78**

**78.1** The specific authenticity and, where appropriate, the trueness to variety shall be guaranteed by the Seller.

**78.2** In the absence of an official, incontestable and available sample, the Buyer can have a sample drawn according to AOSA or ISTA Rules by a governmental or accredited sampler from seeds still under Seller's seal or Seller's tamper-proof closing method in its original state.

**78.3** The body that has drawn the sample shall keep it in the best conditions to safeguard the germination of the seeds. The Buyer shall immediately inform the Seller by Telecommunication of the drawing of the sample or of his intention to have a contradictory sample drawn.

**Art. 79**

Any claim concerning defaults of trueness to variety or varietal purity shall be made within normal delays of sowing and of control in the country and the region of the Buyer and, at the latest, within a maximum period of one year after receipt of the seeds by the Buyer.

**Art. 80**

If, in the opinion of the Buyer, a post-control test is necessary, the sample referred to in Article 78 shall be divided into three parts: the first shall be sent to a station officially recognized to perform variety tests, selected by the parties, which at the request of the Buyer shall carry out the post-control test; the second shall be sent to the Seller; the third shall be kept in reserve by the sampler.

**Art. 81**

If the Buyer and the Seller cannot reach an agreement regarding the station which shall be in charge of the post-control test, the Secretary General of the ISF shall designate this station. That decision shall be final.

**Art. 82**

If the station discovers a discrepancy regarding trueness to the specified variety or varietal purity, the Buyer shall have the right to formulate a claim against the Seller.

**PART G. DISPUTES**

**Section XXX. Failure to perform**

**Art. 83**

**83.1** If one of the parties fails to perform any of his fundamental obligations under the contract or these Rules, the counterparty may require the immediate performance of the obligations or declare the contract and the possible other running contracts terminated without prejudice to claim damages.

**83.2** A declaration of termination of the contract is in any case effective if made by registered mail or express courier.

**83.3** Termination of the contract releases both parties from their obligations under it, subject to the damages due according to these Rules. Termination does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the termination of the contract.

**Section XXXI. Complaints**

**Art. 84**

**84.1** Complaints shall be made by Telecommunication and additionally by registered mail, certified e-mail or express courier with confirmation of delivery (acknowledgment of receipt); possibly they should include supporting documentation.

**84.2** For complaints concerning trueness to variety and varietal purity Article 79 applies.

**84.3** For deficiencies regarding the visual appearance, moisture content, physical purity, specifications (including grading and coating) and de-awning of the seed, for differences in weight, for defective packaging, for errors in the number of parcels or packages, a complaint shall be made at the first discovery of the deficiency and within a maximum of 12 working days after the arrival of the seeds at destination and provided that the Buyer is able to access the seed.

**84.4** Any complaint regarding the germination of seeds shall be made at the first discovery of the inferiority and within a maximum of 60 days after the arrival of the seeds at destination; for tree and shrub seeds the period for submitting a complaint on germination is 180 days.

**84.5** Complaints must be described in such a manner that the Seller or a third party can verify them.

**Section XXXII. Force Majeure and compensation**

**Art. 85**

**85.1** The clause of force majeure of the International Chamber of Commerce, in force at the date of conclusion of the contract, shall be an integral part of the present Rules.

**85.2** The party invoking the clause of force majeure shall notify the other party, as soon as possible and by Telecommunication, of the impossibility of fulfilling its obligation, indicating the reasons. If the

notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, this party is liable for damages resulting from such non receipt.

If the event of force majeure lasts longer than 2 months, both parties will be entitled to dissolve the agreement. In that case, neither party will be required to pay any damages to the other party.

#### **Art. 86**

**86.1** The Parties are required to limit as much as possible the damage with regard to the products delivered about which a complaint is filed to the Seller.

**86.2** The amount of compensation cannot exceed the invoice value of the consignment plus justified, direct and documented costs (costs resulting from the shipment and return of the seeds including customs duties when these cannot be refunded), unless the Arbitration Tribunal decides otherwise.

### **Section XXXIII. Dispute Resolution**

#### **Art. 87**

**87.1** Any dispute, controversy or claim arising out of or in connection with transactions started or concluded on the basis of the present Rules, or the breach, termination or invalidity thereof, can be settled amicably or by mediation and conciliation as provided for in the ISF Procedure Rules for Dispute Settlement or by binding arbitration in accordance with the ISF Procedure Rules for Dispute Settlement, with the exclusion of ordinary judicial procedure.

**87.2** Application for arbitration written in English shall be made in conformity with the provisions of the ISF Procedure Rules for Dispute Settlement and no later than 365 days after the first communication between the parties concerning the dispute, except if arbitrators decide or parties have agreed otherwise.



# **SPECIFIC RULES**

## **PART A**

### **SPECIFIC RULES FOR SEED OF FIELD CROPS**

#### **Section I. Assessment of damages**

1. If the seed does not meet the contract requirements with regard to purity, weed seed content and/or moisture content the buyer has the right to refuse the seed or to ask the seller to make an allowance according to article 4, or to have the seed re-cleaned and/or dried at the seller's risk and expense. In the case of re-cleaning the seller must pay all the costs and damages incurred both direct and indirect, provided they are in accordance with commercial practice.
2. If it is established that the delivered seed is not as per the contract with respect to specified weeds, the buyer has the right either to refuse the seed or to re-clean it at seller's risk and expense. In the case of re-cleaning, the seller must pay all the costs and damages incurred, both direct and indirect, provided that they are in accordance with commercial practice.
3. If the buyer uses his right to refuse acceptance because the seed does not meet the contractual standards, this is considered equivalent to non-fulfilment of the contract on the part of the seller.
4. The following rules apply for assessing the allowance in case of inferiority:
  - a) Unless these are excluded, tolerances for purity and germination must be allowed. The tolerances for purity are given in Table A, for germination in Table B.
  - b) If the purity is below the minimum fixed in the contract, the seller shall make an allowance to the buyer of 3% of the contract price per percentage point of inferiority.
  - c) If the germination is below the minimum in the contract, the seller shall make an allowance to the buyer of 1% of the contract price per percentage point of inferiority.
  - d) Unless specified otherwise, a tolerance of +/- 0.5% applies to the moisture content fixed in the contract.
  - e) If the moisture content is higher than the maximum specified in the contract, the seller shall make an allowance to the buyer as follows:
    - for a departure  $\leq$  1%: an equivalent percentage of the contract price
    - for a departure  $>$  1%: two times that percentage of the contract price
  - f) If the content of weeds is stated in the contract as a percentage without specific description, a tolerance must be allowed, except in case the seller produces a certificate dated before the day on which the transaction has been concluded. Tolerances are given in Table A.
  - g) If the weed seed content is higher than the maximum fixed in the contract, the seller shall allow the buyer 1% of the contract price per 1/10 percent exceeding the percentage agreed in the contract.
  - h) The seller loses the benefit of tolerances if they are exceeded.
  - i) If there is a dispute, the seller and the buyer are under all circumstances obliged to examine all means of conciliation and in any case to take all possible measures to reduce the damage to a minimum.

## **Section II. Seller's liability for stock seed of small grain cereals sold for multiplication**

5. In the event of a seed crop from cereal seeds bought for further multiplication failing to reach due to defects in their varietal purity the official norms for varietal purity required for certification or other equivalent contracted terms as determined by official testing of regulatory samples, then the buyer shall be indemnified.

6. The indemnification shall be as follows:

a) By paying to the buyer an indemnity equivalent to 10% of the price of commercial grain for the quantity proven to have been produced from the faulty seed plus an additional 10% of the calculated indemnity to cover the buyer's administrative costs.

b) The parties may agree that the indemnification in article 6.a above may be substituted in whole or in part by the seller supplying to the buyer certified seed of the same variety of a good clean sample of fair average quality (f.a.q.) delivered un-cleaned at the price of commercial grain of the same species.

