SPALDING AUCTION LIMITED
TERMS AND CONDITIONS FOR THE SALE OF SEED POTATOES

1. INTERPRETATION:
In these Conditions:
1.1 "Buyer" means the person, firm or company who accepts a quotation of the Seller for the sale of the Seed Potatoes and whose order for the Seed Potatoes is accepted by the Seller and who is buying the Seed Potatoes in the course of his business or who holds himself out as doing so.
1.2 "Certificate" means a certificate, report, label or other document issued by the official control or classification service or equivalent body of the country of origin stating that the potatoes were classified as tissue culture, pre-basic, basic, certified or test and trial seed potatoes in that country.
1.3 "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and Seller.
1.4 "Contract" means the contract for the supply of the Seed Potatoes.
1.5 "Destination" means the point of delivery specified by the Buyer and agreed by the Seller.
1.6 "Seed Potatoes" means seed potatoes, which the Seller is to supply to the Buyer in accordance with these Conditions.
1.7 "Seller" means the person, firm or company selling the Seed Potatoes in the course of his business who holds himself out as doing so.
1.8 "Short Weight" refers to a shortfall in weight of one or more individual sealed containers of Seed Potatoes as delivered and not of the whole consignment of Seed Potatoes delivered under the Contract.
1.9 References in these Conditions to "day" or "days" include Saturdays, Sundays, statutory and other national or local holidays.
1.10 "Writing" includes letter, email and facsimile transmission.
1.11 Any reference in these Conditions to any provision of a statute, statutory instrument or regulations shall be construed as a reference to that provision or those provisions as later amended re-enacted or extended.
1.12 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. BASIS OF SALE
2.1 Should any Buyer wish to contract with the Seller otherwise than on these Conditions, special arrangements must be made prior to sale and agreed between the Seller and the Buyer.
2.2 In the absence of any such special arrangements (which shall not bind the parties unless confirmed in writing by them all quotations given and all contracts made by the parties and any additions or amendments thereto shall be subject to these Conditions which supersede and shall be taken to override any other terms or conditions proposed or stipulated by either of the parties.
2.3 Quotations are given subject to the Seed Potatoes being unsold on receipt of order.

3. SEED POTATOES
The Seller expressly warrants that a Certificate has been issued in respect of the Seed Potatoes. This Certificate shall be deemed to be conclusive evidence as to the purity and health of Seed Potatoes.

4. TITLE
It is an express term of this Contract that:-
4.1 in the case of a sale the Seller has a right to sell the Seed Potatoes and in the case of an agreement to sell the Seller will have such a right at the time when property in the Seed Potatoes is to pass;
4.2 the Seed Potatoes are free and will remain free until the time when the property in them is to pass from any charge or incumbrance not disclosed or known to the Buyer before the Contract is made; and
4.3 the Buyer will enjoy quiet possession of the Seed Potatoes except so far as it may be disturbed by the owner or other person entitled to the benefit of any charge or incumbrance so disclosed or known.

5. PROTECTION
Notwithstanding the provisions of Condition 8 in relation to the passing of risk and property the Seller shall make reasonable arrangements for protecting the Seed Potatoes from damage by frost at the loading point and during transport.

6.TOLERANCES FOR DEFECTS, DISEASE AND SIZE
6.1 Without prejudice to any other Condition: in respect of disease, pest, damage, defects and size, the tolerances specified in or to be implied from the terms of the Certificate shall be allowed.
6.2 Where the size of the Seed Potatoes is described by riddles any Seed Potato which both with manipulation but without pressure being applied, passes through the gauge of the upper riddle size quoted, and in any position can be retained on the gauge of the lower riddle size quoted, shall be deemed to conform to size and to comply with its description.

