

UNIVERSAL SEED POTATO CONTRACT FOR SALE

CONTRACT INCLUDES REVERSE SIDE HERETO

1. DATE OF ISSUE _____ 2. ORIGINAL ISSUER: Seller Buyer
 (Check one)

3. CONTRACT NO. _____

This is a legal CONTRACT FOR SALE for either a present or future sale in consideration of the mutual promises hereinafter, between the SELLER,

Seller's Business Name _____ Address _____ City _____ State _____ Zip _____ Telephone Number _____

hereinafter referred to as SELLER, who has the legal authority to sell or offer to sell the hereinafter described seed potatoes (either crops, farm products or goods) and agrees to sell according to all the terms and conditions of this agreement, WHICH SHALL BE NULL AND VOID UNLESS SIGNED BY BOTH PARTIES HERETO AND RETURNED TO THE ORIGINAL ISSUER WITHIN FIFTEEN (15) DAYS AFTER THE HEREBOVE CONTRACT DATE OF ISSUE (ITEM NO. 1), **PROVIDED HOWEVER**, NOTWITHSTANDING ITS ENFORCEMENT AND FULL EFFECT WITH RESPECT TO GOODS FOR WHICH ANY PAYMENT HAS BEEN MADE AND ACCEPTED, OR WHICH GOODS HAVE BEEN RECEIVED AND ACCEPTED, and the BUYER,

Buyer's Business Name _____ Address _____ City _____ State _____ Zip _____ Telephone Number _____

hereinafter referred to as BUYER, who hereby agrees to accept and pay for in-full for the hereinafter described seed potatoes (either crops, farm products or goods) according to all the terms and conditions of this agreement, including **REVERSE SIDE HERETO**, the FULL PAYMENT PROMPTLY CLAUSE, the **LATE PAYMENT CLAUSE**, the **LIMITATION AND EXCLUSION OF CERTAIN WARRANTIES**, the **LIMITATION OF CONSEQUENTIAL DAMAGES AND REMEDIES**, the MISCELLANEOUS CONDITIONS OF SALE, and all of the other provisions hereto as follows:

4. SEED STATE OF ORIGIN	5. POTATO VARIETY or NO.	6. FIELD / LOT IDENTIFICATION	7. SEED CLASS / GENERATION
8. TAG COLOR	9. STATE SEED GRADE	10. MINIMUM TUBER SIZE	11. MAXIMUM TUBER SIZE
12. TRADE TERMS OF SALE: (See P.A.C.A. Regulation Sec. 46.43) SOLD AS:			13. _____ BAG SIZE _____ lbs. _____ BULK SHIPMENT
14. TYPE OF CARRIER	15. QUANTITY of CWT CWT	16. F.O.B. UNIT PRICE per CWT \$ _____ /CWT	17. TOTAL F.O.B. PURCHASE PRICE \$ _____
18. TERMS OF DISCOUNT:		18 (a). LESS DISCOUNT per CWT \$ _____ /CWT	18 (b). LESS TOTAL DISCOUNT \$ _____
19. FREIGHT: Arrangements and Responsibilities:		19 (a). FREIGHT COST per CWT \$ _____ /CWT	19 (b). TOTAL FREIGHT COST \$ _____
		20 (a). TOTAL COST per CWT \$ _____ /CWT	20 (B). TOTAL AMOUNT \$ _____
21. The agreed DOWN PAYMENT SCHEDULE -	22. 1st Down Payment per CWT \$ _____ /CWT	22 (a). DATE DUE 1st Down	22 (b). 1st Down Payment Amount \$ _____
	23. 2nd Down Payment per CWT \$ _____ /CWT	23 (a). DATE DUE 2nd Down	23 (b). 2nd Down Payment Amount \$ _____
24. BALANCE DUE – FULL PAYMENT PROMPTLY – Full payment is due within TEN (10) DAYS after the day on which the said seed potatoes are accepted at delivery by the receiver with respect to each tender or within TEN (10) DAYS after the Date of Invoice, whichever is later:			24. BALANCE DUE \$ _____

25. The agreed SHIPPING-POINT is - _____ :

26. The agreed DELIVERY-POINT is - _____ :

26. The agreed SHIPPING-DATE(S), as planned, is - _____ , subject to available transportation and related weather, and the total and final shipment shall be completed no later than _____ :

NOTICE TO BUYER & SELLER: CONTRACT TERMS AND CONDITIONS CONTINUE ON REVERSE SIDE HERETO AND ARE PART OF THIS AGREEMENT WITH THE FULL-FORCE AND EFFECT.

