

# BUSINESS TERMS AND CONDITIONS FOR FOREIGN SALES

issued by Černý Seed s.r.o. (LLC), a company doing business in accordance with the Certificate of Incorporation, place of business: Czech Republic, Jaroměř, Husova 139, company ID number 04431049, registered in the Trades Register, in accordance with the provisions of Section 1751 para. 1 Act no. 89/2012 Coll., Civil Code, as amended.

The Business Terms and Conditions are valid from 15 August 2019 until publication of a new version and relate exclusively to sales of goods outside of the territory of the Czech Republic.

## I. **GENERAL PROVISIONS**

### **1.1 Subject of regulation**

These Business Terms and Conditions for Foreign Sales (hereinafter referred to only as the "Terms and Conditions") regulate the rights and obligations of the parties specified in the purchase contract (hereinafter referred to only as the "Contract") concluded between Černý Seed s.r.o. (LLC), seed trader, in his capacity as the seller as the one party (hereinafter referred to only as the "Seller") and the customer (i.e. a specialised company purchasing goods for the purpose of their resale, not a consumer) in his capacity as the buyer as the other party (hereinafter referred to only as the "Buyer"). The Terms and Conditions shall apply without reservation; the validity of the Buyer's business terms and conditions is ruled out, unless the Seller has explicitly approved the validity of the Buyer's business terms and conditions in writing in advance.

### **1.2 Part of the Contract**

#### **1.2.1**

These Terms and Conditions constitute an integral part of every Contract concluded between the Seller and the Buyer. Any possible deviations from the Terms and Conditions must be explicitly regulated for in the Contract. Verbal arrangements which are not confirmed in writing shall not be deemed valid.

#### **1.2.2**

Different arrangements in a Contract concluded between the Seller and the Buyer which differ from the Terms and Conditions shall take precedence over the provisions of the Terms and Conditions. The Seller may alter or supplement the wording of the Terms and Conditions although change or supplementation shall not relate to any purchase contracts which have already been concluded.

#### **1.2.3**

The valid version of the Terms and Conditions is published at [www.cernyseed.cz](http://www.cernyseed.cz). The Seller shall inform the Buyer of change to the Terms and Conditions or of his intention to change them by e-mail, unless agreed otherwise in the Contract.

### **1.3 Terms**

Terms used in the Terms and Conditions are defined as follows:

"*Contract*" shall be understood to mean a purchase contract concluded under Act no. 89/2012 Coll., Civil Code, as amended (hereinafter referred to only as the "Civil Code"), this being in accordance with Section 2079 et seq. Civil Code. Its subject shall be delivery of goods by the Seller at the agreed purchase price to the Buyer together with transfer of right of ownership of the goods to the Buyer. A framework purchase contract and binding order (i.e. Buyer's order which has been confirmed by the Seller) shall also be understood to constitute a purchase contract.

"*Performance*" shall be understood to mean delivery of goods. Each delivery of goods constitutes a separate contractual relationship between the Seller and the Buyer which is performed subject to the conditions regulated for by the Terms and Conditions or the Contract.

"*Goods*" indicates seeds of ornamental plants (flowers), trees, spices, medicinal plants and vegetables and possibly other products offered by the Seller according to his current offer.

"*Invoice*" shall be understood to mean a document having the particulars of a due tax document in accordance with the respective generally binding legal regulations.

"*Price*" shall be understood to mean the purchase price.

"*Performance period*" shall be understood to mean the delivery term.

### **1.4 Orders**

#### **1.4.1**

The Seller's offers are always non-binding and their validity is limited in time. The Contract is not concluded until written confirmation of the order by the Seller, or its execution (sending or delivery of goods). Each Performance constitutes a separate contractual relationship between the Seller and the Buyer which is performed subject to the conditions regulated for by the Terms and Conditions and also by the Contract. The minimum level of orders is determined at EUR 20.00 (twenty euros) excl. VAT, or the equivalent in a different currency, unless the Seller explicitly determines otherwise.

#### 1.4.2

Orders for goods which are not yet harvested and cleaned shall only be accepted by the Seller subject to an average harvest of goods of market quality. In the event of a low yield, the Seller shall be entitled either to proportionately decrease the order, or even to cancel it completely, in both cases with no right whatsoever on the part of the Buyer to compensation for damage from the Seller. The Seller shall inform the Buyer as soon as possible if an insufficient harvest is discovered. A bad harvest and insufficient market quality shall release the Seller from his obligation to deliver the ordered goods to the Buyer.

