

Terms and Conditions Femix Seeds

Definitions

Buyer – means the party who accepts Femix' quotation for the sale of seeds or whose order for seeds is accepted by Femix, and the party that requests sample seeds.

Contract - means the contract for the sale and purchase of seeds.

Femix - means Femix Seeds, a trade name of W.F. Van der Heiden – Wang, Zuiderboerenvaart 51, 1601CC, Enkhuizen, The Netherlands.

Terms - means the standard terms and conditions as set out in this document.

Jurisdiction

Dutch law shall govern the contract and the construction of the Terms, the legal relationship and any dispute which may arise in relation to them.

Any dispute regarding the legal relationship between parties, whether arising from this agreement, providing samples or otherwise, will exclusively be submitted to the competent court in the district in the Netherlands where Femix resides.

Prices

Prices are for seed counts, unless stated otherwise. All prices quoted by Femix personnel are subject to alteration without notice. Femix also reserves the right to alter prices by reason of the imposition of or alteration of any tax, duty, levy or other statutory or Government charge at the point of application in accordance with the regulations relating to the aforementioned charges.

Carriage

The Seed prices are, unless otherwise stated, exclusive of packing, delivery, Certificate of Origin, Phytosanitary Certificate or any other to the shipment related cost. Buyer must indicate in writing which information, specifications and documents are required according to the regulations of the country to which delivery shall be made, such as information related to invoicing, phytosanitary requirements, international certificates, any other import documents or import declarations. Femix may charge the costs thereof to buyer.

Seed Quality

Femix believes that the seeds it delivers correspond as best as possible with the descriptions associated with the seeds. Variation in local or climatic conditions can render such information inaccurate. Buyer is therefore advised that any such information given does not constitute a representation by Femix as to these matters and should not be relied on as such. Buyers should satisfy themselves that any seeds which they order are of a variety and performance satisfactory for their requirements and order such seeds at their own risk.

All germination figures quoted are tested by/for Femix under controlled circumstances which mimic common practice in the Netherlands. They are not the figures that can be expected under all circumstances. Copies of the original germination reports are available upon request.

Latent defect

Disease of plants can be transmitted by the wind, by insect, by animals or by human agencies and may be seed borne or soil borne. We believe the seeds hereby sold to be free from latent defect, but it is not a condition of sale nor do we warrant that any seeds sold by Femix shall be free from such defects. Unless Femix has evidently not exercised her usual care a latent defect constitutes force majeure.

Intellectual property rights/reproduction and resale of seed.

All intellectual property rights are reserved, this agreement is not a license, nor is any license implied in any way. All seeds are offered and sold for the production of consumer crops only. The reproduction and/or exploitation of seed is explicitly forbidden. Resale of seeds is allowed only in the country that buyer had the seeds delivered into.

Seed treatment

If at the Buyer's request any treatment whether chemical or otherwise is applied to the seeds, Femix accepts no liability or responsibility for the effectiveness of such treatment or any damage direct or consequential which may result therefrom.

Damage, delay or loss in transit

Femix delivers the seeds Ex Works (Incoterms 2010). All risk for the Buyer starts at the moment the seeds have left the Femix warehouse, regardless of whether Femix provides transport. We advise buyer to insure the seeds for transport and to thoroughly and immediately inspect the seeds upon reception.

Complaints

Buyer must inspect the purchased seeds upon delivery or as quickly as possible after this and must inform Femix within 8 days after delivery if the proper seeds have not been delivered and/or if the agreed quantity of seeds has not been delivered.

Complaints concerning visible defects to the seeds, including their packaging, must be reported to Femix in writing within 8 days after the seeds have been delivered to Buyer.

Complaints concerning non-visible or hidden defects to the seeds, including their packaging, must be reported to Femix in writing within 8 days after the Buyer discovered the alleged defect or could reasonably have been expected to discover the defect.

Complaints must be described in such a way that Femix or a third party can verify these and these complaints must be submitted with a notification of the batch, delivery ticket and invoice information. With this, Buyer must indicate the conditions under which the seeds have been used and, in the event of further sale of the seeds, the party to whom the seeds were sold.

