

East Suffolk Produce Ltd registered in England and Wales with company number 08443660 whose registered office is at Unit R Camilla Court, Nacton, Ipswich IP10 0EU (the “Customer”). Terms and Conditions of Purchase 2018 (B2B) – Ware Potatoes

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these conditions.

“Business Day”	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business
“Client”	the client, if any, of the Customer
“Contract”	the Purchase Order, and the Supplier’s acceptance of it in accordance with clause 3.3, and these terms and conditions
“Delivery Date”	the date specified in the Purchase Order, or, if none is specified within [▪] days of the date of the Purchase Order
“Delivery Location”	the address for delivery of Goods as set out in the Purchase Order or as otherwise specified by the Client by means of advanced notice
“Goods”	the Goods agreed in the Contract to be purchased by the Customer from the Supplier (including any part of it)
“Purchase Order”	the Customer’s written instruction to supply the Goods (incorporating these conditions) which includes details of type, quality, price, size and quantity of the Goods
“Specification”	any specification for the Goods that is agreed by the Customer and Supplier
“Supplier”	the person, firm or company who accepts the Purchase Order in accordance with clause 3.3
“Wastage”	means Goods that do not comply with clause 4

1.2 If there is a conflict between the terms of the Purchase Order and these terms and conditions, these terms and conditions shall prevail.

1.3 Clause headings shall not affect the interpretation of this Contract.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute, statutory provision or a scheme is a reference to it as amended, extended, replaced or re-enacted from time to time.

1.9 Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.10 A reference to writing or written includes faxes and email.

2. Application of conditions

2.1 These conditions shall:

- 2.1.1 apply to and be incorporated as part of the Contract; and
- 2.1.2 prevail over any inconsistent terms or conditions whether contained in or referred to in the Supplier's quotation, acceptance, correspondence or elsewhere or implied by, trade, custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these conditions shall be binding on the Customer unless in writing and signed by a duly authorised representative of the Customer.
- 2.3 Where the Purchase Order is for more than one item, it shall (following acceptance by the Supplier) be regarded as a single Contract for all Goods supplied pursuant to that Purchase Order.

3. Effect of Purchase Order

- 3.1 The Customer shall only be bound by an order if it is in writing, issued on the Customer's standard Purchase Order form and signed by a duly authorised representative of the Customer.
- 3.2 The Purchase Order constitutes an offer by the Customer to purchase the Goods subject to these conditions. Accordingly, any acceptance of the Purchase Order by the Supplier shall establish a contract for the sale and purchase of the Goods on these conditions. Any counter-offer made by the Supplier to supply the Goods on other conditions shall only be validly accepted if such acceptance is in writing and signed by a duly authorised representative of the Customer.
- 3.3 The execution and return of the acknowledgement copy of the Purchase Order form by the Supplier, or the Supplier's execution, commencement of work, or commencement of delivery pursuant to the Purchase Order constitutes acceptance of the Purchase Order on these conditions by the Supplier.

4. Supplier's warranty

- 4.1 The Supplier warrants to the Customer that:
 - 4.1.1 it has insurance with a reputable insurance company including a policy or policies covering all matters which a prudent supplier would insure for;
 - 4.1.2 the Goods conform to the Specification stated in the Purchase Order;
 - 4.1.3 all soil and extraneous matter packaged with the Goods shall be kept to a minimum;
 - 4.1.4 the Goods shall comply with all applicable legislation and codes of practice for the time being in force, including but not limited to all food safety legislation and relevant industry codes of practice (including any specifically provided for in the Specification);
 - 4.1.5 it has and will maintain all the licences, permissions, authorisation, consents and permits that it needs to carry out its obligations under the Contract;
 - 4.1.6 it shall comply fully with the Customer's policies and protocols set out in the Customer's best practice guide (copies available on request);
 - 4.1.7 it shall comply fully with all reasonable directions from the Customer or the Client;
 - 4.1.8 at no time has the Supplier used any liquid or solid effluent from human sewage, treated or untreated in any aspect of crop production of the Goods, nor have the Goods be grown on land treated with human waste material within the last 5 years;
 - 4.1.9 it has not used organic manures nor grazed stock on the land grown 2 years prior to harvest; and
 - 4.1.10 the Goods are free from contamination by glass, oil, rodents and other allergens.
- 4.2 The Supplier shall use all reasonable endeavours to prevent contamination of the Goods, and shall adopt such procedures and implement such risks assessment as would be expected in complying with best practice when supplying the Goods. The Supplier shall inform the Customer if the Goods have been contaminated or the Supplier suspects the Goods have been contaminated.

- 4.3 The Customer may at any time (acting reasonably) require such proof as it requires of the obligations as set out in clause 4.1. A failure to provide such evidence shall be a material breach of the Contract.
- 4.4 The Customer's rights under the Contract are in addition to the statutory terms implied in favour of the Customer by the Sale of Goods Act 1979 and any other statute.
- 4.5 The provisions in this clause 4 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Contract and shall extend to any replacement or substitute Goods provided by the Supplier.

