

GENERAL TERMS AND CONDITIONS OF INCOTEC INTERNATIONAL B.V.

Court registry at the district court Alkmaar, The Netherlands, under number 69/2001 dated April 18, 2001

Applicability of the general terms and conditions

The present general terms and conditions shall apply to all offers and contracts relating to the delivery of goods and services by INCOTEC.

Article 1 Orders

An order shall only have been accepted by INCOTEC if INCOTEC has sent the principal a written order confirmation. In that case and from that time onwards the order shall be binding.

Article 2 Offers and prices

Offers and prices of INCOTEC shall always be without engagement. Oral offers shall lapse after eight days and written orders after thirty days.

Article 3 Notices and communications

1. Unless it has been provided otherwise, all communications concerning the (implementation of the) contract shall be made in writing.
2. Any demands for performance and notices of default shall be made/given by registered letter and shall clearly indicate what is being required as well as the period within which same is required.
3. The provision of the second paragraph shall also apply to the fixing of any other period and to the invocation of any setting aside of the contract. If the setting aside of the contract is invoked, the invocation shall clearly state the grounds for same.

Article 4 Information and data

1. All indications and descriptions in respect of type, nature, quality etc. of goods and services to be delivered by INCOTEC as contained in brochures, product books or other documents of INCOTEC, shall solely be meant as general information and not as an indication of quality and/or guarantee.
2. INCOTEC may always proceed from the assumption that the information and data provided to INCOTEC by the principal within the scope of the formation and implementation of the contract are correct and complete.

3. INCOTEC aims at accuracy and consistency when formulating the indications and descriptions. INCOTEC aims at constant quality improvement. Since INCOTEC treats living products, INCOTEC cannot guarantee that the treated seeds in all cases give results which conform to the indications and descriptions of INCOTEC.

Article 5 Definition of seed and treated seed

1. In the present terms and conditions the term "seed" relates to seed that is/has been supplied to INCOTEC by the principal and, if applicable, is/has been stored by INCOTEC, all this to the extent that the seed has not yet been treated by INCOTEC.
2. In the present terms and conditions the term "treated seed" relates to seed that has been supplied by the principal and treated by INCOTEC.

Article 6 Definition of 'treatment on commission'

1. INCOTEC has developed a number of "seed pelleting and seed coating techniques" in order to improve the sowability and/or protection of seeds of ornamental, vegetable, agricultural, and industrial crops against diseases and pests.
2. INCOTEC has developed a number of "seed treatment techniques" in order to improve the germinating properties of seeds of ornamental, vegetable, agricultural and industrial crops and/or to combat seed born pests and diseases.
3. INCOTEC is capable of applying the above-mentioned techniques in combination.

The above-mentioned techniques, whether or not in combination, are offered to principals by INCOTEC in the form of "treatment on commission" for seed to be made available by the principal to INCOTEC. The treatment may, if requested, also include the packing of the seeds.

Article 7 Conditions for the acceptance and execution of orders

1. Characteristics of the treatments
INCOTEC shall inform the principal of the characteristics and the expected results of the various treatments and of the requirements with which the seeds have to comply in order to be treated by INCOTEC.

2. Plant Breeders' rights

Before the principal despatches seed to INCOTEC, the principal shall be obliged to inform INCOTEC in writing on:

- any plant breeders' rights that may attach to the variety and/or the varieties to which the seeds belong;
- the name(s) and address(es) of the holder(s) of the plant breeders' right(s) concerned;
- if the holder of the right is a third party: the written permission permission of such third party which is required before the seeds can be treated.

If the principal does not act in accordance with the above, INCOTEC shall be entitled to refuse the seeds and/or to refuse or terminate the treatment.

In that case the principal shall be under the obligation to compensate all costs incurred

up to that time by INCOTEC and/or third parties.

INCOTEC shall be bound by the rules of "Nederlandse Algemene Keuringsdienst voor Groentezaden" (NAK-G) (Dutch Inspection Department for Vegetable Seeds) in Roelofarendsveen and to the rules of "Nederlandse Algemene Keuringsdienst voor Zaaizaad en Pootgoed" (NAK) (Dutch Inspection Department for Agricultural Seeds) in Ede.