7. DELIVERY
7.1.1. Delivery is complete as soon as the Seller complies with the terms of delivery stated. In the case of delivery by instalments each instalment shall stand as a separate contract and failure to make or accept (as the case may be) any instalment delivery shall not entitle either party to repudiate the Contract.
7.1.2. In the event of the Seed Potatoes being sold for delivery within a specified period the Buyer must give the Seller loading instructions not less than three weeks before the end of the specified period, time being of the essence.
7.1.3. Without prejudice to Condition 15 below, for a reasonable period, loading and delivery may be postponed by the Seller and loading by the Buyer owing to adverse weather conditions.
7.1.4. Any time or date for the despatch or delivery of the Seed Potatoes shall be taken as an estimate made in good faith, but the time and date may be varied if loading schedules are affected by adverse weather or other events beyond either party's control.
7.2 The Buyer shall inspect or cause to be inspected the Seed Potatoes as soon as reasonably practicable after delivery and satisfy himself that the Seed Potatoes comply in all material respects with the Contract.
7.3 The Seller shall not be liable for any claim in respect of the number of containers delivered or any loss or damage, however sustained, to a consignment or part of a consignment or from a package or container unless, time being of the essence, the Seller is notified in Writing of the Buyer's claim within 7 days of the arrival of the Seed Potatoes at the Destination (excluding the day of delivery but not the day of notification) otherwise than on a consignment note or delivery note at the time of delivery, and the Seed Potatoes are still in their sealed containers.
7.4 The Seller shall not be liable for any claim for Short Weight unless, time being of the essence, the Seller is notified in Writing of the Buyer's claim within 7 days of the arrival of the Seed Potatoes at the Destination (excluding the day of delivery but not the day of notification) otherwise than on a consignment note or delivery note at the time of delivery, and the Seed Potatoes are still in the sealed containers.
PROVIDED THAT in the case of either 7.3 or 7.4 above, if the Buyer proves that it was not reasonably possible for him to give such notice to the Seller within the said period and such notice was given within a reasonable period the Seller shall not be entitled to rely upon the said time limit.

8. PASSING OF RISK AND PROPERTY
8.1 The risk of any loss or damage to or deterioration of the Seed Potatoes from whatever cause arising other than by the negligence of the Seller or his servants shall pass to the Buyer on the earliest of the following events:
8.1.1. when the Seed Potatoes are first delivered to their Destination; or
8.1.2. when the Seed Potatoes are collected by the Buyer's transport, or transport arranged by the Buyer or by the Seller as the Buyer's agent; or
8.1.3. upon the date when the Buyer has failed or refused to take delivery (or collect) the Seed Potatoes if such be the case.
8.2 Property in the Seed Potatoes shall remain with the Seller until payment in full of the purchase price of the Seed Potatoes whereupon it shall pass to the Buyer.
8.3 The Buyer hereby irrevocably grants to the Seller a licence, exercisable in the event of any breach by the Buyer of his obligations under any contract to which these Conditions apply, to enter upon any premises on which there are situate the Seed Potatoes the property to which has remained with the Seller and to remove the same.

9. GERMINATION AND CROP RESULT
Whereas it is impracticable to ascertain the germination and crop result of seed potatoes before sale the Seller shall not be responsible for any failure of the Seed Potatoes (whether total or partial) to germinate and/or crop save as provided under Condition 11.3.1.

10. LIABILITY FOR PATENT DEFECTS
10.1 This condition is without prejudice to Conditions 6 and 9 and applies to any disease, pest, damage or defect whatsoever that is discoverable by reasonable inspection at the time of the arrival of the Seed Potatoes at their Destination or shortly thereafter ("Patent Defects"). The Seller shall be discharged from all liability, and the Buyer shall have no claim in respect of patent defects unless, time being of the essence for the purpose of this condition:
10.1.1. Notification of rejection, claim or complaint is made to the Seller giving a statement of the grounds for such rejection, claim or complaint immediately upon discovery and in any event is confirmed in writing to the Seller within 14 days after the arrival of the Seed Potatoes at their destination, and
10.1.2. The Seller is given an opportunity to inspect the Seed Potatoes, and
10.1.3. The Seed Potatoes shall have been properly stored during the period after their arrival at their destination and the identity of the Seed Potatoes cannot reasonably be contested.
10.2 If the Buyer proves that it was not reasonably possible for him to give such notice to the Seller within the appropriate period and notice was given within a reasonable period the Seller shall not be entitled to rely upon the time limits stipulated in this Condition.
10.3 Unless otherwise agreed, the Seller may (at the Seller's option) replace any Seed Potatoes properly rejected by the Buyer in accordance with these Conditions.
10.4 Without prejudice to the rights of either the Seller or the Buyer under this condition, any Buyer who wishes to reject the Seed Potatoes shall, if requested to do so by the Seller, unload the Seed Potatoes and store them properly either overnight or for such longer period as may reasonably be requested by the Seller pending resolution of the parties rights pursuant to these Conditions.