#### 1.4.3

The Seller shall be entitled to withdraw from the Contract without provision of compensation if performance of the Contract is made impossible for him by an Act of God. Act of God shall be understood to mean adverse events of a natural or social nature which are completely outside the influence of the Seller and which make it impossible or extremely difficult for the Seller to deliver the goods to the Buyer.

#### 1.4.4

The Seller shall be entitled to withdraw from the Contract in the event of any decrease in the Buyer's ability to pay.

#### 1.4.5

The order must in particular include the following details:

- specification of the goods;
- delivery date;
- phytosanitary requirements;
- requirement for certification;
- requirement for other import documents or import permit required for the respective delivery.

### **1.5 Prices**

#### 1.5.1

Prices in the Seller's currently valid price list are specified in EUR exclusive of the respective value added tax rate. The Seller reserves the right to change the Price of goods in relation to change in the prices of subcontractors or other input costs.

#### 1.5.2

The Seller reserves the right to also change the Price in the interim period after conclusion of the Contract, this being in the form of issuance of a new price list and notification of the Buyer of this fact by e-mail, unless determined otherwise in the Contract.

#### 1.5.3

Sales units shall be understood to mean 1 (one) g of natural seeds, 1,000 (one thousand) natural seeds, 1,000 (one thousand) coated seeds (pellets). The Seller reserves the right if necessary to change the sales unit with publication of a new price list. Notification of the Buyer shall take place by e-mail, unless a different method is agreed in the Contract.

#### 1.5.4

Prices specified in the price list do not include packing charges, costs for sending, insurance, costs for certified verification of quality by an independent testing laboratory, customs duty, costs for phytoquarantine control (issuance of a phytosanitary certificate) and other ancillary costs, unless agreed otherwise in the Contract or in individual orders.

### **1.6 Due date**

The price for the goods is payable within 30 (thirty) days of the date of issuance of the Invoice, unless a different due date is explicitly agreed. Failure to pay the Price on the due date shall constitute fundamental breach of the Contract. In the event of payment of the Price in instalments, the whole Price shall become due in the event of failure to pay one of the instalments. In the event of delay on the part of the Buyer to settle an Invoice, the Seller shall be entitled to punitive interest in the level of 0.05% (five hundredths of one percent) of the outstanding amount for each day of delay until payment in full. This shall not affect the right of the Seller to compensation for damage in accordance with the generally binding legislation, on the understanding that the actual and demonstrable damage shall be settled and not loss of profit.

### **1.7 Other payment conditions**

Deduction of discounts shall require special written agreement. The Seller reserves the right to determine payment of a deposit in part or in full as a condition for provision of Performance, this being solely at the Seller's discretion. The deposit shall be settled on the basis of a proforma invoice. Payment of the deposit may, solely at the Seller's discretion, be replaced for example by a bank guarantee or other suitable means of security which is acceptable for the Seller.

### **1.8 Set off**

The Buyer shall only be entitled to set off any possible receivable he may be owed by the Seller against a receivable of the Seller for payment of the Price owed by the Buyer for Performance subject to the Buyer's receivable being undisputed and its reason and level having been explicitly acknowledged by the Seller in writing.

### **1.9 Exchange rate differences**

The level of the Price shall retain its value. The Price is specified in EUR. The Seller shall be entitled as he sees fit to appropriately adjust the Price if any change occurs in the exchange rate between the respective currency for the given transaction and EUR by more than 5% (five percent).

### **1.10 Performance deadline**

The performance deadline begins on sending of confirmation of an order, although not before gaining any official approval, permit or other materials which the Buyer may have to gain, and also not before clarification of all technical and commercial matters relating to Performance. Adherence of the obligations of the Seller with regards to Performance also presupposes timely and due performance of the obligations of the Buyer.

### **1.11 Limitation and cancellation of Performance**

The Seller undertakes to exert the maximum effort to adhere to the agreed delivery deadlines and terms. Orders may be limited or cancelled for reasons lying on the side of the Seller (e.g. with a view to the crop and possible delivery date with a view to agrotechnical deadlines). In such a case, the Seller undertakes to notify the Buyer of this impossibility without unnecessary delay. Partial deliveries are usually permissible.