3. Conditions for treatment

INCOTEC accepts an order for the treatment of seeds subject to the condition that the principal states to INCOTEC the name of the variety, the lot number and/or name used by the principal, the number of seeds, the year in which the seeds were produced and the results of germination tests carried out by the principal. The principal shall always indicate the treatment the seeds must undergo and the desired type of packing for the seeds. Furthermore, the principal shall state the desired date of despatch. The principal shall inform INCOTEC in writing annually, or as soon as there is cause to do so, of the statutory requirements of the relevant authorities regarding the treatment of seeds, especially regarding, inter alia,:

- * invoicing;
- * phyto-sanitary certificates;
- * international certificates;
- * import documents or statements;
- * the allowance of pesticides and other relevant chemicals

4. Requirements in respect of the seeds

The principal shall supply the seed to be treated by INCOTEC without the seeds of weeds, without chaff or dirt, without disinfectants and free from disease(s) or infection. Seeds must be calibrated if treatment by INCOTEC requires same. At the principal's request INCOTEC may, at the principal's expense and risk, take care of cleaning, calibrating, upgrading and/or disinfecting the seeds. If applicable, INCOTEC may, at the principal's request, have seeds which are to be treated undergo a specific cleaning and/or upgrading and/or seed disinfection treatment, whether or not by a third party.

INCOTEC applies minimum norms which must be met by the seed in order to be eligible for treatment. These norms are contained in INCOTEC's product books and/or in the contract between INCOTEC and the principal and will be supplied on request. The norms relate to, inter alia, the minimum and maximum weight per one thousand seeds, the minimum and maximum seed size, the seed length, the germinative power and harvest year.

INCOTEC shall determine (or cause to be determined) the quality of seeds prior to and after treatment of these seeds on the basis a.o. of the relevant ISTA norms (International Seed Testing Association). If the quality of any seeds still to be treated is insufficient or dubious, INCOTEC shall inform the principal thereof. INCOTEC shall be under no obligation to treat seeds as referred to in the previous sentence. If INCOTEC, nevertheless, does treat such seeds at the principal's request, this shall be done entirely at the principal's risk.

INCOTEC shall never be liable, neither before nor after accepting the order, for the quality of the seed as delivered by the principal to INCOTEC.

INCOTEC shall never be liable for diseases or infections of the principal's seed arisen during receipt, storage, treatment and/or despatch by INCOTEC.

Article 8 Delivery times

1. The delivery time shall be the minimum treatment time required from the time the seed arrives at INCOTEC until the time of despatch of the seed to the principal or the address stated by the principal.

The treatment time as stated in the price list and/or other INCOTEC documents shall only be an indication and shall not be binding.

2. INCOTEC shall not be liable in respect of claims based on the fact that the delivery time stated by INCOTEC has been exceeded, insofar as the time by which the delivery time was exceeded is less than one month. The remaining liability on the part of INCOTEC in respect thereof shall never exceed the nett invoice amount of the order concerned, up to a maximum amount of Dfls. 100,000.

Article 9 Delivery

Unless it has been agreed otherwise, INCOTEC shall deliver "ex works". The carriage from INCOTEC to the place of destination as stated by the principal shall in that case be at the principal's expense and risk.

If INCOTEC delivers "free on board", INCOTEC shall only be responsible for the transport from INCOTEC to a Dutch port, airport or to the Dutch border. The individual contract between INCOTEC and the principal shall determine whether delivery is "ex works" or "f.o.b".

Article 10 Export

In the case of export INCOTEC could deliver on CIF conditions in accordance with the Incoterms of the International Chamber of Commerce (in accordance with the latest version of 1991).

Article 11 Insurance

1. Unless it has been agreed otherwise in writing the principal shall insure himself in full against all the risks of carriage to and from INCOTEC.
2. Unless it has been agreed otherwise in writing the principal shall also insure himself in full against the risk of damage (including consequential loss) related to the loss of, damage to or destruction of the seeds, e.g. as a result of inundation, infection, theft, sabotage, fire, storm, etc. during storage and/or treatment by INCOTEC.
3. The principal shall be obliged to show INCOTEC at the latter's first request a copy of the documents concerned which show that the principal has complied with the above-mentioned obligations.

Article 12 Storage

If, prior to or after treatment, INCOTEC stores the principal's seeds or takes them into deposit or keeps them in deposit after being requested to do so, the title to and the risk of these seeds shall remain with the principal in full. The provisions of article 11, second and third paragraphs, shall in this case apply in full. INCOTEC shall never be liable in respect of said storage or deposit.