7. Any seed other than Basic or Pre Basic seed used for further multiplication shall be eligible for indemnification under this agreement only if:

a) the crop has been entered for official certification or other equivalent contractual terms;

b) the seller has been informed by the buyer that the seed is being purchased with a view to further reproduction.

## **PART B**

### **SPECIFIC RULES FOR SEED OF FORAGE AND TURF<sup>3</sup> CROPS**

#### **Section I. Sales by sample**

1. In the case of a sale by sample, the seed delivered shall correspond exactly to the sale sample according to the relevant tolerance limits. If the seed delivery does not correspond to the submitted sample, the buyer has the right to refuse the seed.
2. In the case of a sale by type sample, the seed delivered shall conform approximately to the type sample in characteristics such as size and colour of seeds, general appearance, cleanliness, seeds of other plants and inert matter content. If delivered seed does not correspond to the type sample, a tolerance of 5%, calculated on the commercial evaluation of the type sample and the delivered seed, is granted to the seller and no allowance shall be due. If the evaluation discrepancy is within 10%, the new price shall be calculated with reference to following articles 13 and 15.
3. In the case of a contract concluded through a broker, the sample retained by the broker shall be evidence in case of dispute whether the seed lot corresponds exactly or approximately, as the case may be, with the sale sample.

#### **Section II. Assessment of damages**

##### **General**

4. In every case of inferiority, the buyer shall assess the damage sustained or the inferiority itself on the basis of substantiating evidence.
5. In no case shall the quality of one component of an analysis superior to the contractual quality be allowed as compensation for a component inferior to the contractual quality.
6. If a quality is delivered inferior to that called for by the contract, the following articles shall apply for assessing inferiority.
7. Inferiority in regard to quality covers every negative departure from the contractual qualities. In case tolerances apply and seller's seed testing report shows a result within the tolerances, no allowance shall be due. The cases in which the certificate of analysis furnished by the seller shall not show any figures inferior to those indicated in the contract are stated in articles 34 and 85 of the General Rules, and in following article 13 of Part B of the Specific Rules.
8. In all cases where tolerances apply, the seller loses the benefit of the tolerances if they are exceeded.
9. If the total allowance calculated by applying the formulas given in following articles 13 and 15 exceeds 10% of the contract price, the buyer shall be entitled to refuse the seed.
10. If the buyer exercises his right to refuse acceptance of the seed not complying with the contract, it is considered equivalent to non-fulfilment of the contract on the part of the seller.
11. In the event that the arbitration tribunal is of the opinion that the allowance calculated using any of the formulas is not adequate, the arbitrators may disregard the formula, according to article 97 of the General Rules.

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<sup>3</sup> The rules also apply to all other species with similar usages such as green manure and species planted on highways and the roadside.

## **Purity and germination**

12. Tolerances for purity and germination are indicated in the Tables A and B.

13. In case of inferiority exceeding the tolerances referred to in Art. 12, the new price shall be calculated according to the following formula:

$$X = \frac{L \times A}{G}$$

Where X = new price, L = delivered quality, G = contracted quality, A = contract price.

## **Impurities (in percentages)**

14. If the content of weed seeds, of seeds of other cultivated plants and of inert matter is stated in the contract as a percentage without specific description, tolerances shall be allowed, except in the case where the seller furnishes a certificate of analysis dated before the date of conclusion of the contract, or when tolerances are excluded. Tolerances are given in Table A.

15. If there is inferiority, the following formulas give as a percentage of the contract price the allowance to be granted by the seller:

- in the case of weed seed content: the difference between the delivered and the contractual quality multiplied by 10;
- in the case of seeds of other cultivated plants and/or inert matter content: the difference between the delivered and contractual quality multiplied by 2;
- in the case of one figure for weed seeds and seeds of other cultivated plant content agreed in the contract: the difference between the delivered and contractual quality multiplied by 5.

16. The seller has the right to pay the allowance or have the seeds re-cleaned at his charge.

## **Specified impurities (e.g. by number)**

17. If it is established that the delivered seed is not as per the contract with respect to the content of specified inert matter, specified other cultivated plant seeds or specified weed seeds, the buyer shall have the right either to refuse the seeds or, in agreement with the seller, to clean them at seller's charge.

In the case of re-cleaning, the seller shall pay all the costs incurred, both direct and indirect, provided that they are in accordance with commercial practice.

## **Replacement**

18. The seller shall have the right to replace the lot or lots of seeds that would not comply with the specifications of the contract, provided that this replacement is made within the time limit of shipment foreseen in the contract. The costs related to the replacement of the lot or of the lots shall be borne by the seller.

## PART C

### SPECIFIC RULES FOR SEED OF VEGETABLE AND ORNAMENTAL SPECIES

#### Section I. Cancellation, replacement, damages and liability

1. If the specific purity is less or the germination is below the standards prescribed in Article 19 of the General Rules and in Section III of Part C (Vegetable and Ornamental Seed Specific Rules), and taking into account the tolerances prescribed in Article 20 of the General Rules, or if the goods do not meet the minimum guarantees in accordance with Article 20 of the General Rules, the buyer may request cancellation of the sale, with damages, if any.

Replacement of the goods or an allowance in proportion to the deficiency in specific purity, moisture content or germination, or a complaint regarding outward appearance, may be arranged by amicable agreement between the parties.

#### Section II. Precision seed

2. Precision seed is seed having high germination which has been graded to obtain uniform size and emergence by means of size and density grading. Precision seed may also have been primed to advance germination. Seed is sold in units (by seed count).

#### Section III. Standards for the main vegetable species

| SPECIES         | Purity | Germination | SPECIES                | Purity | Germination |
|-----------------|--------|-------------|------------------------|--------|-------------|
| Welsh Onion     | 99     | 80          | Lentils                | 99     | 85          |
| Onion           | 99     | 80          | Cress (plain)          | 98     | 90          |
| Leek            | 99     | 80          | Watercress             | 98     | 80          |
| Chives          | 98     | 75          | Basil                  | 97     | 75          |
| Dill            | 97     | 75          | Marjoram               | 97     | 70          |
| Chervil         | 99     | 80          | Parsnip                | 95     | 75          |
| Celery/Celeriac | 99     | 80          | Parsley                | 99     | 75          |
| Asparagus       | 99     | 80          | French & Dwarf Bean    | 99     | 85          |
| Orach           | 95     | 70          | Runner bean            | 99     | 82          |
| Upland Cress    | 98     | 85          | Pea (wrinkled & round) | 99     | 82          |
| Swiss Chard     | 98     | 80          | Sugar Pea              | 99     | 87          |
| Beetroot        | 99     | 80          | Purslane               | 98     | 80          |
| Rutabaga/Swede  | 99     | 85          | Radish & Black Radish  | 99     | 85          |
| Kohlrabi        | 99     | 87          | Rhubarb                | 97     | 80          |
| Turnip          | 99     | 87          | Sorrel                 | 98     | 75          |
| Cabbage         | 99     | 85          | Savory                 | 97     | 75          |
| Cauliflower     | 99     | 85          | Golden Thistle         | 50     | 45          |
| Pepper          | 99     | 80          | Scorzonera             | 99     | 80          |
| Endive          | 99     | 80          | Tomato                 | 99     | 85          |
| Chicory         | 98     | 75          | Eggplant               | 99     | 75          |
| Watermelon      | 99     | 85          | Spinach                | 99     | 85          |
| Melon           | 99     | 85          | Dandelion              | 97     | 70          |
| Cucumber/Pickle | 99     | 87          | New Zealand Spinach    | 98     | 85          |
| Pumpkin         | 99     | 80          | Thyme                  | 95     | 70          |
| Squash          | 99     | 85          | Salsify                | 96     | 80          |
| Cardoon         | 98     | 70          | Corn Salad             | 98     | 85          |
| Artichoke       | 98     | 70          | Broad Bean             | 99     | 85          |
| Carrot          | 98     | 80          | Sweet Corn (Sugary)    | 99     | 85          |
| Rocket          | 98     | 80          | Sweet Corn (Shrunken)  | 99     | 80          |
| Fennel          | 98     | 75          |                        |        |             |
| Lettuce         | 99     | 85          |                        |        |             |

## PART D

### TREE AND SHRUB SEEDS

#### Section I. Quantity

1. If no other indication states otherwise, the seller may deliver only 2% more or less than sold.

#### Section II. Assessment of damages

##### Damages due to inferior physical qualities

2. If a quality is delivered inferior to that called for by the contract, the following rules apply for assessing the inferiority.

