



# International Seed Federation

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

July 2009

**NOTE:**

These ISF Rules and Usages for the Trade in Seeds for Sowing Purposes were adopted by the General Assembly in Antalya, Turkey, on 27 May 2009. They become effective on 1 July 2009 and replace all previous ISF Trade Rules and Usages.

In case of disagreement as to the interpretation the English text is considered the original.

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

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# **GENERAL RULES**

## **Part A. General Provisions**

### **Section I. Validity**

1. The "ISF" Rules shall be applicable to the trade of all categories of seeds for sowing purposes and, where appropriate, to the trade of reproductive plant material.

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.

The present Rules consist of General Rules and Specific Rules for field crops, forage and turf crops, vegetable and ornamental species, and tree and shrub species.

2. When the code letters "ISF" 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, except if reference to ISF in the contract refers only to specific parts of the Rules. Any exceptions to these Rules or particular and/or additional provisions specified in the contract shall prevail over the present Rules.

3. If the application of national laws renders one or several provisions of the present Rules null and void, the validity of all other provisions contained in the present Rules will not be affected by it.

### **Section II. Definition of terms of time and communication**

4. When the words "hour" and "working day" are used, hours and days of customary and legal holidays of the parties involved are excluded.

5. When the word "day" is used, days of customary and legal holidays of the parties involved are included.

6. "Telecommunication" means all kinds of teletypes, telegrams, facsimile, and e-mails, with the exception of verbal communications by telephone.

7. Messages and offers (by letter or Telecommunication) that arrive during customary and legal holidays of the parties involved shall be considered as having arrived on the following working day.

## **Part B. Conclusion of a Contract**

### **Section III. Definitions**

8. a) Subject to import or export authorization: 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.

b) Subject to crop: the seller does not have the seed at the confirmation of the contract. The amount and quality of seed depends on the harvest to come as may be specified in the contract.

c) Guaranteed to pass: the seller guarantees that the seed will fulfill all requirements of the importing country and, if known by the seller, the countries of transit.

d) Subject to passing: the seller does not guarantee that the seed will fulfill all requirements of the transit and importing countries. If a contract is not specified "guaranteed to pass", it is considered as "subject to passing".

e) Official: 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.

f) Intellectual Property Rights are 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.

Additional restrictions can be sought by contracts, trade secrets and tort actions.

#### **Section IV. Conclusion and acceptance of a contract**

**9.** a) A contract is concluded via offer and acceptance. The parties have the option to make the contract subject to agreement on further details and written confirmation thereof.

b) Offers to buy or sell shall be considered binding if accepted by Telecommunication (preferable) or verbally within 24 hours after the hour of their receipt, if the offer is not explicitly declared as "non binding, "without obligation" or similar.

**10.** The contract shall, at the least, include the following information: the date, name of the parties, the quantity, the price per unit (according to INCOTERMS), the species with, when appropriate, variety and type.

Recommended additional information in the contract may include

- seed treatment, coating, etc
- the description of the quality (see for example article 33)
- the type of packaging (see article 36)
- the delivery period
- the payment conditions
- any applicable terms of Sections V, VI, VII, VIII and IX of these General Rules;
- the shipping terms
- applicable intellectual property rights
- all particular provisions not forming part of the present Rules or which modify the procedures specified therein

**11.** If a contract is concluded, the buyer or the seller shall, within three working days unless justified delay can be established, mail to each other a confirmation of the relevant contractual conditions. The contract shall be considered confirmed on the basis of this confirmation, if the receiving party does not object to it within three working days after receipt of the confirmation, unless justified delay can be established. If neither of the contracting parties sends a written confirmation, the contract shall be considered confirmed on the basis of communications between the parties.

**12.** A contract established by a broker shall be binding on both parties unless one of the parties has a valid reason to refuse the other party and declares the refusal by Telecommunication within a maximum of 48 hours after the names of the contracting parties are made known to each other. In case of a contract established by a broker, parties will confirm the contract by reciprocal mail within three working days.

**13.** Any difference, error or omission detected in the contract, the confirmation or another document related to the contract by the seller, the buyer or the broker, shall be corrected and confirmed by Telecommunication within two working days after receipt of notice. In the absence of a reply within two working days after receipt of the correction, the correction is deemed accepted.

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

**14.** 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.

Notification of the decision by the authorities, granting or refusing or imposing conditions on the authorization sought, shall be given by the party requiring it by Telecommunication to the other

party within 48 hours of its receipt.

If a party cannot reasonably fulfil 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.

**15.** a) 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.

b) If the authorization has not been granted, the party concerned shall establish to the other party that it has done its best reasonable efforts to obtain the authorization.