In the event of any complaint made by Buyer that is not reported to Femix within the aforementioned applicable time, Buyer shall no longer be entitled to any form of recovery and/or compensation of damages whatsoever.

In the event of a continuing dispute between parties about germination, varietal purity, trueness to type, technical purity or seed health, an assessment can take place at the request of Buyer and/or Femix; this assessment shall be done by the Naktuinbouw, the Netherlands, or by another objective and independent body prior agreed to by Femix and Buyer. The results of this assessment shall be binding to both parties with regard to the (technical) assessment. The costs associated with this assessment shall be borne by the unsuccessful party.

Limitation of liability

In accordance with the established custom of the seed and horticultural trade any express or implied condition statement or warranty statutory or otherwise whatsoever not expressly stated in the Terms is excluded.

In the event of any seeds supplied by Femix not complying with the terms of the Contract or of any seeds proving defective (whether as regards purity or germination or otherwise) Femix will at her option replace the said seeds free of charge to the Buyer or will refund all payments made to Femix by the Buyer in respect of the defective seeds and this will be the limit and the sole extent of Femix obligation.

Save as set out in this clause above Femix hereby limits all liability whatsoever to the purchase price of the relevant seed order with regard to the seed variety it concerns. In case of liability arising out of the provision of a sample the liability is limited to an amount of Euro 1.000,-. Femix is not liable for any form of consequential loss, including lost turnover or lost profit and business stoppage. The aforementioned limitations do not apply in case of damage resulting from any intentional misconduct or conscious recklessness of Femix.

If a Buyer specifically requests to not chemically treat seed where this is normally offered or advised by Femix, Femix is not liable for any damage which may result therefrom.

Force majeure

Should the fulfilment of any Contract or order be prevented or delayed by Act of God, action by any Government, blockade, revolution, prohibition of export or import, riot, civil commotion, strikes, lockouts, force majeure, failure of crops, breakdown of machinery, power failure, fuel shortage, loss and/ or detention at sea or any other contingency reasonably beyond control of Femix, Femix will not be liable or responsible for any loss and/or damage occasioned thereby. Should any of the seeds be rendered unfit for delivery by reason of any of the above acts the Contract so far as it relates to those seeds shall be deemed to be cancelled.

Payment

After 30 days all accounts are due at full invoice price unless other arrangements have been agreed upon in writing. Statutory commercial interest rates will be charged on overdue accounts calculated on the outstanding balance.

Non-payment

Femix reserves the right to withhold deliveries until all and any outstanding payments due from the buyer under any contract with Femix have been received.

Insolvency

If the Buyer:

- (a) Has a Receiver or Liquidator appointed to any of its property or business undertaking; or
- (b) Announces that he is ceasing to Trade (other than for declared legitimate reasons such as retirement, whilst continuing to honor all existing contracts); or
- (c) Fails to make a payment as due, suspends payment and/or notifies any of his creditors that he is unable to meet debts or that he is about to suspend payment of his debts; or
- (d) Convenes, calls or holds a meeting of creditors; or
- (e) Being an individual or a firm becomes bankrupt or makes any composition or scheme of arrangement with his creditors; or
- (f) Being a corporation convenes, calls or holds a meeting for the purpose of going into liquidation (other than for the purpose of reconstruction or amalgamation) by the making of an order or the passing of a resolution for winding-up or becomes subject to an administration order; or
- (g) The other party being a partnership - any of the above events occurs with respect to the partnership or to any partner therein; then:

the full remaining price for any seeds delivered by Femix shall become immediately due to it, and Femix shall have the right without prejudice to any other rights and remedies available to it to cancel and/or terminate the contract at any time. Whenever any of these rights are exercised by Femix, Femix will not be liable to pay any compensation to the Buyer.

General

If any provision of the Terms is invalid or unenforceable in whole or in part the validity of the other provisions of the Terms and the remainder of the provision in question shall not be affected. The parties are obliged to enter into a valid provision that as much as possible meets the scope of the invalid or unenforceable clause.