Inferiority as regards quality covers every negative departure from the agreed qualities.

For example, the following items can be concerned: purity, germination, content of the other seeds, content of harmless impurities, moisture content, etc.

##### Purity and germination

3. The statements in the contract are to be given in percentages. Unless these are excluded, latitudes must be allowed.

The tolerances are those of the ISTA or AOSA that are valid at the time of conclusion of the contract. For purity see annex Table A and for germination see Table B.

The calculation of inferiority is according to the formula:

$$X = \frac{L \times A}{G}$$

Where:

- X= the new price
- L= the delivered quality
- G= the guaranteed quality
- A= the contract price

If the new price differs from the contract price by more than 10%, the buyer is also entitled to refuse the delivery.

If both purity and germination are inferior, the inferiority is calculated in each case and the two results added together.

If the contract does not state percentages but expressions such as “well cleaned”, “normal of the new harvest”, etc. and the buyer has made a justified complaint in this respect, he has the right to re-clean the seed at seller’s expense. In this case, seller must pay all the costs and damages incurred, both direct and indirect, provided these are in accordance with commercial practice.

## **Content of other seeds and/or inert impurities**

4. The content can be stated either as a maximum number or as a percentage without specific description. In the latter case, a tolerance must be allowed. The relative tolerances are given in Table B.

If there is inferiority in respect of the contents of other seeds the formula applies that the difference between delivered and agreed quality has to be multiplied by 2.

The seller nevertheless has the right, either to pay compensation or have the seed re-cleaned at his expense.

If the limit is exceeded by more than 10% of the contract price, the buyer is also entitled to refuse acceptance.

5. If it is established that the delivery in respect of its purity is not as per contract, the buyer has the right to refuse the seed or clean it at seller's expense.

In the case of re-cleaning the seller must pay all the costs and damages incurred, both direct and indirect, provided they are in accordance with commercial practice.

The tolerances laid down by ISTA or AOSA do not apply in this respect.

6. If the delivery does not correspond to other conditions of quality in the contract e.g. with regard to the homogeneity, specified under Section VIII of general rules, these shall be decided by arbitration unless a friendly settlement can be reached.

7. If a delivery departs from the agreed guarantee on more than one point, the inferiority shall be calculated in each case separately, with the exception provided in specific rule 2.

In calculating the inferiority, the parties may, if they wish so, take into account a better figure resulting from other analysis.

8. The seller loses the benefit of the tolerances if these are exceeded.

## **Damages due to factors other than physical qualities**

9. If damages arise in the fulfilment of a contract due to departure from conditions other than physical qualities, the question whether damage has been occasioned and the amount thereof shall be decided by arbitration, if friendly negotiations do not lead to an agreement.

In both cases of inferiority, the damage sustained or the inferiority itself shall be assessed by the buyer on the basis of substantial evidence. Against this assessment the seller has the right to demand that the agreed arbitration body fixes the amount of the damage.

## **Trueness to Variety**

10. Seed sold labeled to variety can be sold in 2 ways:

1. Labeled as "Open Pollinated (OP) Seed": the resulting seedlings may not resemble the mother plant. No warranty as to trueness to variety is implied by this label.
2. Labeled as the variety. Example: Acer palmatum 'Atropurpureum'. 80% of the resulting seedlings should resemble the variety if labeled as such.

11. Claims for damages need to be made within 2 years of date of sale and damages will be decided by arbitration.

# ANNEXES



## Annex 1 TERMS AND DEFINITIONS

|                            |   |
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| <b>Accreditation</b>       | <p>Accreditation is a process in which certification of competency, authority, or credibility is presented. One example of accreditation is the accreditation of testing laboratories and certification specialists that are permitted to issue official certificates of compliance with established technical standards.</p> <p>Accreditation in the trade of seed is granted by the relevant Organizations or Associations to field inspectors, to samplers (individuals taking samples) and to quality testing laboratories.</p>   |
| <b>Air Way Bill (AWB)</b>  | <p>Also "air consignment note". It refers to a receipt issued by an international airline for goods and an evidence of the contract of carriage, but it is not a document of title to the goods. The Air Waybill (AWB) is the most important document issued by a carrier either directly or through its authorised agent. It is a non-negotiable transport document. It covers transport of cargo from airport to airport. By accepting a shipment an IATA cargo agent is acting on behalf of the carrier whose air waybill is issued.</p>   |
| <b>Amiable compositeur</b> | <p>Amiables compositeurs [Spanish: "amigables componedores"] [Italian: "compositori amichevoli"] [German: "Schiedsrichter"]</p> <p>Clauses in arbitration agreements allowing the arbitrators to act as "amiables compositeurs", permit the arbitrators to decide the dispute according to the legal principles they believe to be just, without being limited to any particular national law. The resulting arbitral awards are frequently based on equity (infra) or on the lex mercatoria (infra). The arbitrators are authorized, as "amiables compositeurs", to disregard legal technicalities and strict constructions which they would be required to apply in their decisions if the arbitration agreement contained no "amiable compositeur" clause. "Amiable compositeur" clauses in arbitration agreements are expressly permitted by art. 28(3) of the UNCITRAL Model Law on International Commercial Arbitration 1985 (infra), as well as in both domestic and international arbitration procedures.</p> |
| <b>AOSA</b>                | <p>The Association of Official Seed Analysts (AOSA) is an organization of member laboratories. Members include official state, federal, and university seed laboratories across the United States and Canada.</p> <p>Primary Functions: to establish the AOSA Rules for Testing Seeds which are generally adopted by most states as the rules for testing seeds in their respective states; to contribute to the refinement and modification of the rules and procedures for seed testing and ensure that testing procedures are standardized between analysts and between laboratories; to influence and assist in enforcement of appropriate seed legislation at state and federal level.</p>   |
| <b>AOSCA</b>               | <p>AOSCA is the Association of Official Seed Certifying Agencies. It is dedicated to assisting clients in the production, identification, distribution and promotion of certified classes of seed and other crop propagation materials.</p> <p>Established in 1919 as the International Crop Improvement Association, AOSCA now has a number of member Agencies across the US, plus Global member countries located in Canada, South America, Australia and New Zealand.</p>  |

