

General sales conditions of  
**Seed potatoes 2024**



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# 1. Conditions for the industry

**1.1.** Solely the Aviko Potato general sales conditions of seed potatoes shall apply to all agreements whereby Aviko Potato sells seed potatoes to third parties, hereinafter referred to as the Other Party. In addition, the following conditions will apply on a supplementary basis, insofar as they do not conflict with the agreement and the Aviko Potato general sales conditions of seed potatoes: the 2018 General Trading Conditions for Seed Potatoes, including the associated arbitration regulations (established by the NAO, LTO, VAVI and NAV), hereinafter referred to as the Conditions for the Industry. The Aviko Potato general sales conditions for seed potatoes and the General Trading Conditions for Seed Potatoes 2018 with accompanying arbitration rules were provided to the other party on conclusion of the agreement and can be viewed, downloaded and printed via the site [www.avikopotato.nl](http://www.avikopotato.nl). By entering into an agreement with Aviko Potato, in which reference is made to these Aviko Potato general sales conditions for seed potatoes, the other party declares that it possesses, is acquainted with, accepts and shall abide by the Aviko Potato general sales conditions for seed potatoes and the General Trading Conditions for Seed Potatoes 2018 with the accompanying arbitration rules.

**1.2.** Any disputes will be settled by arbitration in keeping with the arbitration regulations of the Conditions for the Industry. Arbitration in the first and second instance will take place in Wageningen, in the Dutch language. The Agricultural Arbitration Bureau (Stichting Geschillen in de Landbouw c.a.) has its offices in 6700 AE Wageningen, Postbus 245 ([info@iar.nl](mailto:info@iar.nl), tel.: 0317-424181, fax: 0317-424313).

**1.3.** In addition to that stipulated in articles 1.1 and 1.2, Aviko Potato shall always have the right to summon the Other Party before the Court in Rotterdam in respect of any claims that have not been disputed within 30 days of the date of invoice.

## 2. Liability

**2.1.** The liability of Aviko Potato is limited to the lowest amount of either of the following: the invoice amount of the goods to which the founded claims and damage refer, or an amount of € 25,000.00. Aviko Potato shall never be liable for indirect damage, consequential damage and loss of profit.

**2.2.** Aviko Potato does not wash or cut seed potatoes. If the other party requires washed and/or cut seed potatoes they must take care of this themselves after delivery, i.e. after the transfer of property to the Other Party. The washing and/or cutting of seed potatoes shall always take place for the account and risk of the Other Party. Aviko Potato shall never be liable for any damage arising from quarantinable diseases, including brown rot, ring rot and Chitwoodi.

**2.3.** The other party agrees to store and handle the seed potatoes after receipt as described in the checklist of the “Ketenproject verbetering pootgoedkwaliteit”. In the event of a deviation from this, the other party forfeits any right to complain about the delivered seed potatoes and Aviko Potato is discharged from any liability.

### **3. Force majeure**

**3.1** All sales of Aviko Potato shall take place subject to harvest. If a significantly smaller volume of product is available than might reasonably be expected in terms of the quantity and/or quality of the potatoes due to an adverse harvest, including any of the crop rejected by the prevailing authorities, Aviko Potato shall have the right to reduce the quantities sold by them accordingly. This situation, among others, applies if the products purchased by Aviko Potato on the basis of grower contracts are insufficient to meet the demand from all customers of Aviko Potato. Aviko Potato shall fully meet their delivery obligations in accordance with this unavoidably reduced quantity. In such a case, Aviko Potato shall not be bound to deliver substitute products; neither shall they be liable for any damage whatsoever.

**3.2.** In addition to the Conditions for the Industry, Aviko Potato may appeal to force majeure in the event of strike, interruption of work, force majeure of suppliers, government measures and/or regulations which make difficult, delay or impede compliance, lack of means of transport, problems on the transport route, interruption in the supply of energy and products, insufficient stock due to, for example, weather conditions and diseases, as well as technical failure.

**3.3.** While the situation of force majeure continues, Aviko Potato shall be entitled to suspend their obligations. If it can no longer be expected of Aviko Potato that they comply with their obligations because of a situation of force majeure (which shall be the case if the force majeure situation persists for more than 30 days) Aviko Potato shall be entitled to rescind the agreement without any party being entitled to indemnification.

## 4. The rights of growers

**4.1.** The seed potatoes may only be planted by the other party himself, for the cultivation of ware potatoes, and the other party must deliver the entire harvest to Aviko Potato. The other party is not permitted to (re)sell the seed potatoes.

**4.2.** By entering into the purchasing agreement the Other Party grants to Aviko Potato their representatives and the license holder of the variety (if applicable) the right to check and test all plots on which the seedlings have been planted, including sites of storage, whether temporary or permanent, of the seedlings. The Other Party shall identify the fields in question upon first request.

