

INCOTEC® - TERMS AND CONDITIONS FOR INCOTEC® PRODUCTS
PLEASE READ THESE TERMS and PRODUCT CATALOG TERMS CAREFULLY.

1. All the Terms; Modifications; Inconsistent Customer Terms Ineffective. These Terms, as well as additional items set forth in the Product Catalog, are the entire understanding of Customer and INCOTEC relating to the providing of Seed Treatment by INCOTEC to Customer, and may be modified or amended only in writing. **No terms or conditions in any Customer form, purchase order or writing shall be given effect if inconsistent with these Terms.**

2. Payment and Credit Terms; Late Payment Charges and Collection Costs. All amounts owing per the terms of the invoice are due in full on the invoice date. This includes payment for treated seeds that remain stored at INCOTEC (see para. 5). Late payments shall accrue a late charge of 1.5 percent per month. **If litigation for any amounts due per the invoice is commenced by INCOTEC, Customer shall pay or reimburse INCOTEC® all costs of such litigation, including attorneys' fees and costs.**

3. Capacity Allocation. In the event that INCOTEC does not have the Product capacity to serve all customers for all orders (whether accepted or not), INCOTEC may allocate its capacity among its customers, including Customer, as it determines in its sole discretion.

4. Quality of Incoming Raw Seed. Raw Seed from Customer to be treated by INCOTEC shall satisfy the minimum germination, purity and other standards as set forth in the Product Catalog.

5. Transportation and Storage; Risk of Loss is on Customer at All Times. Customer Seed (raw and treated) shall remain the property of Customer, and Customer has the entire risk of loss of its Seed (raw and treated) in the custody of INCOTEC or while in transit, regardless of fault or causation.

6. LIMITATIONS ON WARRANTY AND LIABILITY; CLAIM HANDLING; INDEMNITY BY CUSTOMER

A. Limitation on Warranties. WITH RESPECT TO THE PRODUCT AND ANY TREATED SEED, INCOTEC WARRANTS ONLY THAT IT WILL USE ITS BEST EFFORTS SO THAT THE PRODUCT WILL COMPLY WITH THE INCOTEC SPECIFICATIONS FOR TREATED SEED. ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE PRODUCT OR TREATED SEED, UNLESS EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

B. Limitation of Damages and Liability. (1) **THE LIABILITY OF INCOTEC FOR CLAIMS** (regardless of the legal theory asserted, such as breach of contract, breach of warranty, negligence, tort, violation of statute or regulation, strict products liability, consumer protection statutes or deceptive trade practices statutes); **or (2) DAMAGES** (including settlements, judgments and awards, and costs, including attorneys' fees and expenses incurred in defending claims) **ARISING OUT OF THE PRODUCT OR TREATED SEED, SHALL NOT BE GREATER THAN THE ACTUAL PRICE OF THE PRODUCT WITH RESPECT TO WHICH THE CLAIM or DAMAGES ARISES.**

UNDER NO CIRCUMSTANCES IS INCOTEC LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND OR TYPE INCLUDING WITHOUT LIMITATION, CLAIMS FROM CUSTOMER, FARMERS OR OTHER THIRD PARTIES, PROSPECTIVE OR PRESENT LOSS OF PROFITS, CROP LOSS OR DAMAGE, BUSINESS REPUTATION OR GOODWILL, EVEN IF INCOTEC WAS AWARE OF A POTENTIAL FOR SUCH DAMAGE.

C. Time Limits for Notification of Claims; Termination of Customer Rights for Failure to Abide. In the event of any Claim against INCOTEC, and in order to preserve the ability to see and save all relevant evidence, Customer must: (1) give INCOTEC notice of such claim immediately (within 5 days or less); and (2) file suit against INCOTEC within **one year** after such Claim arose, failing which any and all rights under this Agreement or at law of Customer against INCOTEC shall terminate and be void.

D. INDEMNIFICATION. CUSTOMER SHALL FULLY DEFEND, INDEMNIFY AND HOLD INCOTEC HARMLESS FROM ANY AND ALL CLAIMS FROM THIRD PARTIES ARISING OUT OF THE PRODUCT OR TREATED SEED.

7. NOTICE - ARBITRATION/CONCILIATION/MEDIATION REQUIRED BY SEVERAL STATES

Under the seed laws of several states, including, but not limited to, AL, AR, CA, CO, FL, GA, ID, IL, IN, MN, MS, ND, SC, SD, TX and WA, arbitration, mediation or conciliation is required as a prerequisite to maintaining a legal action based upon the failure of seed to which this notice is attached to produce as represented. A complaint shall be filed (sworn for AL, AR, FL, IN, MN, MS, SC, TX, WA; verified CO, IL; signed only CA, GA, ID, ND, SD) along with the required filing fee (where applicable) with the Commissioner/Director/Secretary of Agriculture (AL, CA, CO, FL, GA, ID, IL, MN, MS, ND, SC, SD, TX, WA) or State Plant Board (AR), Seed Commissioner or Chief Agricultural Officer (IN) within such time as to permit inspection of the crops, plants or trees by the designated agency and the seedsman from whom the seed was purchased or within such other time as allowed by law. A copy of the complaint shall be sent to the seller by certified or registered mail or as otherwise provided by state statute. Information about this requirement may be obtained from the appropriate State Department of Agriculture.

8. Customer Consent to California Law, Jurisdiction and Venue. These Terms shall be exclusively governed by and construed in accordance with the internal laws of the State of California. **Customer consents to the jurisdiction and venue of any court, federal or state, sitting in the State of California, for the resolution of any dispute arising out of the Product, and for the collection by INCOTEC of any amounts owing by Customer to INCOTEC.**

I HAVE READ AND ACCEPT THESE TERMS AND CONDITIONS INITIAL HERE _____