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| <b>Appeal</b>                               | An appeal is a petition for review of a case that has been decided by an Arbitration Tribunal. The petition is made to a different tribunal that may confirm, overturn or modify the decision of the Tribunal in the first instance.   |
| <b>Arbitration</b>                          | <p>The process by which the parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual consent or statutory provision. The hearing and determination of a dispute by an impartial referee agreed to by both parties (often used to settle disputes between labor and management)</p> <p>The settling of disputes between parties who agree not to go before the courts, but rather agree to accept as final the decision of experts of their choice, in a place of their choice, usually subject to laws agreed upon in advance and usually under rules which avoid much of the formality and niceties of proof and procedure required by the courts.</p>   |
| <b>Arbitration Clause</b>                   | <p>A clause in a contract, providing that any dispute arising under the contract shall be submitted to arbitration before one or more arbitrators, in the place and according to the laws and rules specified in the clause.</p> <p>Contracts mentioning "ISF Rules" imply the arbitration clause that refers to ISF Arbitration and its agreed Procedure Rules for Dispute Settlement</p>   |
| <b>Bank holiday</b>                         | Also Legal Holiday. - A day on which banks are legally closed. A holiday observed over the whole country; public holiday authorized by law and limiting work or official business  |
| <b>Bid</b>                                  | A price offered for a good by a potential buyer or a price offered by a potential vendor to perform a specific sale  |
| <b>Bill Of Lading (BOL)</b>                 | <p>A contract between the seller and the carrier. The BOL is usually prepared by the carrier or forwarder. It documents the condition of the goods upon the carrier's acceptance. It is negotiable when it is consigned "to order of" meaning the buyer is allowed to take possession of the goods.</p> <p>A legal document between the shipper of a particular good and the carrier detailing the type, quantity and destination of the good being carried. The bill of lading also serves as a receipt of shipment when the good is delivered to the predetermined destination. This document must accompany the shipped goods, no matter the form of transportation, and must be signed by an authorized representative from the carrier, shipper and receiver.</p> |
| <b>Blue International Certificate (BIC)</b> | A Blue International Seed Sample Certificate is issued when sampling from the seed lot is not under the responsibility of an ISTA accredited laboratory. The accredited laboratory is responsible only for testing the sample as submitted. It is not responsible for the relationship between the sample and any seed lot from which it may have been derived. On the Blue International Seed Sample Certificates, the results reported refer strictly to the sample at the time of receipt. The certificate is released on blue paper (this is why the name).  |
| <b>BIO</b>                                  | Bulletin International Orange, French translation of the ISTA Orange International Certificate (see)   |
| <b>Buyer</b>                                | A person or a company who buys; also purchaser, customer. The entity that purchases seed from another entity that has it available or is willing to produce it for delivery at a later stage.  |

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| <b>Cartagena Protocol</b>               | <p>The Cartagena Protocol on Biosafety (entered into force on 11 September 2003) is an international agreement on biosafety, as a supplement to the Convention on Biological Diversity. The Biosafety Protocol seeks to protect biological diversity from the potential risks posed by living modified organisms resulting from modern biotechnology.</p> <p>The Biosafety Protocol makes clear that products from new technologies must be based on the precautionary principle and allow developing nations to balance public health against economic benefits. It will for example let countries ban imports of a living modified organism if they feel there is not enough scientific evidence that the product is safe and requires exporters to label shipments containing genetically altered commodities such as corn or cotton.</p>   |
| <b>Certificate of Origin</b>            | <p>A statement required by some countries that certifies the origin of the exported goods. It can be issued by the Chamber of Commerce of the city where the seed has been packed or that nearest to the port of loading</p>   |
| <b>Certification (of a seed lot)</b>    | <p>Commonly this term identifies the activity of assessing varietal identity, varietal purity and other standards. There are several certification systems. The most common are the OECD Seed Schemes, AOSCA Standards/Guidelines and the EU norms</p>   |
| <b>Commercial Invoice</b>               | <p>Basically a bill for the goods from the buyer to the seller. Also known as a "bill", "statement" or "sales invoice".</p> <p>A commercial document that itemizes a transaction between a buyer and a seller. An invoice will usually include the quantity of purchase, price of goods and/or services, date, parties involved, unique invoice number, and tax information. If goods or services were purchased on credit, the invoice will usually specify the terms of the deal, and provide information on the available methods of payment.</p> <p>A commercial document issued by a seller to the buyer, indicating the products, quantities, and agreed prices for products or services the seller has provided the buyer. An invoice indicates the buyer must pay the seller, according to the payment terms. The buyer has a maximum amount of days to pay for these goods.</p> |
| <b>Conclusion of a Contract</b>         | <p>A contract is concluded at the moment when an acceptance of an offer becomes effective.</p>   |
| <b>Day</b>                              | <p>When the word "day" is used with no further qualification, days of customary and legal holidays of the parties involved are included.</p>   |
| <b>Deductible (in insurance policy)</b> | <p>[French: "Franchise"; German: "Selbstbeteiligung "; Spanish: "Franquicia"; Italian: "Franchigia",]</p> <p>In an insurance policy, the deductible is the amount of expenses that must be paid out of pocket before an insurer will pay any expenses. It is normally quoted as a fixed quantity and is a part of most policies covering losses to the policy holder. The deductible must be paid by the insured, before the benefits of the policy can apply. Typically, a general rule is: the higher the deductible, the lower the premium, and vice versa.</p>   |

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| <b>Dispute</b>          | A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other.   |
| <b>Dolus</b>            | Dolus differs from fault in this, that the latter proceeds from an error of the understanding, while to constitute the former there must be a will or intention to do wrong   |
| <b>Ex aequo et bono</b> | <p>Ex Aequo Et Bono is a Latin term which means what is just and fair or according to equity and good conscience. Something to be decided ex aequo et bono is something that is to be decided by principles of what is fair and just. A decision-maker who is authorized to decide ex aequo et bono is not bound by legal rules but may take account of what is just and fair. Most legal cases are decided on the strict rule of law. For example, a contract will be enforced by the legal system no matter how unfair it may prove to be. But a case to be decided ex aequo et bono, overrides the strict rule of law and requires instead a decision based on what is fair and just under the given circumstances.</p> <p>It is a term often used in international law when a matter is to be decided according to principles of equity rather than by points of law. Article 38(2) of the Statute of the International Court of Justice provides that the court may decide cases ex aequo et bono, if the parties agree thereto.</p> <p>In the context of arbitration, it refers to the power of the arbitrators to dispense with consideration of the law and consider solely what they consider to be fair and equitable in the case at hand. Article 33 of the United Nations Commission on International Trade Law's Arbitration Rules (1976) provides that the arbitral tribunal should decide as ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.</p> |
| <b>Fault</b>            | Neglect of care. An act to which blame or censure is attached. Fault implies any Negligence, error, or defect of judgment. Fault has been held to embrace a refusal to perform an action that one is legally obligated to do, such as the failure to make a payment when due.   |
| <b>Firm offer</b>       | In contract law, an offer (usually in writing) which states it may not be withdrawn, revoked or amended for a specific period of time. If the offer is accepted without a change during that period, there is a firm, enforceable contract.   |
| <b>Force Majeure</b>    | Force Majeure literally means "greater force". These clauses excuse a party from liability if some unforeseen event beyond the control of that party prevents it from performing its obligations under the contract. Typically, Force Majeure clauses cover natural disasters or other "Acts of God", war, or the failure of third parties--such as suppliers and subcontractors--to perform their obligations to the contracting party. It is important to remember that Force Majeure clauses are intended to excuse a party only if the failure to perform could not be avoided by the exercise of due care by that party. However, Force Majeure is not intended to excuse negligence or other malfeasance of a party, as where non-performance is caused by the usual and natural consequences of external forces (for example, predicted rain stops an outdoor event), or where the intervening circumstances are specifically contemplated.  |