**4.3.** In the event of the purchase of seedlings protected by growers' rights, the Other Party shall be under the obligation to permit immediate access to their business and potatoes, be this on the field or in storage, to the supervising authorities who perform control interventions on behalf of the holder of the growers' right. Furthermore, the Other Party shall provide access to their administration, including invoices, if relevant to the investigation.

**4.4.** If Aviko Potato should become involved in a procedure about growers' right or any other industrial and/or intellectual rights, the Other Party shall be under the obligation to render any assistance required by Aviko Potato, including the collection of evidence.

## 5. Payment

**5.1.** Unless otherwise agreed in writing, the Other Party shall pay all invoices within 30 days of the date of invoice, also if the goods incurred damage or were lost after delivery. If the Other Party fails to pay within this term they will be in default of payment, without any formal notification being required.

**5.2.** Aviko Potato retains at all times the right to request a security from the Other Party in the form of a bank guarantee. If the Other Party fails to submit the bank guarantee within the term specified by Aviko Potato, Aviko Potato shall have the right to suspend and/or rescind the agreement and to require full compensation from the Other Party.

**5.3.** Aviko Potato shall retain the ownership of the goods supplied until all payments owing by the Other Party have been paid in full to Aviko Potato. In entering into the purchasing agreement, the Other Party grants to Aviko Potato the irrevocable consent and proxy to access the premises and buildings of the Other Party in order to execute the retention of property and/or to retake possession of the goods supplied.

**5.4.** Aviko Potato and businesses belonging to the Aviko Potato group of companies may at all times offset outstanding invoices against such claims as are held or will be held by the counterparty on Aviko Potato or businesses belonging to the Aviko Potato group of companies, including claims resulting from potatoes supplied.

## **6. Set-off authority**

**6.1.** Aviko Potato and all of their associated businesses are authorised to offset all that the other party and the (legal) entities associated with the latter owe to the former, be that claimable or not, against all that Aviko Potato and/or their associated businesses owe to the other party and to the (legal) entities associated with it, be that claimable or not. Therefore, the authority to offset shall also apply (in deviation from section 6:127 par. 3 of the Civil Code) if claimable assets and debts fall within mutually separated equities.

## **7. Mediation through the PGC (ATC, aardappeltelerscommissie)**

**7.1.** If a dispute arises between Aviko Potato and a Supplier about the execution of the agreement to which these Terms & Conditions or of any further agreements issuing from them apply which cannot be settled amicably, either party may request the PGC to act as a mediator.

To that effect, they shall submit a request in writing to the PGC, c/o Aviko Potato, Postbus 171, 8250 AD Dronten, [aardappeltelergroep@avikopotato.nl](mailto:aardappeltelergroep@avikopotato.nl), including a detailed description of the dispute and a request for intervention.

**7.2.** Upon receipt of such a request the PGC shall designate three of their members, including the member who represents the region in which the business of the Supplier is domiciled. These members, having heard the parties and/or

enabled them to explain their standpoint, shall attempt to reconcile the parties. The costs of any such mediation shall be borne, in equal parts, by Aviko Potato and the Supplier.

**7.3.** If the members of the PGC fail to reconcile the parties, or in a situation where both parties or either party prefer not to make use of the intervention facility of the PGC, a dispute shall be settled, with the exclusion of the civil court, by means of arbitration and according to the arbitration regulations of the Conditions for the Industry.

## **8. Applicable law and period of limitation**

**8.1.** The Other Party shall, at the risk of losing all their rights including the right to apply for arbitration, be under the obligation to apply for arbitration within two months of the time at which it becomes apparent that the dispute cannot be solved amicably between the parties at the latest. The period of two months begins when: a) the mediation pathway or the mediation by the PGC is interrupted without having led to general agreement between the parties or b) if either party informs the Other Party that they do not consent to mediation or intervention on the part of the PGC. Solely Dutch law shall apply to all agreements concluded with Aviko Potato. The stipulations of the Convention for the International Sale of Goods do not apply.

**8.2.** Unless the claim is precluded earlier by the lapse of time on the grounds of the applicable Conditions of the Industry, the claim of the Other Party on Aviko Potato will be precluded by the lapse of time one year from the date and time at which the claim has arisen.

**8.3.** In the event of any differences between the Dutch text of these terms and conditions and any subsequent translations, the Dutch wording shall prevail. One or more conditions of these provisions being null and void or subject to nullity shall not affect the other stipulations and a new stipulation, formulated by Aviko Potato, shall then prevail which matches and connects insofar as possible with the stipulation that has become null and void/nullified.



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