### **1.12 Delay by the parties**

If one of the Contracting parties is in delay or if he culpably breaches another legal obligation, the other Contracting party shall be entitled to demand compensation for damage in accordance with the generally binding legislation. Compensation shall only be provided for demonstrable actual damage. The Seller shall not however bear any liability for delay caused by facts which he could not influence whilst exercising reasonable care (Acts of God, delay during a customs check, technical and logistical difficulties during transportation and similar).

## **II.** **SALE AND DELIVERY OF GOODS**

### **2.1 Purchase price**

The Seller's "ex works" prices shall apply (i.e. "EXW Černý Seed s.r.o., Husova 139, Jaroměř, CZ /INCOTERMS 2010"). All fees relating to transportation, as well as other costs necessary for delivery of goods to the Buyer (e.g. certification costs) shall be borne by the Buyer.

### **2.2 Transportation and delivery of goods**

#### **2.2.1**

The method of transportation shall be agreed via confirmation of the Buyer's order by the Seller, or in the respective approved pricing offer regulating the respective transaction, in which clarification shall be provided as to whether transportation of the goods will be arranged by the Seller at the Buyer's cost or whether transportation is to be arranged by the Buyer himself at his cost or whether he will be using the services of a forwarding company at his own cost.

#### **2.2.2**

The Seller is entitled to refuse to deliver goods to the Buyer in a manner which conflicts with the generally binding legislation of the Czech Republic or country to which the goods should be delivered.

#### **2.2.3**

Together with the method of transportation, the matter of possible insurance for the consignment shall also be resolved as well as the question of packaging for the goods.

#### **2.2.4**

Natural and coated seeds may be delivered in large packs or in individual packs, made up on the basis of request by the Buyer and approved by the Seller (packaging into plastic ampoules, into non-standard packaging or packaging in quantities smaller than the stipulated minimum). The Seller shall be entitled to request of the Buyer compensation for costs relating to individual or non-standard packaging of seeds.

#### **2.2.5**

The place of transfer of risk relating to the goods is the location of handover to the Buyer or his contractual forwarder if the Buyer has arranged transportation of goods or at the moment of delivery of goods to the Buyer if transportation is arranged by the Seller. If the Seller and the Buyer do not come to agreement otherwise, the location of collection of the goods by the Buyer and his forwarder shall be the Seller's warehouse. In the event of transportation of the goods to the Buyer arranged by the Seller, liability for damage to the goods shall be transferred to the Buyer at the moment of delivery of the goods to the agreed location (e.g. the Buyer's warehouse).

#### **2.2.6**

The specific place of transfer of risk shall be determined according to the individual transaction by the corresponding INCOTERMS 2010 conditions and clear specification (address, airport or warehouse) provided in the pricing offer or in the Contract or Invoice. The Seller reserves the right to refuse delivery subject to "EXW Černý Seed s.r.o., Husova 139, Jaroměř, CZ /INCOTERMS 2010" conditions), especially in cases of export of goods outside the EU.

### 2.2.7

If an Act of God prevents the Seller from delivering the goods, the delivery term shall be prolonged by the period of duration of obstacles constituting such an Act of God. The right of the Seller to withdraw from the Contract shall remain unaffected by this.

### 2.2.8

The Seller reserves the right to perform partial deliveries with the exception of cases when the parties have explicitly agreed that partial performance shall not be permitted.

### 2.2.9

Failure to collect the goods on the determined date shall entitle the Seller to impose a contractual penalty in the agreed level, on the understanding that possible imposition of the contractual penalty shall not restrict the Seller in claiming for compensation for damage in accordance with the generally binding legislation.

### 2.2.10

If goods were not delivered on time and this delay in delivery was not caused by an Act of God, when the liability of the Seller is excluded, the Buyer shall be entitled to demand of the Seller a contractual penalty if this has been arranged and/or compensation for damage in accordance with the generally binding legislation. The level of contractual penalties claimed for by the Buyer may reach a maximum total of the price of goods ordered by the Buyer from the Seller.