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| <b>Free access to seed</b>   | Free access, means that the seed consignment has been subject to the inspections or controls required by the receiving country; has been cleared and has been delivered to the buyer or to a forwarding agent. Therefore the buyer or the agent has access to the whole shipment, can physically check it, he is able to identify and inspect the different lots and sample them if necessary.  |
| <b>Gross Negligence</b>      | Gross negligence is a conscious and voluntary disregard of the need to use reasonable care, which is likely to cause foreseeable grave injury or harm to persons, property, or both. It is conduct that is extreme when compared with "ordinary negligence", which is a mere failure to exercise reasonable care. Ordinary negligence and gross negligence differ in degree of inattention, while both differ from wilful and wanton conduct, which is conduct that is reasonably considered to cause injury. This distinction is important, since contributory negligence - a lack of care by the plaintiff that combines with the defendant's conduct to cause the plaintiff's injury and completely bar his or her action - is not a defence to wilful and wanton conduct but is a defence to gross negligence. In addition, a finding of wilful and wanton misconduct usually supports a recovery of Punitive Damages, whereas gross negligence does not.   |
| <b>Guaranteed to Pass</b>    | Means that the seller guarantees that the seed will fulfill all requirements of the importing country and, if known by the seller, the countries of transit.  |
| <b>Hour</b>                  | When the words "hour" and "working day" are used, hours and days of customary and legal holidays of the parties involved are excluded.  |
| <b>Incoterms</b>             | Commercial terms published by the International Chamber of Commerce (ICC) and widely used for international shipment of goods. They have been developed having in mind the different type of transportation and point of shipment. Their importance is in the clear identification of the passing of risks and ownership according to the various possibilities. They are a series of pre-defined commercial terms published by the ICC widely used in international commercial transactions. A series of three-letter trade terms related to common sales practices, the Incoterms rules are intended primarily to clearly communicate the tasks, costs and risks associated with the transportation and delivery of goods. The Incoterms rules are accepted by governments, legal authorities and practitioners worldwide for the interpretation of most commonly used terms in international trade. They are intended to reduce or remove altogether uncertainties arising from different interpretation of the rules in different countries. (See Annex 3 for the complete list of the terms) |
| <b>Intellectual Property</b> | From WIPO: Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. IP is divided into two categories: Industrial property, which includes inventions (patents), trademarks, industrial designs, plant breeder's rights and geographic indications of source; and Copyright, which includes literary and artistic works such as novels, poems and plays, films, musical works   |

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| <b>Intellectual Property Rights</b> | Means exclusive rights on a creation (plant variety) to protect the mental and innovative efforts of the creator (plant breeder) such as, but not limited to, Plant Breeders Rights, Patents and Trade Marks.  |
| <b>Invoice – Commercial</b>         | See: Commercial invoice  |
| <b>Invoice - Pro forma</b>          | See. Pro forma invoice   |
| <b>ISTA</b>                         | The International Seed Testing Association (ISTA) produces internationally agreed rules for seed sampling and testing, accredits laboratories, promotes research, provides international seed analysis certificates and training, and disseminates knowledge in seed science and technology. This facilitates seed trading nationally and internationally, and also contributes to food security.  |
| <b>ISTA Accreditation</b>           | Both accreditation and certification are a form of recognition based on an assessment of compliance with stated requirements. ISTA Accreditation pertains to the technical and managerial competence in a seed testing laboratory. As a consequence, accreditation is granted to the laboratory, not to individuals. Whereas accreditation is a procedure by which an authoritative body gives formal recognition that a body or person is competent to carry out specific tasks; certification by a third party gives written assurance that a product, process or service conforms to specified requirements. More specifically, by granting accreditation to a seed testing laboratory, the International Seed Testing Association recognizes the laboratory's competence for seed testing and the validity of its analysis results as for the relevant scope of accreditation. In contrast, certification has a much broader meaning; for instance, certification against ISO 9001 is applicable to any kind of organisation and merely means that the management principles laid down in this standard are applied. Whether the products, services or other output are positively affected is not under consideration (although it may be assumed). Product certification, like certification of seed lots under the provisions of OECD, is intended to facilitate international trade of seed and represents a tool to demonstrate conformity of a seed lot with minimum requirements as to circumstances of production and specific properties. |
| <b>Legal Holiday</b>                | See also 'Bank Holiday' - A day on which banks are legally closed. A holiday observed over the whole country; public holiday authorized by law and limiting work or official business  |
| <b>Letter of Credit</b>             | A letter from buyer's bank to seller, in which the buyer's (importer's) bank guarantees payment, provided that all the terms stated in the letter are met.   |
| <b>Misconduct</b>                   | Unlawful behaviour by a person entrusted in any degree. Misconduct is a legal term meaning a wrongful, improper, or unlawful conduct motivated by premeditated or intentional purpose or by obstinate indifference to the consequences of one's acts.  |

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| <b>Multiplication Contract</b>  | Multiplication Contract means a contract for the production of seed between a Multiplier and a Multiplication Orderer. The Multiplication Contract includes the agreements about transactions with the stock seed and/or the harvested material, the handling of any surplus; the contract may specify all necessary technical details to successfully achieve the production of seed.  |
| <b>Multiplication Orderer</b>   | A person or company - such as a breeder, a breeding company, a holder of a plant variety right or similar - providing the stock seed for the contracted production. Multiplication contract means a contract for the production of seed, including agreements about transactions with the stock seed or the harvested material  |
| <b>Multiplication Producer</b>  | See Multiplier  |
| <b>Multiplication Purchaser</b> | See Multiplication Orderer  |
| <b>Multiplier</b>               | A person or a company who has and organizes the fields needed to produce the surface or the quantity agreed in the Multiplication Contract, manages all technical aspects provided with the contract and gives all necessary expert care to assure the success of the crop and the quality of harvested seed.   |
| <b>New York Convention</b>      | This is the Convention developed by the United Nations Commission on International Trade Law (UNCITRAL). This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.  |
| <b>New York Convention (2)</b>  | The "Convention on the Recognition and Enforcement of Foreign Arbitral Awards" was signed on June 10, 1958 in New York. This convention deals with the recognition of foreign arbitral awards and the enforcement of arbitration clauses.   |
| <b>Notice</b>                   | A formal announcement, notification, or warning, especially an announcement of one's intention to withdraw from an agreement  |
| <b>OECD</b>                     | Also OCDE (French, Spanish), OCSE (Italian). The mission of the Organisation for Economic Co-operation and Development (OECD) is to promote policies that will improve the economic and social well-being of people around the world. The OECD Agricultural Codes and Schemes facilitate international trade through the simplification and harmonisation of documentary, inspection and testing procedures. International certification differs from national certification, as domestic regulatory systems may vary to a large extent. The OECD Seed Schemes provide an international framework for the certification of agricultural seed moving in international trade. |

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| <b>Offer</b>                                  | <p>A promise that, according to its terms, is contingent upon a particular act, forbearance, or promise given in exchange for the original promise or the performance thereof; a demonstration of the willingness of a party to enter into a bargain, made in such a way that another individual is justified in understanding that his or her assent to the bargain is invited and that such assent will conclude the bargain.</p> <p>An offer is a communication that gives the listener the power to conclude a contract.</p>  |
| <b>Offeree</b>                                | A person or entity to whom an offer to enter into a contract is made by another (the Offeror).  |
| <b>Offeror</b>                                | A person or entity who makes a specific proposal to another (the Offeree) to enter into a contract.   |
| <b>Official</b>                               | Means any document or action issued or done by a governmental entity or any seed testing entity duly accredited/authorized either by ISTA or AOSA or an OECD National Designated Authority.   |
| <b>Orange International Certificate (OIC)</b> | <p>Also known as ISTA Orange (in French BIO Bulletin International Orange). This is a document issued by ISTA accredited laboratories to report the results of lab tests performed on a sample of the seed lot. An Orange International Seed Lot Certificate is issued when both sampling from the seed lot and testing of the sample are carried out under the responsibility of an ISTA accredited laboratory, or when sampling from the seed lot and testing of the sample are carried out under the authority of different ISTA accredited laboratories.</p> <p>The Orange Certificate reports information and lab results on: species of the seed, date of sampling and of testing, germination in %, moisture, physical purity, inert matter, other seeds, weeds, on request health and vigour.</p> <p>The certificate is released on orange colored paper (this is why the name).</p>  |
| <b>Packing List</b>                           | An itemized list describing the contents of each package in a shipment. Used in determining the total weight and volume of a shipment and for verifying the cargo.  |
| <b>Price Quote / Price Quotation</b>          | Generally, a simple Price Quote is not an offer. Advertisements, catalogs, price lists are considered invitations for offers, not actual offers.  |
| <b>Pro-Forma Invoice</b>                      | <p>Basically a price quote. Describes the type and quantity of the goods to be shipped, value of the goods, total cost of the transaction based on the terms of sale, and other specifications. A preliminary bill of sale sent to buyers in advance of a shipment or delivery of goods. Typically, it gives a description of the purchased items, notes the cost, as well as other important information like shipping weight and transport charges.</p> <p>Pro forma invoices are often used for customs purposes on imports. In foreign trade, a pro forma invoice is a document that states a commitment from the seller to provide specified goods to the buyer at specific prices. It is not a true invoice, because the seller does not record a pro forma invoice as an accounts receivable and the buyer does not record a pro forma invoice as an accounts' payable. A pro forma invoice is not issued by the seller until the seller and buyer have agreed to the terms of the order. In few cases, pro forma invoice is issued for obtaining advance payments from buyer, either for start of production or for security of the goods produced.</p> |