#### **Section VI. Contract subject to acceptance of seed certification**

**16.** Since seed of several crops is subject to either voluntary or compulsory certification in most of the producing countries, it must be clearly stated in the contract whether or not the seed must be certified.

In the case that the contract stipulates the delivery of "certified seed" the buyer shall check whether the certification in the country of production is valid and accepted in the country of destination.

**17.** The contract may, therefore, be exceptionally concluded with the conditional clause that the seed certification of the country of production will be accepted by the buyer's country and that, if the buyer can demonstrate that the certificate covering the seed is not accepted by the authorities of his country, he may refuse to observe the contract.

The buyer must then inform the seller of his decision within not more than thirty days after the contract has been signed. This period can also be mutually agreed between buyer and seller.

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

**18.** 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.

**19.** a) 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.

b) 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.

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 VIII. Multiplication or growing contract from stock seed of the contracting buyer**

##### **20. Definition**

A seed multiplier means a contracting party for the production of seed.

A multiplication contract means a contract for the production of seed, including agreements about transactions with the stock seed or the harvested material, between a seed multiplier and a person or company providing the stock seed for the production (such as a breeding company, holder of a plant variety right or similar), hereinafter referred to as "buyer".

##### **21. 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;
- c) for a quantity fixed in advance.

**22.** a) For a contract arranged according to a) or b) the total yield must, if corresponding with the norms stipulated in the contract, be delivered by the seed multiplier and be accepted by the buyer.

b) In case the contract has been concluded for a quantity fixed in advance, the conditions determining the acceptance of any surplus must be established at the time of contracting.

The seed multiplier must:

- i) indicate to the buyer the quantity he will deliver;
- ii) on his request, send the buyer a representative sample of the surplus;
- iii) ask for shipping instructions.

**23.** The contract may specify all necessary technical details, which include the (coded) 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.

#### **24. Stock seed**

a) Payment, ownership and use of the stock seed

- i) Stock seed of the parent line of hybrids must be delivered free of charge to the seed multiplier and the value of stock seed shall not be claimed by the buyer, unless otherwise agreed.
- ii) Stock seed for open pollinated varieties may be delivered free of charge or against payment either in cash or in kind, as agreed by the parties. Unless stipulated in the contract payment in kind will be weight-for-weight for vegetables and other non-certified seed and 2 kg of certified seed for 1 kg of stock seed for certified crops.
- iii) The buyer is and remains the owner of stock seed not sown. Any stock seed must be returned to the buyer at his request and cost.
- iv) When a domestic law of the country of one of the contracting parties requires a payment, this payment shall not be considered as final but will be noted as due by the buyer and recovered by the seed multiplier at the time of delivery.

b) Quality of the stock seed

- i) The buyer is responsible for the quality of his stock seed, in regard to purity, germination, trueness to type and the uniformity of parental lines in case of hybrid seed. The multiplier and the buyer shall agree on responsibilities concerning the seed health of the stock seed. In case of abnormal germination, varietal purity or trueness to variety, the buyer must inform the seed multiplier. Normal roguing will be done by the seed grower at his expense. For seed lots with abnormal mechanical or varietal purity, or those showing a serious anomaly such as a mistake in variety or a mixture the seed multiplier must immediately notify the buyer, 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.
- ii) The seed multiplier has the right to test before sowing the stock seed for various seed-borne diseases or noxious weeds stated in the contract and has the right to cancel the contract if these seed-borne diseases or noxious weeds are found to occur in the stock seed.

c) Use of stock seed

The seed multiplier undertakes to use only the stock seed supplied by the buyer for seed production. The supplied stock seed will be used only for its intended purpose.

#### **25. Production phase and delivery**

- a) The seed multiplier undertakes 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 intervarietal crossing or mixing.
- b) The seed multiplier undertakes to give all necessary expert care to the crop and harvested seed.
- c) The seed multiplier shall convey to the buyer 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 seed multiplier is obliged to inform the buyer immediately of the reason for the deviation.
- d) The buyer 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 buyer must inform the seed multiplier at least two weeks in advance of the visit. The seed multiplier may accompany the buyer on this visit; if not, he is obliged to provide the name and address of the grower.
- e) The seed multiplier shall deliver the entire yield to the buyer and shall not retain any seed, including remaining stock seed if requested. (*see 24/a/iii*).

An agreement must be made when signing the contract for the situation where the seed is not of the desired quality and the buyer is not willing to buy the seed. Such an agreement could take the form of a permission to the seed multiplier to sell the seed elsewhere, or of an obligation to ship the seed to the buyer, or to destroy the seed. Conditions for such solutions must be specified in the contract. In case there is no agreement, and in the absence of valid Intellectual Property Rights (including trade secrets), the producer is free to use the seeds as he sees fit.