## **2.3 Acceptance of the goods**

### 2.3.1

If no place and time is agreed, the Buyer shall be obliged to accept the goods at the Seller's warehouse at the address: CZ, Jaroměř, Husova 139, postcode 55101, from Monday to Friday, with the exception of days which are national holidays, this being from 8 am (eight) until 3 pm (three) after notification by the Seller to the Buyer of the possibility of collecting the ordered goods.

### 2.3.2

On acceptance of the goods from the carrier, the Buyer shall be obliged to check that the packaging of the goods is intact and in the event of any defects to notify the carrier of this without delay. If any rupture of the packaging is found indicating unauthorised interference with the consignment, the Buyer need not accept the consignment from the carrier. By signing the delivery note, the Buyer confirms that the packaging of the consignment containing the goods was intact and no later claim may be considered with regards to breach of the packaging.

## **2.4 Delay on the part of the Buyer**

If the Buyer finds himself in delay or if he culpably breaches other legal obligations, risk of accidental expiry or accidental damage to the goods shall be transferred to the Buyer. If the Buyer is in delay with acceptance of goods, the Seller shall provide him with a reasonable period for collection, at most however 10 (ten) days; after expiry of this deadline in vain, the Seller shall be entitled to withdraw from the Contract. This shall not affect his right to charge the Buyer storage charges in the amount of 0.1% (one tenth of a percent) of the Price of undelivered goods exclusive of VAT or the right to compensation for damage in accordance with the generally binding legislation. The Seller shall be entitled to demand of the Buyer compensation for demonstrable damage and also loss of profit in relation to his delay or breach of any other legal obligation.

## **2.5 Delay on the part of the Seller**

The Seller shall bear liability for delay in Performance if his gross negligence on handover of goods to the forwarder is proven. The Seller shall also be liable for delay if delay in delivery caused by him is based on culpable breach of an important/fundamental breach of the Seller's contractual obligation; in this case however, liability for compensation for damage shall be limited to the actual and demonstrable damage and not loss of profit.

## **2.6 Quantity, quality and packaging**

### 2.6.1

If no other quality of Performance is agreed, the Seller shall deliver Performance in the usual quality in accordance with regular commercial practice. The quality must correspond to the generally binding legislation and appropriate standards. Goods shall be packed in standard packaging supplied by the Seller, or in transport packaging. The Seller shall be obliged to pack the goods in such a way that no damage occurs to the goods in terms of regular impact and effects during transportation. In the case of transportation arranged by the Seller, the Seller shall also be obliged to ensure that the level of transportation of goods is such that the agreed qualitative properties of the goods are preserved. In the event of request by the Buyer, the Seller shall insure Performance with transportation insurance at the cost of the Buyer.

### 2.6.2

The Buyer shall assume liability for liquidation of packaging used during transportation of goods.

## **2.7 Warranty and compensation for damage**

### **2.7.1**

The Seller provides a warranty for the Performance, the duration and scope of which is regulated by the order or the Contract. The warranty shall in particular be understood to mean that the goods shall be fit for the agreed use for a specific period of time and maintain the agreed properties, e.g. germination capacity subject to adherence to the prescribed agrotechnical requirements.

### **2.7.2**

The Seller shall be held liable to the Buyer for the goods complying with the Contract, in particular that they shall be free from defects. Compliance with the Contract shall be understood to mean that the goods have the quality and utility values required by the Contract and that they correspond to the requirements of the legislation, that they are delivered in the appropriate quantity, measurements or weight and that they correspond to the purpose which the Seller specifies for use of the goods or which the goods are usually used for.

### **2.7.3**

The agreed quality (properties) of the goods shall in particular be characterised by:

- the agreed quantity;
- the agreed weight;
- purity and authenticity of type or variety;
- compliance with the other agreed standards;
- the specified germinating capacity in terms of usual tolerance is determined on the basis of ISTA methodology.

### **2.7.4**

Descriptions of varieties in catalogues or on the Seller's website are supposed to help the Buyer make his choice; they do not however constitute a promise and guarantee of specific properties. By concluding the Contract, the Buyer also accepts deviations from the characteristics specified in the Seller's prospectuses or similar materials of the Seller, or in the offers describing properties (shape and colour), if they result from the natural irregularity / variability of the material used (paper, printing and similar).