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| <b>Proposal</b>                                  | <p>A Proposal informs buyers that an organization is looking to sell; it requires the company to specify what it proposes to sell; it alerts buyers that the selection process is competitive; allows for wide distribution and response; ensures that buyers respond factually to the identified requirements and is generally expected to follow a structured evaluation and selection procedure.</p> <p>A Proposal can be made also by a buyer to potential sellers.</p>  |
| <b>Quotation</b>                                 | <p>An offer to sell with a specific price stated. A Quotation often includes the specifications of the items/services to make sure all the buyers are bidding on the same item/service. Logically, the more detailed the specifications, the more accurate the Quotation will be and comparable to the other suppliers. Another reason for being detailed in sending out a Quotation is that the specifications could be used as legal binding documentation.</p>  |
| <b>Registered Letter - Registered Mail</b>       | <p>A registered letter is one that is recorded and tracked throughout its time in the mail system and requires the mailman obtain a signature in order to deliver it. By registering a letter, the sender has a legal document that indicates that the notice was delivered.</p> <p>The use of registered mail with return receipt (AR = Acknowledgement of Receipt or Avis de Reception) is aimed at proving that the documents were both mailed and received. The AR is a postal service which returns to the sender of a Registered Letter a form or card signed by the recipient. This is evidence that the letter was received.</p> |
| <b>Roguing</b>                                   | <p>Remove inferior or defective plants or off-types from a crop.</p>   |
| <b>Sample</b>                                    | <p>A small quantity of any commodity or merchandise, exhibited as a specimen of a larger quantity called the "bulk" or the "lot".</p>  |
| <b>Seed</b>                                      | <p>In ISF Rules "seed" implies all categories and classes of seed for sowing purposes, and, where appropriate, reproductive plant material</p>   |
| <b>Seed Multiplier</b>                           | <p>See: Multiplier</p>   |
| <b>Seller</b>                                    | <p>A person or a company who sells; also vendor.</p>   |
| <b>Subject to Certification</b>                  | <p>Means that the seller does not guarantee that the seed will fulfill all requirements of the certification protocols for the country of production and/or of destination. (It means that the seller does not have the seed at the confirmation of the contract but must produce it).</p>   |
| <b>Subject to Crop</b>                           | <p>Means that the seller does not have the seed at the confirmation of the contract. The amount and quality of seed depend on the harvest to come, as specified in the contract.</p>   |
| <b>Subject to Import or Export Authorization</b> | <p>Means that the shipment of seed needs an authorization of the exporting or importing countries on aspects such as but not limited to phytosanitary regulations, genetically modified (GM) crops, access to genetic resources.</p>   |

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| <b>Subject to Pass<br/>Subject to Passing</b> | Means that the seller does not guarantee that the seed will fulfill all requirements of the transit and importing countries.   |
| <b>Telecommunication</b>                      | The transmission over a distance of words, sounds, images, or data in the form of electronic or electromagnetic signals or impulses. by cable, telegraph, telephone, or internet.  |
| <b>Treatment (of Seed)</b>                    | Seed treatment is understood to be any application of biological, physical and chemical agents and techniques to seed that provide protection to seeds and plants and improve the establishment of healthy crops.  |
| <b>Vienna Convention</b>                      | <p>Common name for the United Nations Convention on Contracts for the International Sale of Goods (UNCISG). They are a body of law governing the international sale of goods between parties domiciled in member countries.</p> <p>Formally known as the United Nations Convention on Contracts for the International Sale of Goods; an international treaty governing international commerce, defining the rights and duties of an exporter/seller and an importer/buyer. For example, it states that the seller must deliver the goods and the buyer must pay for them. Importantly, the treaty sets forth a variety of agreements into which exporters and importers may enter. This list of agreements lays out when the risk associated with delivery of the goods transfers from the seller to the buyer, and who is responsible for what costs. More than 70 nations subscribe to the Vienna Convention.</p> <p>See also: Incoterms®.</p> |
| <b>Visual appearance (of seed)</b>            | <p>What can be seen and evaluated by observation with the 'naked eyes'. Main characteristics are colour, shape, size, uniformity, surface of the seed, hilum, awns, cleanliness, ...</p> <p>Visual appearance can give an initial indication of seed quality only and is not quantifiable.</p>   |
| <b>Working days</b>                           | <p>When the words "hour" and "working day" are used, hours and days of customary and legal holidays of the parties involved are excluded.</p> <p>In commerce: any day (other than Sunday or legal holiday) on which legal business can be conducted. Whether Saturday is a working day or not depends on the custom or usage of the trade or jurisdiction.</p> <p>In law: any day other than Sunday or gazetted or statutory holiday. Also called dies juridicus, Latin for judicial day.</p>  |

## Annex 2 TABLES FOR TOLERANCES

The tolerances apply for testing the same or another sample of the same seed lot in the same or another Official laboratory.