11. LATENT DEFECTS
11.1 This condition is without prejudice to Condition 9 and applies to any disease, pest, damage or defect whatsoever that is NOT discoverable by reasonable inspection at the time of the arrival of the Seed Potatoes at their Destination nor within 14 days thereof ("Latent Defects").
11.2 The Seller and the Buyer have relied on the Certificate in entering into the Contract and the warranty given in Condition 3, the Contract is based on such Certificate and the relevant control or classification system.
11.3 It is specially provided and agreed that in no case whatsoever shall the Seller be liable for latent defects unless it is proved on the balance of probability that:-
11.3.1. the same were caused by the application of injurious chemical or chemicals prior to the delivery of the seed potatoes at their destination; or
11.3.2. the same arise from a lack of purity resulting from the presence of more than one potato variety (admixture) in the Seed Potatoes prior to the delivery of the Seed Potatoes at their destination.
11.4 The Seller shall be discharged from all liability and the Buyer shall have no claim under Condition 11.3 unless:-
11.4.1. time being of the essence for the purpose of this Condition
11.4.1.1. where the Buyer has the Seed Potatoes or the growing crop (as the case may be) in his possession or control, any complaint or claim shall be notified to the Seller immediately on discovery of the subject matter of the complaint or claim and in any event confirmed in writing to the Seller within 14 days of such discovery.
11.4.1.2. and in any other case, any complaint or claim shall be notified to the Seller as soon as reasonably practicable after the Buyer has been notified (whether orally or in writing) of the complaint or claim and in any event confirmed in writing to the Seller within 28 days of the discovery of the subject matter of the complaint or claim.
11.4.2. the Seller is given a reasonable opportunity to inspect the Seed Potatoes or the growing crop (as the case may be).
11.4.3 the Seed Potatoes have been or were prior to planting properly stored by the Buyer and the identity of the Seed Potatoes cannot reasonably be contested.
11.5 If the Buyer proves that it was not reasonably possible for him to give such notice to the Seller within the appropriate period and notice was given within a reasonable period the Seller shall not be entitled to rely upon the time limits stipulated in this Condition.

12. EXCLUSION OF LIABILITY
12.1 Save as stated in these Conditions all express or implied conditions and warranties statutory or otherwise are hereby expressly excluded.
12.2 Nothing in these Conditions shall affect any liability which the Seller may incur for death or personal injury resulting from negligence or any other liability which may not be limited or excluded at law.

13. CLAIMS, COMPENSATION AND DAMAGES
13.1 In any case where the Seed Potatoes are properly rejected by the Buyer before planting the reasonable costs of removal and disposal of the Seed Potatoes so rejected shall be borne by the Seller.
13.2 It is specially provided and agreed that compensation and damages payable under any claim or claims arising out of the Contract shall not in any circumstances save as provided for in Condition 13.5 below amount in aggregate to more than the Contract price of the Seed Potatoes forming the subject of the claim or claims and any costs properly payable under Condition 13.1.
13.3 It is intended by the parties that any claim arising under Condition 11.3 shall primarily lie against the person who or company which first supplied the Seed Potatoes under a contract for sale and accordingly the Seller hereby assigns to the Buyer all and any rights (whether arising under any previous agreement(s) for the sale of the Seed Potatoes or otherwise and including any right of action and including also any rights acquired by the Seller by assignment or novation) which the Seller may have against any person or company in both cases who has previously sold the Seed Potatoes or any part or parcel of them.
13.4.1. In consideration of the said assignment and provided that the Seller shall lend such help as the Buyer may reasonably require in pursuing any claim against any other person or company under this condition the Buyer agrees that he shall have no claim whatsoever against the Seller in respect of Latent Defects until the Buyer shall first have pursued his rights under the said assignment (and any similar antecedent assignment) against the person who or company which first supplied the Seed Potatoes under a contract for sale.
13.4.2. It is agreed that the requirement in the preceding sub-Condition shall not require the Buyer to bring a claim or claims against a person who has been adjudged bankrupt after the date of this Contract or against a company which is the subject of an administration order or winding up order.
13.5 In respect of any claim or claims arising under Condition 11.3 it is specially provided and agreed that compensation and damages payable shall not in any circumstances amount in aggregate to more than:-
13.5.1. in the case of any claim or claims against the person who or company which first supplied the Seed Potatoes under a contract for sale six times the price at which that person or company sold the Seed Potatoes forming the subject of the claim or claims;
13.5.2. or in any other case twice the price at which the person or company against whom or which the claim is made sold the Seed Potatoes forming the subject of the claim or claims provided always that:-
13.5.2.1. the Buyer shall have taken all reasonable steps to first have pursued his rights under Condition 13.3; and
13.5.2.2. the Buyer shall (against the figure of twice the price) give credit for and set off any sum or sums recoverable from any other person or company.
13.6 Without prejudice to any other Conditions herein the Seller shall not be liable in any manner whatsoever for any consequential loss (including any claim for loss of profits), damage or injury howsoever caused which may arise out of or in connection with the sale of the Seed Potatoes.