### **Section IX. Import regulations**

**26.** 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.
- c) in the case no clause or no Incoterms has been agreed upon, it is to be considered 'Subject to passing'.
- d) If the seed can be brought up to the standards required to satisfy the regulations of the importing country:
  - 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.
  - 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.
- e) Any modification of the regulations referred to in the first paragraph of Article 26 after the date of conclusion of the contract shall be at the buyer's risk.
- f) 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.

**27.** 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, to pay the return costs to the arrival port or the border station.

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 C. Conditions of a Contract**

### **Section X. Quantity**

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

a) 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 +/- 3%, if not stated "minimum".

b) In case of seed weight, it shall clearly be indicated in the contract if the quantities are expressed in kilogrammes (kg), in Imperial pounds (lbs). If necessary, the following conversions shall apply:

$$\begin{array}{lcl} 1 \text{ kg} & = & 2.205 \text{ lbs} \\ 1 \text{ lb} & = & 0.4536 \text{ kg} \end{array}$$

**29.** The addition of the word "about" or "approximately" shall authorize the seller to deliver, at the conditions of the contract, a quantity up to 5% more or less than the quantity agreed to in the contract.

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

**30.** If the quantity agreed to in the contract varies 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 XI. Quality**

**31.** At the time of shipment, the seed shall be sound, sufficiently dry, without bad odour, unadulterated and marketable. Any treatment of the seeds, shall be expressly agreed upon. 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.

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

**33. a)** A description of the quality may be given in the offer, the order and the contract. If missing, and if the standards are indicated in an annex corresponding to the designated species, these standards shall then apply.

b) The description of the quality may include the percentages of purity, of germination of seed vigour<sup>1</sup>, of hard and fresh ungerminated 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

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<sup>1</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. Consequently, except if otherwise specifically agreed by the parties, vigour characteristics are excluded from ISF arbitration. If vigour 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.

certification; the crop year and other indications which can determine the quality of the seeds.

c) 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.

If the classification is not precisely stated, the Official classification in the seller's country at the date of conclusion of the contract shall prevail.

**34.** 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.

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 (see also Section XXIV, article 85)

**35.** 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 XII. Packaging**

**36. a)** The seeds shall be put in single packages of good quality, sound, suitable for export, and for contracts of sale by weight 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 otherwise 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.

b) The contract shall indicate whether the gross or net weight shall apply and 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.

c) The packages shall 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.

d) The packages shall be marked or labelled so that they can be identified based on the documents.

e) The packages shall comply with the phytosanitary regulations of the transit and importing countries.

f) In case of shipment of GM seeds, the packages shall comply with relevant additional national and international packaging requirements.

## **Section XIII. Shipping**

**37.** When abbreviations such as "FOB", "CFR", "CIF", are defined in the "INCOTERMS" published by the International Chamber of Commerce, the definitions that are in force at the date of conclusion of the contract shall apply.

**38.** In addition to the INCOTERMS, the following terms shall apply when the shipment is by container:

a) "FCA" (Free carrier): the costs of stuffing shall be at the seller's charge

b) "FOB port": the costs of stuffing shall be at the seller's charge

c) "DCT" (delivered container terminal) and "on wheels": the costs of delivery to the terminal or putting the container on wheeled transport shall be at the seller's charge. The costs of unstuffing shall be at the buyer's charge

d) "CIF" and "CFR" (LCL-LCL, less than container load or equivalent term): the costs of unloading the container from the vessel to the pier and the costs of unstuffing the container shall be at the buyer's charge (except where included in the shipping company's freight charges);

e) "House to contracted point": the costs from the point of loading to the port or border post of the consignee's country shall be at the seller's charge. The costs from the port or border post to the warehouse and the costs of unstuffing shall be at the buyer's charge;

f) "House to house rate" (FCL-FCL, full container load): the costs from the point of loading to the consignee's warehouse shall be at the seller's charge. The costs of unstuffing and costs of transport of the empty container to the container terminal shall be at the buyer's charge.

g) If not otherwise agreed in the contract, the costs incurred by implementation of biosecurity and phytosanitary rules during trans-shipment shall be at the cost of the buyer.

h) Any additional provisions concerning container shipment shall be specified in the contract.