**Table A - Tolerances for purity, other crop seeds, weed seeds and inert matter (%)**

| Contract figure | Contract figure | Tolerance        | Tolerance        |
|-----------------|-----------------|------------------|------------------|
| 50-100%         | Less than 50%   | Non-chaffy seeds | Chaffy seeds (*) |
| Column 1        | Column 2        | Column 3         | Column 4         |
| 99.95-100.00    | 0.00-0.04       | 0.18             | 0.21             |
| 99.90-99.94     | 0.05-0.09       | 0.28             | 0.32             |
| 99.85-99.89     | 0.10-0.14       | 0.34             | 0.40             |
| 99.80-99.84     | 0.15-0.19       | 0.40             | 0.47             |
| 99.75-99.79     | 0.20-0.24       | 0.44             | 0.53             |
| 99.70-99.74     | 0.25-0.29       | 0.49             | 0.57             |
| 99.65-99.69     | 0.30-0.34       | 0.53             | 0.62             |
| 99.60-99.64     | 0.35-0.39       | 0.57             | 0.66             |
| 99.55-99.59     | 0.40-0.44       | 0.60             | 0.70             |
| 99.50-99.54     | 0.45-0.49       | 0.63             | 0.73             |
| 99.40-99.49     | 0.50-0.59       | 0.68             | 0.79             |
| 99.30-99.39     | 0.60-0.64       | 0.73             | 0.85             |
| 99.20-99.29     | 0.70-0.79       | 0.78             | 0.91             |
| 99.10-99.19     | 0.80-0.89       | 0.83             | 0.96             |
| 99.00-99.09     | 0.90-0.99       | 0.87             | 1.01             |
| 98.75-98.99     | 1.00-1.24       | 0.94             | 1.10             |
| 98.50-98.74     | 1.25-1.49       | 1.04             | 1.21             |
| 98.25-98.49     | 1.50-1.74       | 1.12             | 1.31             |
| 98.00-98.24     | 1.75-1.99       | 1.20             | 1.40             |
| 97.75-97.99     | 2.00-2.24       | 1.26             | 1.47             |
| 97.50-97.74     | 2.25-2.49       | 1.33             | 1.55             |
| 97.25-97.49     | 2.50-2.74       | 1.39             | 1.63             |
| 97.00-97.24     | 2.75-2.99       | 1.46             | 1.70             |
| 96.50-96.99     | 3.00-3.49       | 1.54             | 1.80             |
| 96.00-96.49     | 3.50-3.99       | 1.64             | 1.92             |
| 95.50-95.99     | 4.00-4.49       | 1.74             | 2.04             |
| 95.00-95.49     | 4.50-4.99       | 1.83             | 2.15             |
| 94.00-94.99     | 5.00-5.99       | 1.95             | 2.29             |
| 93.00-93.99     | 6.00-6.99       | 2.10             | 2.46             |
| 92.00-92.99     | 7.00-7.99       | 2.23             | 2.62             |
| 91.00-91.99     | 8.00-8.99       | 2.36             | 2.76             |
| 90.00-90.99     | 9.00-9.99       | 2.48             | 2.92             |
| 88.00-89.99     | 10.00-11.99     | 2.65             | 3.11             |
| 86.00-87.99     | 12.00-13.99     | 2.85             | 3.35             |
| 84.00-85.99     | 14.00-15.99     | 3.02             | 3.55             |
| 82.00-83.99     | 16.00-17.99     | 3.18             | 3.74             |
| 80.00-81.99     | 18.00-19.99     | 3.32             | 3.90             |
| 78.00-79.99     | 20.00-21.99     | 3.45             | 4.05             |
| 76.00-77.99     | 22.00-23.99     | 3.56             | 4.19             |
| 74.00-75.99     | 24.00-25.99     | 3.67             | 4.31             |
| 72.00-73.99     | 26.00-27.99     | 3.76             | 4.42             |
| 70.00-71.99     | 28.00-29.99     | 3.84             | 4.51             |
| 65.00-69.99     | 30.00-34.99     | 3.97             | 4.66             |
| 60.00-64.99     | 35.00-39.99     | 4.10             | 4.82             |
| 50.00-59.99     | 40.00-49.99     | 4.21             | 4.95             |

(\*) Seeds of the following genera are to be regarded as chaffy unless processed or machined to remove the chaffy structure: *Agropyron*, *Agrostis*, *Alopecurus*, *Anthoxanthum*, *Arrhenatherum*, *Axonopus*, *Bromus*, *Chloris*, *Cynodon*, *Cynosurus*, *Dactylis*, *Deschampsia*, *Festuca*, *Lolium*, *Melinis*, *Panicum*, *Paspalum*, *Poa*, *Trisetum*, *Zoysia*.

**Table B - Tolerances for germination**

| Contract figure | Contract figure | Tolerance |
|-----------------|-----------------|-----------|
| More than 50%   | 50% or less     |           |
| Column 1        | Column 2        | Column 3  |
| 99              | 2               | 2         |
| 97-98           | 3-4             | 3         |
| 94-96           | 5-7             | 4         |
| 91-93           | 8-10            | 5         |
| 87-90           | 11-14           | 6         |
| 82-86           | 15-19           | 7         |
| 76-81           | 20-25           | 8         |
| 70-75           | 26-31           | 9         |
| 60-69           | 32-41           | 10        |
| 51-59           | 42-50           | 11        |

**Table C - Tolerances for weed seeds and other crop seeds expressed in numbers**

| Contract figure | Tolerance | Contract figure | Tolerance |
|-----------------|-----------|-----------------|-----------|
| Column 1        | Column 2  | Column 3        | Column 4  |
| 3-4             | 5         | 163-173         | 31        |
| 5-6             | 6         | 174-186         | 32        |
| 7-8             | 7         | 187-198         | 33        |
| 9-11            | 8         | 199-210         | 34        |
| 12-14           | 9         | 211-223         | 35        |
| 15-17           | 10        | 224-235         | 36        |
| 18-21           | 11        | 236-249         | 37        |
| 22-25           | 12        | 250-262         | 38        |
| 26-30           | 13        | 263-276         | 39        |
| 31-34           | 14        | 277-290         | 40        |
| 35-40           | 15        | 291-305         | 41        |
| 41-45           | 16        | 306-320         | 42        |
| 46-52           | 17        | 321-336         | 43        |
| 53-58           | 18        | 337-351         | 44        |
| 59-65           | 19        | 352-367         | 45        |
| 66-72           | 20        | 368-386         | 46        |
| 73-79           | 21        | 387-403         | 47        |
| 80-87           | 22        | 404-420         | 48        |
| 88-95           | 23        | 421-438         | 49        |
| 96-104          | 24        | 439-456         | 50        |
| 105-113         | 25        | 457-474         | 51        |
| 114-122         | 26        | 475-493         | 52        |
| 123-131         | 27        | 494-513         | 53        |
| 132-141         | 28        | 514-532         | 54        |
| 142-152         | 29        | 533-552         | 55        |
| 153-162         | 30        |                 |           |

**Table D - Maximum tolerance values for comparing two seed moisture content tests**

(From Bonner, 1984)

| Seed size of a sample   | Average seed moisture content of two tests |        |               |
|-------------------------|--|--------|---------------|
|                         | Less than 12%                              | 12-25% | More than 25% |
|                         | Maximum % of tolerance allowed             |        |               |
| Less than 30 seeds/gram | 0.3  | 0.5    | 0.5           |
| More than 30 seeds/gram | 0.4  | 0.8    | 2.5           |

## Annex 3 - International Chamber of Commerce (ICC) Incoterms® rules\*

### Incoterms® 2010

The eighth published set of pre-defined terms, "Incoterms 2010" defines 11 rules, reducing the 13 used in the "Incoterms 2000" rules by introducing two new rules ("Delivered at Terminal", DAT; "Delivered at Place", DAP) that replace four rules of the prior version ("Delivered at Frontier", DAF; "Delivered Ex Ship", DES; "Delivered Ex Quay", DEQ; "Delivered Duty Unpaid", DDU).[6] In the prior version, the rules were divided into four categories, but the 11 pre-defined terms of "Incoterms 2010" are subdivided into two categories based only on method of delivery. The larger group of seven rules applies regardless of the method of transport, with the smaller group of four being applicable only to sales that solely involve transportation over water.

#### Rules for Any Mode(s) of Transport

The seven rules defined by Incoterms® 2010 for any mode(s) of transportation are

|            |   |
|------------|---|
| <b>EXW</b> | <p><b>Ex Works</b> (named place of delivery)<br/>The Seller makes the goods available at its premises. This term places the maximum obligation on the buyer and minimum obligations on the Seller. The Ex Works term is often used when making an initial quotation for the sale of goods without any costs included. EXW means that a Seller has the goods ready for collection at his premises (works, factory, warehouse, plant) on the date agreed upon. The Buyer pays all transportation costs and also bears the risks for bringing the goods to their final destination. The Seller doesn't load the goods on collecting vehicles and doesn't clear them for export. If the Seller does load the good, he does so at Buyer's risk and cost. If parties wish Seller to be responsible for the loading of the goods on departure and to bear the risk and all costs of such loading, this must be made clear by adding explicit wording to this effect in the contract of sale.</p> |
| <b>FCA</b> | <p><b>Free Carrier</b> (named place of delivery)<br/>The Seller hands over the goods, cleared for export, into the disposal of the first carrier (named by the buyer) at the named place. The Seller pays for carriage to the named point of delivery, and risk passes when the goods are handed over to the first carrier.</p>   |
| <b>CPT</b> | <p><b>Carriage Paid To</b> (named place of destination)<br/>The Seller pays for carriage. Risk transfers to Buyer upon handing goods over to the first carrier.</p>   |
| <b>CIP</b> | <p><b>Carriage and Insurance Paid to</b> (named place of destination)<br/>The containerized transport/multimodal equivalent of CIF. Seller pays for carriage and insurance to the named destination point, but risk passes when the goods are handed over to the first carrier.</p>   |
| <b>DAT</b> | <p><b>Delivered at Terminal</b> (named terminal at port or place of destination)<br/>Seller pays for carriage to the terminal, except for costs related to import clearance, and assumes all risks up to the point that the goods are unloaded at the terminal.</p>   |
| <b>DAP</b> | <p><b>Delivered at Place</b> (named place of destination)<br/>Seller pays for carriage to the named place, except for costs related to import clearance, and assumes all risks prior to the point that the goods are ready for unloading by the Buyer.</p>  |
| <b>DDP</b> | <p><b>Delivered Duty Paid</b> (named place of destination)<br/>Seller is responsible for delivering the goods to the named place in the country of the Buyer, and pays all costs in bringing the goods to the destination including import duties and taxes. This term places the maximum obligations on the Seller and minimum obligations on the Buyer.</p>   |