14. PAYMENT
The Seller reserves the right to require payment at any time before or after delivery to the Destination and to raise interest on overdue accounts. The Seller's payment and credit terms are stated in the Contract.

15. FORCE MAJEURE
15.1 The Seller and the Buyer shall be relieved of all or any of his obligations under the Contract to the extent that performance of such obligations is prevented, frustrated, impeded or delayed in consequence of any event beyond a party's reasonable control which could not have been foreseen or which if it could have been foreseen was unavoidable including statute, regulation, rule, order or instruction of any Government, or other authority or any strike, lock-out or trade dispute (whether involving the Seller's employees or other parties) or civil commotion, breakdown of plant or machinery, failure of energy sources, malicious damage, natural disasters, extreme adverse weather conditions, provided that the party invoking this Condition gives notice in Writing to the other party within 7 days of the event or not later than 7 days after the Contract being entered into, whichever is the later. Unless otherwise mutually agreed the party invoking this Condition is entitled to an extension of not more than 30 days to deliver or accept delivery of the Seed Potatoes (the first extension). If delivery under this Condition is still prevented at the end of the first extension, the party not invoking this Condition shall have the option of cancelling the Contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 days running consecutively from and including the first day after the last day of the first extension. If at the conclusion of the second extension period delivery is still prevented the Contract or any remaining part thereof shall be automatically cancelled.
15.2 Where the provisions of Condition 15.1 have been invoked the price payable for the Seed Potatoes shall be:-
15.2.1. the Contract price payable at the contractual date of delivery where it is the Seller who has invoked the provisions of Condition 15.1
15.2.2. the Contract price payable at the actual date of delivery where it is the Buyer who has invoked the provisions of Condition 15.1.

16. INSOLVENCY OF THE BUYER
16.1 This condition applies if:
16.1.1. the Buyer makes any voluntary arrangement with its creditors or being an individual or firm becomes bankrupt or being a company becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
16.1.2. an encumbrancer takes possession, or a receiver is appointed of any property or assets of the Buyer; or
16.1.3. the Buyer ceases or threatens to cease to carry on business; or
16.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
16.2 If this Condition applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without liability to the Buyer and if the Seed Potatoes have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
16.3 The Buyer hereby irrevocably grants to the Seller a licence, exercisable in any of the circumstances mentioned above and without prejudice to any other right or remedy available to the Seller, to enter upon any premises on which there are situate the Seed Potatoes the property to which has remained with the Seller and to remove the same.

17. SEVERANCE AND WAIVER
17.1 If any Court or competent authority finds that any provision of the Contract or these Conditions or any part of any provision is invalid, illegal or unenforceable that provision or part provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions of the Contract shall not be affected.
17.2 A waiver of any right or remedy under the Contract is only effective if given in Writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of any other right or remedy.

18. CONSTRUCTION
18.1 Where the Seed Potatoes were grown (as seed potatoes) in Scotland these Conditions and the Contract shall be subject to and construed in accordance with Scottish law.
18.2 In all other cases the Conditions and the Contract shall be subject to and construed in accordance with English law.

19. DISPUTES
19.1 Any dispute arising out of the Contract other than a claim by the Seller for the price of the Seed Potatoes shall be settled by Arbitration according to the Arbitration Rules of the BPTA in force as at the date of receipt by the Secretary of the request for Arbitration referred to below, and all parties, whether members of the BPTA or not, shall by their respectively entering into the Contract, be deemed to have full knowledge of such rules and to have elected to be bound thereby.
19.2 A request for Arbitration must be received by the Secretary to the BPTA together with payment for such registration fee and deposit as may be prescribed from time to time by the BPTA not later than 24 months after the date of delivery of the Seed Potatoes. The making of an award shall be a condition precedent to any right of action by either party or any person claiming under either of them, so that if arbitration proceedings regarding claims are not instituted within the time limit prescribed by this Condition, all causes of action relating to such claims whether by way of arbitration or in any Court of Law are deemed time barred and waived.