SELLER hereby agrees that he has READ BOTH SIDES OF AGREEMENT and agrees to and accept the terms and conditions hereto, including the EXPRESSED REPRESENTATIONS, RESPONSIBILITIES TO PERFORM AND REMEDIES as set forth.

BUYER hereby acknowledges that he has READ BOTH SIDES OF THIS AGREEMENT and agrees to and accepts the terms and conditions hereto, including the LIMITATION OF WARRANTIES, CONSEQUENTIAL DAMAGES AND REMEDIES as set forth.

Seller's Signature _____

Buyer's Signature _____

Business Name _____

Business Name _____

28. DATE OF ACCEPTANCE _____

28. DATE OF ACCEPTANCE _____

CONTRACT CONTINUED ON REVERSE SIDE

REVERSE SIDE OF THE UNIVERSAL SEED POTATO CONTRACT FOR SALE

TERMS AND CONDITIONS CONTINUED FROM FRONT SIDE – WITH FULL-FORCE AND EFFECT –

29. The agreed **LATE PAYMENT CHARGES** –

Notwithstanding the laws of any State or Federal law with respect to late payment charges, all accounts not paid-in-full as defined by the hereabove Item No. 24, will be subject to a **LATE PAYMENT CHARGE** equal to the maximum amount or rate permitted by law. If not otherwise prohibited, a **LATE PAYMENT CHARGE** will be imposed on the unpaid balance of all past due accounts, less the amount of payments received and any credits, at an **ANNUAL PERCENTAGE RATE OF TWENTY-ONE PERCENT (21%)**, this is a periodic rate of 0.0575 percent per calendar day calculated ten (10) days after the day on which the said seed potatoes are accepted at delivery by the receiver with respect to each tender or within ten (10) days after the Date of Invoice, whichever is the later, and until full-payment and all billed **LATE PAYMENT CHARGES** have been received by the seller. If full-payment is received within the 10 days after the said seed potatoes were accepted per tender or as otherwise provided, no **LATE PAYMENT CHARGES** will be imposed. Payments are applied to billed **LATE PAYMENT CHARGES**, next to old purchases, and then to newly unbilled purchases. If twenty-one percent (21%) is not allowed by the respective State law, then the maximum permitted amount of rate will be imposed accordingly.

30. The agreed **EXCLUSION AND LIMITATION OF CERTAIN WARRANTIES** –

Due to the fact that seed potatoes are perishable vegetative tuber seeds, unstable under certain conditions; easily contaminated or damaged through handling, shipment, storage, cutting, treating, or planting; devitalized or weakened by mishandling or planting during unfavorable or moisture conditions, and because the handling, use, sanitation, cropping, germination, quality after shipping and physical possession of the seeds are far beyond the control of the producer, SELLER, shipper or regulatory inspectors, including the Federal-State Inspection Service, State Seed Certification Agency, State Department of Agriculture, the following **EXCLUDED AND LIMITED WARRANTIES ARE OFFERED FOR THE SEED POTATOES SOLD BY THIS AGREEMENT**:

- a) The SELLER and the producer represent that the seed potatoes sold and to be shipped by this agreement conforms to the label (seed tag) description as required by the Seed State of Origin and/or Federal-State Inspection Laws, and will conform to the requirements specified in the above items Number 4 through 13 of this agreement; and
- b) **THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION OF THE FACE HEREOF. THE SELLER AND THE PRODUCER MAKE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FREEDOM FROM ANY LATENT POTATO DISEASE, VIRUS OR DISORDER OF ANY NATURE, OR OTHERWISE, AND IN ANY EVENT LIABILITY FOR BREACH OF ANY WARRANTY OR CONTRACT WITH RESPECT TO SUCH SEEDS IS LIMITED TO THE ACTUAL PURCHASE PRICE, AS PER TRADE TERMS OF SALE, ITEM NO. 12 HEREBOWE.**

31. The agreed **LIMITATION OF CONSEQUENTIAL DAMAGES AND REMEDIES** –

ANY DAMAGES ARISING OUT OF THIS CONTRACT SHALL BE LIMITED IN ALL EVENTS TO THE RETURN OF THE ACTUAL PURCHASE PRICE PAID AS PER TRADE TERMS OF SALE FOR SUCH SEEDS ON THAT PORTION OF THE SEED POTATOES ON WHICH A COMPLAINT MAY ARISE. THE SELLER OR PRODUCER SHALL NOT BE LIABLE FOR PROSPECTIVE PROFITS OR SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES. THE RETURN OF THE ACTUAL PURCHASE PRICE PAID AS PER TRADE TERMS OF SALE FOR SUCH SEEDS IS THE EXCLUSIVE AND SOLE REMEDY AVAILABLE TO THE BUYER OR USER OF THESE SEED POTATOES.