**The four rules defined by Incoterms® 2010 for international trade where transportation is entirely conducted by water are:**

|            |   |
|------------|---|
| <b>FAS</b> | <p><b>Free Alongside Ship</b> (named port of shipment)<br/>The Seller must place the goods alongside the ship at the named port. The Seller must clear the goods for export. Suitable only for maritime transport but NOT for multimodal sea transport in containers (see “Incoterms 2010”, ICC publication 715). This term is typically used for heavy-lift or bulk cargo.</p>   |
| <b>FOB</b> | <p><b>Free on Board</b> (named port of shipment)<br/>The Seller must load themselves the goods on board the vessel nominated by the Buyer. Cost and risk are divided when the goods are actually on board of the vessel (this rule is new!). The Seller must clear the goods for export. The term is applicable for maritime and inland waterway transport only but NOT for multimodal sea transport in containers (see “Incoterms 2010”, ICC publication 715). The Buyer must instruct the Seller the details of the vessel and the port where the goods are to be loaded, and there is no reference to, or provision for, the use of a carrier or forwarder.<br/><i>Note: This term has been greatly misused over the last three decades ever since “Incoterms 1980” explained that FCA should be used for container shipments.</i></p> |
| <b>CFR</b> | <p><b>Cost and Freight</b> (named port of destination)<br/>Seller must pay the costs and freight to bring the goods to the port of destination. However, risk is transferred to the Buyer once the goods are loaded on the vessel (this rule is new!). Maritime transport only and Insurance for the goods is NOT included. This term is formerly known as CNF (C&amp;F).</p>   |
| <b>CIF</b> | <p><b>Cost, Insurance and Freight</b> (named port of destination)<br/>Exactly the same as CFR except that the Seller must in addition procure and pay for the insurance. Maritime transport only.</p>   |

**Previous terms ELIMINATED from the Incoterms® 2000 rules**

|            |  |
|------------|--|
| <b>DAF</b> | <p><b>Delivered At Frontier</b> (named place of delivery)<br/>This term can be used when the goods are transported by rail and road. The Seller pays for transportation to the named place of delivery at the frontier. The Buyer arranges for customs clearance and pays for transportation from the frontier to his factory. The passing of risk occurs at the frontier.</p>   |
| <b>DES</b> | <p><b>Delivered Ex Ship</b> (named port of delivery)<br/>Where goods are delivered ex ship, the passing of risk does not occur until the ship has arrived at the named port of destination and the goods made available for unloading to the Buyer. The Seller pays the same freight and insurance costs as he would under a CIF arrangement. Unlike CFR and CIF terms, the Seller has agreed to bear not just cost, but also Risk and Title up to the arrival of the vessel at the named port. Costs for unloading the goods and any duties, taxes, etc... are for the Buyer. A commonly used term in shipping bulk commodities, such as coal, grain, dry chemicals, and where the Seller either owns or has chartered, their own vessel.</p> |
| <b>DEQ</b> | <p><b>Delivered Ex Quay</b> (named port of delivery)<br/>This is similar to DES, but the passing of risk does not occur until the goods have been unloaded at the port of destination.</p>   |
| <b>DDU</b> | <p><b>Delivered Duty Unpaid</b> (named place of destination)<br/>This term means that the Seller delivers the goods to the Buyer to the named place of destination in the contract of sale. The goods are not cleared for import or unloaded from any form of transport at the place of destination. The Buyer is responsible for the costs and risks for the unloading, duty and any subsequent delivery beyond the place of destination. However, if the Buyer wishes the seller to bear cost and risks associated with the import clearance, duty, unloading and subsequent delivery</p>  |

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## **Annex 4 - Force Majeure and Hardship Clauses Updated**

The International Chamber of Commerce recently issued 2003 updates\* for its suggested Force Majeure Clause and Hardship clauses. These are the first revisions to these clauses since 1985 and reflect significant changes. The ICC anticipates that either clause will apply to any contract where the parties expressly incorporate it, or alternatively, where the contract incorporates by reference the "ICC Force Majeure Clause" and/or the "ICC Hardship Clause." With the prospect of incorporation by reference, familiarity with the consequences of these new formulations is especially important for those reviewing any document where an incorporation by reference might appear.

### **Force Majeure 2003**

Traditional formulations of force majeure usually are based on impossibility of performance. The threshold of impossibility is high but, if reached, the contracting party suffering the force majeure event is relieved of contract performance obligations as long as the force majeure event continues. The ICC 2003 clause adopts a considerably lower threshold based upon "impediments" that are beyond the "reasonable control" of the party. A party also may be excused from performance of its contractual obligations as a result of a third party's inability, as a result of similar "impediments," to perform all or part of the contract that the third party has been engaged to perform.

There is a long list of impediments and many are familiar force majeure events: war, acts of God, insurrection, etc., but others require careful consideration since they may absolve a party from performance of contractual obligations as a result of circumstances quite different from the hostile actions or natural disasters most often equated with force majeure circumstances. For example, "compliance with any law or governmental order" or "prolonged breakdown of...telecommunication" suggest circumstances that may have little to do with unanticipated external events, but might nevertheless relieve a party from its contractual obligations.

A party invoking force majeure must "take all reasonable means to limit the effect of the impediment or event invoked upon performance of its contractual duties" so the new formulation of force majeure is not without limits in the relief a party can reasonably expect to achieve. However, the scope of the ICC 2003 version introduces into force majeure analysis an expansion of subjective considerations and the possibility of relief from the performance of contractual obligations in circumstances not traditionally associated with force majeure events.

### **Hardship 2003**

The ICC 2003 hardship clause recognizes that parties must perform their contractual obligations even if "events have rendered performance more onerous than would reasonably have been anticipated at the time of the conclusion of the contract." However, where continued performance has "become excessively onerous due to an event beyond [a party's] reasonable control which it could not reasonably have been expected to have taken into account," the clause obligates the parties to "negotiate alternative contractual terms which reasonably allow for the consequences of the event." Failure to agree to alternative provisions entitles the party invoking the clause to terminate the contract.

The difference in result suggested by an obligation, on the one hand, to perform a contract that is "more onerous" than anticipated while, on the other hand, avoiding performance of the terms of a contract that are "excessively onerous," might encourage the liberal use of the hardship clause by those who perceive that they made a disadvantageous bargain. The use of the hardship clause or its incorporation by reference into a contract could result in unanticipated requests for renegotiation with the ultimate threat of contract termination if renegotiation proves futile. Careful consideration of the possible consequences of the ICC 2003 hardship clause is warranted.

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\* Available at: [www.iccbooks.com](http://www.iccbooks.com)