### **2.7.5**

Liability of the Seller for the development and growth of plants from all seeds delivered is excluded, as their development and growth is dependent on external factors which cannot objectively be verified and influenced by the Seller, i.e. soil, climate or cultivation methods stemming from the professional knowledge of the Buyer. The liability of the Seller for infestation of seeds with diseases and pest and their transfer is similarly ruled out.

### **2.7.6**

All guarantees of the Seller shall lose their validity if any change occurs to the goods as a result of incorrect handling (storage, handling, processing or mixture of the goods).

### **2.7.7**

Every consignment must be checked immediately after delivery. An incorrect number of loaded items and damage to them must be reported to the carrier. Obvious defects to goods, weight and differences in quantities must be reported by the Buyer to the Seller in writing within 5 (five) working days, bad germination capacity of seeds within 3 (three) weeks of receipt of the goods – with a precise description of the defects ascertained. Defects which are discovered by the Buyer later must be reported in writing to the Seller immediately after having been ascertained, no later however within 6 (six) months of the delivery date.

### **2.7.8**

If the goods are affected by any defect at the moment of transfer of risk, the Seller undertakes in terms of request for additional performance to execute a replacement delivery. If delivery of defect free goods does not subsequently occur within 2 (two) weeks, the Buyer may demand a discount from the purchase price from the Seller or withdraw from the Contract.

### **2.7.9**

Claims for goods shall be governed by the claims regulations of the Seller, the current version of which can be found at [www.cernyseed.cz](http://www.cernyseed.cz), unless the order or Contract has determined other claims rules.

### **2.7.10**

The Seller shall be held liable to the Buyer for damage created due to defective seeds, at most however up to the level of the purchase price actually paid by the Buyer.

## **2.8 Transfer of ownership**

Right of ownership of the goods shall not be transferred to the Buyer until payment in full of the Price, including any possible exchange rate differences in accordance with paragraph 1.9 of the Terms and Conditions, outstanding interest and contractual penalties owed by the Buyer. Date of payment shall be understood to mean the date of crediting the respective amount to the Seller's account.

## **2.9 Withdrawal from the Contract**

### **2.9.1**

If the Seller withdraws from the Contract (in particular due to delay on the part of the Buyer with payment of the Price), the Seller shall be entitled to take back goods which have not been paid for.

### **2.9.2**

Withdrawal from the contract by the Buyer must be made in writing and delivered to the Seller's address.

### **2.9.3**

In the event of withdrawal from the contract, the Contract shall be cancelled ex tunc. Goods must be returned to the Seller without delay from the date of sending notice of withdrawal from the Contract to the Seller, this being to the Seller's address. Goods must be returned to the Seller undamaged, in unopened original packaging in the case of plant seeds.

### **2.9.4**

The Seller shall be entitled to examine returned goods, in particular for the purpose of ascertaining whether the returned goods are damaged, worn or partially used.

### **2.9.5**

In the event of withdrawal from the contract, the Seller shall refund the purchase price to the Buyer without unnecessary delay once the goods have been returned by the Buyer undamaged, not worn or partially used, this being by means of cashless transfer to the account determined by the Buyer.

### **2.9.6**

The Buyer acknowledges that if goods returned to by the Buyer are damaged, worn or partially used, entitlement shall be created for the Seller towards the Buyer to compensation for damage incurred by him due to this. The Seller shall be entitled to unilaterally set off compensation for damage incurred against the Buyer's entitlement to refund of the purchase price.

### **2.9.7**

In the event of withdrawal from the contract, the Buyer shall bear all costs relating to return of the goods.

## **2.10 Purpose of use of the goods and protection of the Seller's intellectual property**

### **2.10.1**

All seeds are supplied by the Seller to the Buyer exclusively for cultivation of plants which are intended for final use. Use for production of seeds (reproduction) is explicitly forbidden. The Buyer undertakes not to reproduce varieties from the Seller's supplier programme or provide them for reproduction and subsequent distribution. Breach of the above-mentioned ban shall entitle the Seller to impose a contractual penalty in the amount of EUR 100,000.00 (one hundred thousand euros) for each reproduced variety. Imposition of the contractual penalty shall not affect entitlement on the part of the Seller to compensation for damage in accordance with the generally binding legislation.