32. The agreed **MISCELLANEOUS CONDITIONS OF SALE** –

- a) **CURRENCY.** All prices, amounts and payment herein refer to and are payable in UNITED STATE OF AMERICA DOLLARS:
- b) **TRADE TERMS AND DEFINITIONS.** The P.A.C.A. "definitions" (Sec. 46.2) and "trade terms and definitions" (Sec. 48.43) of the official Regulations Under the Perishable Agricultural Commodities Act of 1930 as amended (issued under Sec. 15.46 Stat. 537.7 U.S.C. 499o) in effect at the time of the Date of Issuance of this agreement, shall be part of this CONTRACT FOR SALE and shall be binding upon the parties and have full-force and effect. The SELLER and the BUYER are both chargeable with having knowledge and skill peculiar to the said sections of the P.A.C.A. Regulations:
- c) **FUTURE SALE BASED UPON WINTER TEST RESULTS.** When the future sale of the said seed potatoes are subject to certain post-harvest winter test results or inspection tolerances, and should the said seed potatoes fail such test or tolerances, then the BUYER shall have the right to terminate and end the agreement without breach or recourse against either party, and furthermore, the BUYER shall have the right to receive full refund promptly, without interest, upon request for any and all money paid for the said seed potatoes.
- d) **LIMITATION OF PERFORMANCE – REFUND.** The SELLER nor producer shall not be liable, or breach, except to fully refund promptly, without interest, any and all money received as partial or full-payment for the said seed potatoes, for failure to perform or deliver tender pursuant to this agreement when such failure is caused by: (1) crop rejection or disqualification by an official State Seed Certification Agency whatever the cause: (2) shipping or transportation related stoppages, damages, strikes, accidents or mishaps, fires, thefts, or failure to perform as per contract-of-haul, or (3) Acts of God or natural disasters, storms, floods, frost or freeze, hail, disease, virus, pathogens, fires, or other circumstances beyond the SELLERS or producers control relating to the said seed potatoes, either as crops, farm products in storage, or goods:
- e) **OFF-SIZE TOLERANCES.** Notwithstanding the Seed State of Origin regulation regarding off-size tolerances for the respective grade (Item 9 above), and if not otherwise agreed. (1) **FOR UNDERSIZE:** 3% for potatoes in any load lot which fail to meet the required or specified minimum size except that 5% shall be allowed when the minimum size specified is 2 1/4 inches or more in diameter, or 5 ounces in weight; and (2) **FOR OVERSIZE:** 10% for potatoes in any load lot which fail to meet the required or specified maximum size:
- f) **WEIGHT TOLERANCES.** Shipments may vary as to actual weight per load, or contract, because of carrier weight limitations, in such case, the final balance due (and freight) shall be determined by multiplying the "actual shipping-point CWT weight" times the "price per CWT": and
- g) **DELIVERY IN LOAD LOTS.** Unless otherwise agreed, it is agreed and understood that shipment and delivery of the said seed potatoes shall be tendered in one or more truck/load or railcar/load lots throughout the agreed SHIPPING DATE(S) and until the total quantity is tendered. Each shipment/delivery shall be the equivalent of a separate contract. Payment may be demanded for one or more load lots upon acceptance as per this agreement or as a single payment upon final invoice as per this agreement.

33. The agreed **STATUTE OF LIMITATION – TERRITORIAL APPLICATION** –

- a) It is agreed that any action for breach of this CONTRACT FOR SALE or of any warranty, express or implied, must be commenced within one (1) year after the cause of action has occurred and;
- b) It is agreed that the laws of the 'Seed State of Origin' – as specified hereabove in Item No. 4 and none other, govern this agreement, sales transaction and seed product. If any legal action is brought, the agreed place of venue is to be the "Seed State of Origin."

34. **SUCCESSORS AND ASSIGNS AGREEMENT** –

This agreement shall be binding and have full-force and effect on executors, administrators, successors and assigns of the parties hereto.

35. **SEVERABILITY AGREEMENT** –

If a part of this contract is found invalid by a court of law, all valid parts that are severable from the invalid parts remain in effect. If a part of this contract is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.