5. Quantities

Unless where stated in the Purchaser Order the Supplier shall deliver the exact specified quantities of items in accordance with the Purchase Order. Without affecting its other rights and remedies, the Customer reserves the right to reject incomplete deliveries and to return excess quantities at the Supplier's risk and expense.

6. Inspection and testing of the Goods

- 6.1 The Supplier shall:
- 6.1.1 carry out such quality control testing on the Goods as is prudent and customary in line with best market practice before delivery to ensure that only those Goods which comply with the Specification are delivered; and
 - 6.1.2 if so requested by the Customer, allow the Customer and/or the Client to attend such quality control testing.
- 6.2 The Customer reserves the right to inspect and carry out its own quality control testing at any stage of cultivation or after harvest. If, as a result of any inspection, the Customer or Client finds or believes that the Goods do not comply with these terms and/or the Purchase Order, or are unlikely to comply on harvest (if relevant), the Customer or Client may inform the Supplier, and the Supplier shall take such steps as are necessary to ensure compliance.
- 6.3 The Customer and Client shall have the right to conduct further inspections after the Supplier has carried out any necessary remedial actions.
- 6.4 Inspection by the Customer of the Supplier's Goods shall in no way imply acceptance by the Customer or prejudice the Customer's right to reject the Goods. Nor shall it relieve the Supplier of any responsibility or any liability whatsoever.

7. Delivery and acceptance of the Goods

- 7.1 The Supplier shall ensure that:
- 7.1.1 the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition;
 - 7.1.2 the Goods are clearly labelled clearly stating the harvest date, variety, field name or number, Supplier's name and package number. Where the Goods are split the grade should also be labelled;
 - 7.1.3 no charge shall be made for wrapping, packing, boxes, pallets, crating or containers unless specified in the Purchase Order, and the Customer shall not be responsible for returning any such materials. Boxes must be fit for purpose of transportation, automatic emptying and be suitable for stacking to British Standard 6711 (i.e. stackable 6 high);
 - 7.1.4 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
 - 7.1.5 any Goods delivered in bulk or graded out of store shall not be handled at temperatures below 8 degrees Celsius
- 7.2 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 7.3 The Customer shall not be deemed to have accepted the Goods until it has had:

7.3.1 in the case of Goods delivered on an “ex field” basis, stored at 7 degrees Celsius or above, 7 days to inspect the Goods after delivery; or

7.3.2 in the case of Goods delivered from cold storage, 10 days to inspect the Goods after delivery.

7.4 On delivery to the Customer’s or Client’s premises (as the case may be) the Customer or Client will carry out a representative quality assessment from each consignment within the relevant deadline specified in clauses 7.3.1 and 7.3.2. Without prejudice to the Customer’s other rights and remedies and notwithstanding any other provision of the Contract, any Goods that do not meet with the Customer or Client’s requirements may be rejected and returned to the Supplier’s premises at the Supplier’s risk and expense.

7.5 For Goods stored:

7.5.1 at 7 degrees Celsius or above in situations where the latent defect(s) are not visible on initial sampling (including, but not limited to progressive rots and bruising) loads may still be rejected and returned beyond the period specified in clause 7.3.1; and

7.5.2 at below 7 degrees Celsius in situations where the latent defect(s) are not visible on initial sampling (such as, but not limited to progressive rots and bruising) loads may still be rejected beyond the period specified in clause 7.3.2,]

the provisions of clause 13 shall apply to any Goods that are rejected.

7.6 Time is of the essence as to the delivery of the Goods.

8. Risk and property

8.1 The Goods shall be at the risk of the Supplier until they are deemed delivered. The Supplier shall off-load the Goods at its own risk and as directed by the Customer or Client (acting reasonably).

8.2 Ownership of the Goods shall pass to the Customer on completion of delivery (including off-loading) in accordance with the Purchase Order, except that if the Goods are paid for before delivery ownership shall pass to the Customer once payment has been made. The passing of ownership in the Goods is without prejudice to any right of rejection to which the Customer may be entitled under the Contract or otherwise.

8.3 Notwithstanding any provision of the Contract, the Customer may resell or use Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods.

9. Prices

9.1 All prices shall be as stated in the Purchase Order and are subject to clause 9.2. Unless otherwise specified all prices are inclusive of delivery, packaging, packing, shipping, carriage, insurance and other charges and duties, and are not subject to adjustment save as specifically provided in the Contract.