### **2.10.2**

For the purpose of the above-mentioned obligation of the Buyer, the Seller or representative authorised by him shall be entitled to enter the business premises of the Buyer without impediment to perform checks on production of plants and their use. The Buyer undertakes to tolerate such checks and to provide the Seller with the required cooperation.

### **2.10.3**

Any other offering of the Seller's varieties by the Buyer with indication of the Seller's brand or logo to third parties shall only be possible on the basis of the prior written consent of the Seller.

### **2.10.4**

Visual material to go with the Seller's goods (photographs, digital photographs and other visual material) is the subject of the Seller's copyright.

### **2.10.5**

The Buyer may only use the Seller's visual material in his own business for advertising purposes and as illustrative material for his own catalogue and other promotional media. Use is only possible for original varieties which visual material was provided for, the same applying in terms of illustration of offers of these varieties. Every other use than exclusively for the Buyer, in particular any publication, shall require the prior written consent of the Seller.

### **2.10.6**

Use of visual materials for printing bags and other commercial consumer packaging is permitted. Use of visual materials for other varieties than the Seller's varieties is expressly forbidden and any possible non-compliance with this shall entitle the Seller to impose a contractual penalty in the amount of EUR 10,000.00 (ten thousand euros) for each such unauthorised use.

Application of the contractual penalty shall not affect entitlement to compensation for damage in accordance with the generally binding legislation.

2.10.7

The Seller's flower seed catalogue may only be used for resale of the Seller's goods.

### III. **CLOSING PROVISIONS**

#### **3.1 Confidential information**

The parties undertake to maintain discretion with regards to confidential information ("know-how", commercial, organisational, financial, proprietary, marketing and other related data of the parties, which is protected appropriately against provision of access to it by unauthorised third parties) without the prior written consent of the other party and not to provide access to this even through negligence to any third party with the exception of cases determined by law. The obligations specified in this paragraph shall persist even once the validity of the Contract ends, unless the parties agree otherwise.

#### **3.2 Governing law**

The legal relations between the Seller and the Buyer relating to Performance shall be governed by the laws of the Czech Republic. Relations not explicitly regulated for by the Terms and Conditions or the Contract shall be governed by the Civil Code.

#### **3.3 Resolution of disputes**

Unless explicitly determined otherwise by the Contract or order, all disputes which arise from the Contract or in relation to it shall be judged excluding the competence of the general courts, with final validity in terms of arbitration proceedings held at the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic in Prague in accordance with its Rules on-line by one arbitrator determined by the Chairman of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic, on the understanding that arbitration proceedings shall be held in English.

#### **3.4 Severability**

If one or more clauses of the Terms and Conditions were to be ineffective or to become ineffective, the force of the other provisions of the Terms and Conditions shall not be affected. The parties already declare here at this point that for this event, they shall replace the clause which is at that time ineffective for its economic and actual purpose with a legally effective clause as soon as possible.

#### **3.5 Act of God**

If an event arises which makes meeting of the obligations arising from the Terms and Conditions and/or the Contract partially or wholly impossible, the party which is affected by the Act of God shall be obliged to inform the other party of this without unnecessary delay and to jointly take appropriate steps to remedy the situation. Act of God shall be understood to mean extraordinary circumstances preventing meeting of obligations arising from the Terms and Conditions and/or the Contract (strikes or employee lockouts, power cuts or failure of other energy, riots, uprisings, flooding, fire, earthquake or similar calamities of a natural or social nature etc.), which did not arise until after their conclusion and which could not have been averted by the parties. If circumstances arise which have the nature of an Act of God and make it impossible to meet obligations arising from the Terms and Conditions and/or the Contract for a period of more than 30 (thirty) calendar days, the other party shall be entitled to withdraw from the Terms and Conditions and/or the Contract without being obliged to provide compensation for damage arising.

#### **3.6 Validity and effectiveness of the Terms and Conditions**

These Terms and Conditions have been issued by the Seller, effective as at 15.8.2019 and shall be valid for an indefinite period until their cancellation by the Seller or replacement by new Business Terms and Conditions solely at the Seller's discretion.

In Jaroměř, on 15<sup>th</sup> August 2019

PhDr. Jan Černý