Article 13 Force majeure <non-imputable failure in the performance

1. Force majeure on the part of INCOTEC shall in any case be understood to mean:
 - Circumstances concerning people and/or materials used or normally used by INCOTEC in the performance of the contract which are of such a nature that the performance of the contract becomes impossible as a result or becomes so onerous and/or disproportionately expensive for INCOTEC that performance of the contract can, in reason, no longer or not immediately be demanded from INCOTEC;
 - strikes;
 - the circumstance that a presentation that is important for the presentation to be delivered by INCOTEC is not delivered to INCOTEC or is delivered late or improperly;
 - war, war risk, riots etc.
2. If a situation of force majeure lasts for a period in excess of 4 weeks, either party shall be entitled to terminate the contract.
3. In the event of force majeure INCOTEC shall not be obliged to pay damages.

Article 14 Infringement

1. If INCOTEC should infringe or threaten to infringe the intellectual property rights of third parties by treating and/or packing the seeds, INCOTEC shall be entitled to suspend or terminate the execution of the order, as required by the circumstances.
2. In the cases referred to in the previous paragraph INCOTEC shall not be liable to pay damages to the principal.

Article 15 **Payment**

1. The prices and conditions of payment for the treatment of seed on commission are stated per treatment in the recent price lists (which are without engagement), in the contracts between INCOTEC and the principal and/or in the pro forma invoice and the invoice.

2. Adjustments of the prices and conditions of payment shall be sent to the principal annually in the month of June.
INCOTEC may adjust the prices and conditions of payment at any given time. If a principal does not agree with the adjustments as proposed by INCOTEC, he shall be entitled to terminate the contract after the last order at the original price level has been executed and paid for.

3. The cost of treatment, packing, testing, despatch, levies, certifications, handling etc. shall be paid in accordance with the conditions as stated in the invoice and within the stated period.

4. On payments in respect of which the stated period of time has been exceeded interest shall be calculated in conformity with the percentage stated in the invoices. The principal shall be under the obligation to pay all costs and expenses (including lawyers' bills) which will have to be incurred by INCOTEC, both judicially and extra-judicially, in order to obtain full performance on the part of the principal.

5. All amounts shall be paid in the currency stated in INCOTEC's invoice.

6. The acceptance of a complaint shall not entitle the principal to refuse payment of other invoices.

Article 16 **Trade names**

If the principal intends to use the name "INCOTEC®" and/or one of INCOTEC's trade names such as "Split Pill®", Splitkote® or "Thermocure®", the principal shall be under the obligation to request the permission of INCOTEC in writing.

Article 17 Liability

1. Without prejudice to the other provisions of these general terms and conditions INCOTEC's liability - on any account whatsoever - shall in all cases be limited to the amount of the nett invoice value of the order concerned to be increased by the cost price of the seeds concerned, to a maximum amount of Dfls. 500,000 in total. For this purpose the term "cost price" is defined as the price at which the principal has produced or acquired the seeds.
2. Employees and servants of INCOTEC may invoke the previous paragraph in the same manner.
3. At the principal's request INCOTEC is prepared to make efforts to insure further liability at the principal's expense.

Article 18 Specific use of the treated seeds

INCOTEC shall not be liable if the treated seeds are not raised or cultivated in accordance with the method to which INCOTEC has specifically attuned the treatment of the seeds, as this appears, for example, from the product information.

Article 19 Pesticides and growth stimulators

1. Pesticides are fungicides, insecticides, other substances and/or organisms for the protection or stimulation in growth of crops. If necessary, INCOTEC adds, in accordance with its standard product list, to the best of its ability, pesticides and/or growth stimulators during its treatments, unless the principal has given specific instructions in writing to deviate from this. INCOTEC shall not be liable for the effects of pesticides and growth stimulators on the quality of seeds or for the incorrect use of the seeds treated with pesticides and/or growth stimulators.
2. INCOTEC shall not be liable for any damage resulting from the addition of pesticides and/or growth stimulators at the principal's request or instructions.
3. INCOTEC shall not be liable for any restrictions imposed, or to be imposed by a government agency on the use of and/or trade in seeds which have been treated with pesticides and/or growth stimulators.
4. INCOTEC only uses those dosages of pesticides and/or growth stimulators which are

prescribed by the manufacturer and/or those dosages which are legally established by the official institution of admission per country. In case the principal deviates from those prescribed dosages, the treatment will be on full responsibility of the principal, and INCOTEC will not be liable for any product liability at all, like effects on germination energy, feasibility, residues or any other risks for human beings and the environment.