9.2 On delivery the price to be paid for the Goods will be calculated using the net weight of the Goods which is the weight of the Goods, less any:

9.2.1 soil and any extraneous matter. The weight of the soil and any extraneous matter will be deducted by the Customer or Client when calculating the net weight. The Customer will be entitled to set off the cost of haulage and disposal for the excess soil and extraneous matter from the amount due to the Supplier under the Purchase Order;

9.2.2 Wastage:

(a) The weight of Wastage in any given load shall be deducted by the Customer or the Client when calculating the net weight. The Customer will be entitled to set off the cost of haulage and disposal for the Wastage from the amount due to the Supplier under the Purchase Order;

(b) If the total Wastage of the load is determined by the Customer or the Client to be 30% or more of the gross weight of the Goods the Customer may reject the load of Goods or the weight of such Wastage shall be deducted in accordance with 9.2.2(a) above; and

(c) as otherwise agreed between the parties; and

9.2.3 outsizing;

9.2.4 weighbridge charges (where applicable); and

9.2.5 packaging or containers (determined by reference to industry norm weights)

10. Payment

10.1 The payment terms for the Goods will be as set out on the Purchase Order.

10.2 Unless otherwise stated in the Purchase Order the Customer will only pay the Supplier when the Customer is paid by the Client to which the Goods relate.

10.3 Without prejudice to any other right or remedy, the Customer reserves the right to set off any amount at any time owing to it by the Supplier against any amount payable by it to the Supplier under the Contract.

11. Indemnity and limitations

11.1 The Supplier shall keep the Customer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer as a result of or in connect with:

11.1.1 any claim that the Goods fail to comply with the terms of this Contract;

11.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

11.1.3 any claim against the Customer by a third party arising out of or in connection with the supply of Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors

This clause 11 shall survive termination of the Contract.

12. Termination

12.1 The Customer may cancel the Contract (for all or part only of the Goods) by giving written notice to the Supplier at any time before delivery.

12.2 Without prejudice to any other rights or remedies to which the Customer may be entitled, the Customer may terminate the Contract without liability to the Supplier if:

12.2.1 the ability of the Customer to accept or take delivery of the Goods is delayed, hindered or prevented by circumstances beyond its reasonable control;

12.2.2 the Supplier commits a material breach of any term of this Contract which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

12.2.3 the Supplier repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;

12.2.4 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;

- 12.2.5 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - 12.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
 - 12.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier;
 - 12.2.8 the holder of a qualifying floating charge over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
 - 12.2.9 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
 - 12.2.10 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
 - 12.2.11 any event occurs, or proceedings taken, with respect to the Supplier in any jurisdiction to which it is subject that has an equivalent or similar effect to any of the events mentioned in clause 12.2.2 to clause 12.2.10 (inclusive);
 - 12.2.12 the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - 12.2.13 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 12.3 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination of this Contract shall remain in full force and effect.
- 12.4 Termination of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

13. Remedies

- 13.1 If any Goods are not supplied in accordance with, or the Supplier fails to comply with, any terms of the Contract, the Customer may (without prejudice to any other right or remedy) exercise any one or more of the following rights or remedies, whether or not any part of the Goods have been accepted by the Customer:
- 13.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 13.1.2 reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid immediately by the Supplier;
 - 13.1.3 require the Supplier, at the Supplier's expense, to supply replacement goods. If the Supplier refuses to supply replacement goods within 15 days of receiving such a request, the Customer may purchase replacement goods from another source and the Supplier shall reimburse the Customer for any costs and expenses incurred in doing so;
 - 13.1.4 if replacement goods are not requested under clause 13.1.3 to recover from the Supplier any costs and expenses incurred by the Customer in obtaining substitute Goods from a third party;
 - 13.1.5 where the Customer has paid in advance for Goods that have not been provided by the Supplier, to have such sums refunded by the Supplier; and/or
 - 13.1.6 refuse to accept any further deliveries of the Goods, without liability to the Supplier,

and in any case to claim such damages for any additional costs, loss or expenses incurred by the Customer that it may have sustained in connection with the Supplier's breach or breaches of the Contract not otherwise covered by this condition 13.

14. Variation

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

15. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. Rights and remedies

Except as expressly provided in this Contract, the rights and remedies provided under this Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

17. Severance

17.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

17.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. Assignment

18.1 The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

18.2 The Customer may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19. Third party rights

No one other than a party to this Contract, their successors and permitted assignees, shall have any right to enforce any of its terms.

20. Notices

20.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing and shall be:

20.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

20.1.2 sent by fax to its main fax number.

20.2 Any notice or communication shall be deemed to have been received:

20.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

20.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

20.2.3 if sent by fax, at 9.00 am on the next Business Day after transmission.

20.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

21. Mediation

21.1 If any dispute arises in connection with the Contract, the Supplier will at the written request of the Customer to enter into mediation in good faith to settle such a dispute and will do so in accordance with [the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed between the parties within 14 Business Days of notice of the dispute, the mediator will be nominated by CEDR.

21.2 The Supplier must not issue any legal proceedings in respect of a dispute against the Customer unless and until (i) the Customer has confirmed in writing that it does not wish to engage in a mediation pursuant to clause 21.1; or (ii) a mediation in relation to the dispute has taken place between the Customer and the Supplier but the dispute has not been settled. The Customer shall inform the Supplier of whether or not it wishes to engage in such a mediation within 30 Business Days of being requested in writing to do so by the Supplier.

22. Governing law

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that, subject to clause 21, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.