#### **Section XIV. Documents**

**39.** The documents to be presented by the seller as part of the contract may include:

- the invoice
- a complete set of the original bill of lading duly endorsed in case of shipment by sea, or the duplicate consignment note duly stamped in the event of transport by rail by the railway company, and in the case of transport by road by the transport company, or the delivery note or the warehouse receipt
- the insurance certificate
- the official weight note (established by an accredited weigher at the request and the expense of the buyer)
- the consular invoices and other named documents required by the regulations of the country of destination (the fees for these documents are at the buyer's charge)
- certificates of analysis
- where certified seeds are involved, a copy of the official certificate of the certifying agency;
- the phytosanitary certificate;
- the certificate of origin as issued by the chamber of commerce in the country of the seller.
- packaging compliances, if relevant (see Section XII article 36)
- export permit, if relevant
- in case of GM seed: documentation as required by the Biosafety protocol according to national regulations in the country of the buyer.

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

**41. a)** 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. Except if otherwise agreed, the complete set of documents shall be received or presented as soon as possible but not later than one month after the arrival of the seeds.

b) The buyer shall be authorized to take delivery of the seeds if he can identify them and give a guarantee satisfactory to the transport company.

c) The costs incurred following a default to furnish the documents in time are at the seller's charge.

## **Section XV. Insurance**

**42.** 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.

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. Execution of a Contract**

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

**43. a)** The seller shall inform the buyer by letter or Telecommunication of his intention to ship the seeds.

b) 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.

**44.** 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 XVII. Default of shipping instructions**

**45.** If the buyer does not convey shipping instructions in accordance with article 44 and the seller does not wish the contract be declared null and void, then the seller shall grant an extension of time to the buyer by Telecommunication.

**46.** 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
for all other shipments	7 days

from the last date provided for in article 44.

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

**48.** 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 and consequential damages such as interest, costs of warehousing, price difference, loss of profit.

The seller shall inform the buyer of his decision by Telecommunication.

**49.** 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 XVIII. Time frames for shipment**

**50.** 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 air, within 7 days;
  - by ship, within 14 days;
- b) in case of "prompt shipment":
  - by rail or by road or 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.

**51.** 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 XIX. Notification of shipment**

**52.** 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).

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

### **Section XX. Default of shipment**

**53.** If the seller does not ship during the period indicated in article 50, 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.

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

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

**55.** 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 and consequential damages, such as interest, price difference, loss of profit, etc. The buyer shall inform the seller by Telecommunication of his decision.

**56.** 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.

**57.** 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 XXI. Expiration of a contract**

**58.** 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 XVII, XX of these Rules, then the contract shall be deemed null and void, and neither the seller nor the buyer may claim for damages.

### **Section XXII. Payment**

**59.** Unless otherwise specified in the contract, the payment shall be made net against documents at first presentation.

**60.** 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.

**61.** The bank transfer costs shall be at the buyer's account.

**62.** a) 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 bank interest in the country of the seller.

b) This penalty of 5% is not due if the buyer can prove that the delay of payment was caused by circumstances beyond his control.

**63.** 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.

**64.** It shall not be permitted to retain all or part of a payment in compensation for litigation and/or debts.

**65.** If the seeds have been furnished on credit, they remain the property of the seller as long as the invoice remains unpaid. The buyer shall not be authorized to dispose of the seeds as long as he has not paid them, unless parties have agreed otherwise.

On the condition that he can identify the seed lot, the seller shall have the right to take the seed back at buyer's costs as soon as the date of payment has passed.

**66.** 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:

a) either by proceedings brought in a competent court of law, without having recourse to arbitration as provided for in the present Rules (Section XXVIII of the Rules and Usages for the Trade in Seeds for Sowing Purposes); or

b) by an expedited arbitration procedure as provided for in Article 21 of the ISF Arbitration Procedure Rules.

## **Part E. Quality Checks and Analyses**

### **Section XXIII. Quality control**

**67.** The seller shall declare the quality of the seeds at the time of the shipment. With the exception of the provisions of article 85, 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.

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;

c) by a simple declaration.

If the contract specifies what type of seed testing report shall be furnished, the seed testing report shall conform to this specification.

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.

**68.** Unless otherwise agreed by the parties, 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. If the parties so wish, they may agree on a specific sampler and/or seed testing laboratory.

### **Contract with an Official seed testing report**

**69.** 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.

**70.** 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 XXIV, articles 82 and 83; or

c) the buyer furnishes an Official seed testing report made on an officially drawn sample and analysed 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 and it has not been stipulated in the contract that the Official seed testing report is final. The official drawing of a sample for these certificates shall have taken place within 28 days after the arrival of the seeds at the first point of destination.

**71.** If, in conformity with article 70, 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.

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.