In case a pesticide and/or growth stimulator is not admitted for a specific seedtreatment on a specific crop in the Netherlands, INCOTEC is allowed to perform the seedtreatment in order of the principal on condition that the pesticide and/or growth stimulator has admittance in the country to which the treated seed will be exported.

Article 20 (Re)treatment by third parties of treated seeds

INCOTEC shall not be liable if seeds are (re)treated by third parties after these seeds have been treated by INCOTEC.

Article 21 Complaints

1. Visible defects shall be notified to INCOTEC in writing, preferably by fax, within 5 working days after receipt of the treated seeds.
2. Complaints in respect of the germination of seeds shall be notified to INCOTEC in writing within 30 calendar days after receipt of the treated seeds.
3. Invisible defects which can be determined during the customary germination tests shall be notified in writing to INCOTEC forthwith as soon as they manifest themselves within the agreed guarantee period. If defects manifest themselves in the fields or in the greenhouse, INCOTEC shall be informed thereof forthwith.
4. Complaints shall not be accepted if INCOTEC is informed after the periods of time stated above have expired.
5. The samples taken by INCOTEC shall form the basis of determinations concerning the seeds. If the principal does not agree with INCOTEC's test results, the NAK-G or NAK shall be requested to examine the samples of treated and untreated seeds of the same lot on their germinating quality and/or purity and/or trueness to type.

6. If the principal decides to sell seeds treated by INCOTEC which are inadequate in the principal's opinion, he shall be liable for - additional -damage and shall hold INCOTEC harmless against damage suffered by third parties. Such a decision shall be notified to INCOTEC in writing. INCOTEC may then withdraw the right to make use of INCOTEC's trade mark rights.

Article 22 Suspension

1. If the principal fails to perform one or more of his obligations properly and/or in good time:
 - a. the obligations on the part of INCOTEC shall automatically and immediately be suspended until the exigible amounts payable by the principal have been paid in full;
 - b. INCOTEC may demand payment in full and/or sufficient security from the principal, e.g. in the form of a bank guarantee to be issued by a reputable Dutch bank, in respect of the performance on the part of the principal.
2. INCOTEC shall, prior to performing its own obligations, be entitled to require full payment and/or sufficient security for the performance by the principal, if it is likely that the principal will not (be able to) meet his obligations properly and/or in good time.

Article 23 Conversion

1. If any provision of these general terms and conditions is null and void, such provision shall automatically (by operation of law) be replaced by a valid provision which corresponds to the maximum possible extent to the purport of the provision which is null and void.

The parties shall, if necessary, be under the obligation to enter into reasonable consultations with each other on the text of this new provision.
2. In the latter case the other provisions of these general terms and conditions shall remain in force in full to the maximum possible extent.

Article 24 Extinction of rights

1. The principal shall enforce his rights under the contract within one year after they have arisen by instituting legal proceedings, failing which his rights shall automatically become extinct.
2. INCOTEC shall be entitled to prolong the above-mentioned period, if desired.

3. The above provisions do not detract from any other provisions of the general terms and conditions on the strength of which one or more rights of the principal have already become extinct at an earlier stage.

Article 25 **Applicable law**

Each and every juridical relationship between INCOTEC and the principal shall be governed by Dutch law, with the exception of the Vienna Convention on the Sale of Goods.

Article 26 **Disputes**

1. All disputes, including summary proceedings, relating to and/or resulting from these general terms and conditions and/or contracts to which these general terms and conditions are applicable shall, to the exclusion of all other Courts, be submitted to the competent Court in Amsterdam for its decision.

2. INCOTEC shall, however, remain entitled to bring a case before the Court that has jurisdiction under the statutory rules.

Article 27 **Translations**

In the event of any disputes on the interpretation of any provision of these general terms and conditions or any provision contained in contracts to which these general terms and conditions apply, the Dutch version shall be decisive. A copy of these general terms and conditions is available on request.