**72.** If the result of the analysis provided for in article 71 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.

**73.** 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.

**74.** The official sample drawn in the seller's country shall be evidence to control the exterior appearance of the seeds. Two parts of this sample shall immediately be sent to the buyer upon his request.

### **Contract without Official seed testing report**

**75.** a) To obtain a sample which will be evidence in the event of a difference, it is recommended that the seller, at the time of shipment, has a sample drawn and sealed, divided in a sufficient number of parts according to the methods and procedures provided by AOSA or ISTA Rules, by a

governmental or accredited, duly qualified sampler, hereinafter referred to as an Official Sample;

b) To protect his interests, the buyer may have a sample of the seeds drawn on arrival according to the provisions indicated above. This sample will be evidence in the absence of an Official Sample drawn prior to shipment. The sample of the buyer must be drawn within 28 days after the arrival of the seeds at the first point of destination.

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

**76.** 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 75, 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.

**77.** 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.

**78.** If the result of the analysis provided for in articles 76 and 77 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.

**79.** If the buyer has the right to claim an allowance or damages on the basis of the analysis referred to in articles 76 and 77, the costs of this analysis are at the seller's charge. In any other case, the costs are at the buyer's charge.

**80.** The sample indicated in article 75 shall be evidence to control the exterior appearance of the seeds. If the sample has been drawn at the time of shipment, two parts of this sample shall immediately be sent to the buyer upon his request.

#### **Section XXIV. Seed testing**

**81.** 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.

**82.** The sample shall be sent for analysis within eight days after the date of drawing it, except in the case where the test concerns trueness to variety (see article 86) and in the case of tree and shrub seeds for which the sample shall be sent within 15 days.

**83.** The corresponding seed testing report shall not be dated more than 90 days prior to the date of shipment from the warehouse of the shippers and for the seeds of maize for which the maximum limit is 120 days and for tree and shrub seeds, for which the maximum limit is 180 days.

**84.** 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.

**85.** 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" (see Section XI, Quality, articles 34 and 35, as well as the articles of the specific rules concerning the assessment of damages).

#### **Section XXV. Control of trueness to variety**

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

a) 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.

b) 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.

**87.** 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.

**88.** If, in the opinion of the buyer, a post-control test is necessary, the sample referred to in article 86 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.

**89.** 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.

**90.** 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 F. Disputes**

### **Section XXVI. Complaints**

**91.** Complaints shall be made by Telecommunication and additionally confirmed by registered mail with notice of delivery and supporting documents.

a) For complaints concerning trueness to variety and varietal purity article 87 of Section XXV applies.

b) For differences in weight, defective packaging, errors in the number of parcels or packages, exterior appearance, moisture content, specific purity and the specification (including grading and coating) of the seed, 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.

c) 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, except for tree and shrub seeds within a maximum of 180 days.

**92.** In the case of a control analysis, the specifications of the contract shall serve as the basis for the complaint.

### **Section XXVII. Force Majeure**

**93.** 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.

The party invoking the clause of *force majeure* shall notify the other party, as soon as possible and by telecommunication, of the impossibility of delivery or the necessity to defer the delivery, indicating the reasons.

### **Section XXVIII. Arbitration**

**94.** a) With the exception of the differences mentioned in Section XXII, article 67.a) any dispute between the parties, resulting from transactions started or concluded on the basis of the present Rules, which have not been settled amicably or by mediation and conciliation as provided for in the ISF Procedure Rules for Dispute Settlement, shall be settled by binding arbitration according to the ISF Procedure Rules for Dispute Settlement, with the exclusion of ordinary judicial procedure, unless otherwise expressly agreed to in writing.

b) Application for arbitration shall be made in conformity with the provisions of the ISF Procedure Rules for Dispute Settlement.

**95.** Application for arbitration shall be made within 30 days:

- a) after the occurrence of an event or the first possibility of identification of a deficiency; or
- b) from the date of breaking-off the amicable negotiations. In that case, the proposals made by the parties prior to arbitration shall not be admissible to arbitration; or
- c) from the date of the termination of the mediation or conciliation process.

**96.** 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 goods and including customs duties when these cannot be refunded), unless the arbitration committee considers this is not reasonable compensation.

# **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>2</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 ~~one~~ 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.

##### **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

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<sup>2</sup> The rules also apply to all other species with similar usages such as green manure and species planted on highways and the roadside.

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 33 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 35 of the General Rules, or if the goods do not meet the minimum guarantees in accordance with Article 34 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.

# ANNEXES

## 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 50-100%	Contract figure Less than 50%	Tolerance Non-chaffy seeds	Tolerance Chaffy seeds (*)
1	2	3	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	
1	2	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
1	2	1	2
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