

GENERAL TERMS OF TRADE OF THE LIMITED LIABILITY COMPANY HELIOS, WHICH HAS ITS REGISTERED OFFICE IN NIJMEGEN, THE NETHERLANDS, AND IS REGISTERED IN THE CHAMBER OF COMMERCE UNDER NUMBER 86433105

ARTICLE I - APPLICABILITY AND DEFINITIONS

1. These General Terms of Trade apply to all offers made by and agreements entered into with HELIOS in particular, they apply to all sales and deliveries of goods in the broadest sense of the word, such as strawberry seeds and strawberry or sweet potato plants. These terms of trade also apply to all commission contracts and all services of HELIOS, (such as examining biological samples) including advice and information provided.
2. The following definitions apply in these General Terms of Trade:

the other party: the natural or legal person receiving offers from HELIOS or entering into agreements with HELIOS in accordance with paragraph 1;

direct damage: material damage to the goods sold and delivered by us or goods processed or examined by HELIOS as commissioned by the other party, including damage resulting from deficiencies in the growing capacity and/or emergence of the goods for which HELIOS can be held responsible and/or the varietal authenticity and/or varietal purity and/or the technical purity and/or health of the strawberry seeds and strawberry or sweet potato plants sold and delivered;

indirect damage: all damage or loss not covered by the definition of direct damage, such as consequential damage, loss of earnings, damage resulting from disappointing cultivation outcomes or yields, higher production and/or harvesting costs, injury, immaterial damage, failure to make savings, loss of goodwill, damage caused by commercial stagnation, damage due to claims made by the other party's customers, interest and costs.

3. HELIOS strives to provide these General Terms of Trade to the other party before or on entering into agreements. However, if we have not provided them, or if it is not reasonably possible for us to do so, the other party may contact HELIOS and ask to see them.
4. If one or more of the provisions of these terms of trade appear(s) to be invalid or is (are) abolished, this will not affect the legal force of the other provisions.
5. If the Dutch text of these General Terms of Trade conflicts with any translated version of this text, the Dutch text of these General Terms of Trade shall prevail.

ARTICLE II - GENERAL TERMS OF TRADE OF THE OTHER PARTY AND DEVIATING AGREEMENTS

1. The general terms of delivery and payment of the other party shall not apply to our offers or to agreements entered into with HELIOS.
2. Agreements between HELIOS and the other party that deviate from these General Terms of Trade shall apply only as agreed if HELIOS has confirmed them in writing.

ARTICLE III - OFFERS, AGREEMENTS AND PRICES

1. All offers shall be free of engagement at all times. If an offer is accepted by the other party, HELIOS shall be entitled to withdraw it within five working days of receipt of the acceptance.
2. Documents attached to the offer or in the agreement by HELIOS, data relating to plant quality, results of research, technical cultivation advice and/or variety descriptions are free of engagement and provided only for reference and information purposes.

The following definitions apply to the following expressions used in offers and/or agreements, unless otherwise specified in writing:

immunity: a variety is not vulnerable to attacks by a specific pest organism or disease;

vulnerability: the inability of varieties to restrict the growth and development of a specific pest organism or disease.

3. Any samples shown or supplied to the other party before or during the presentation of the offer are purely indicative; the goods delivered will not necessarily be the same as the sample.
4. The prices quoted are ex-store and exclude packaging, unless otherwise specified in the offer.
6. All prices exclude VAT, transport, certificate and plant passport, and insurance costs unless otherwise specified in the offer.

ARTICLE IV - HARVEST AND PROCESSING RESERVATION

All offers made by, and agreements entered into with, HELIOS are subject to a harvest and processing reservation. Where a disappointing harvest and/or processing of harvested goods (in terms of the quantity and/or quality of the harvested and processed goods) results in fewer goods being available than stated in the offer and/or agreement, HELIOS shall be entitled to reduce the quantity delivered to the other party accordingly. In such event, the other party shall not be entitled to claim the difference, compensation and/or (partial) release from the agreement. Also has the other party

shall not be entitled to claim difference, compensation and/or (partial) release if the product, strawberry plants, do not meet their expectations.

ARTICLE V - DELIVERY TIMETABLE, DELIVERY AND RISK

1. HELIOS will make every effort to deliver the goods in accordance with the other party's sowing or planting season. In the event of a commission contract or if HELIOS otherwise performs work for the other party, HELIOS will make every effort to perform the work agreed within the term agreed. However, the delivery timetables stated are purely indicative and should never be regarded as fixed dates unless specifically otherwise agreed in writing.
2. In the event the delivery date is exceeded by thirty days or more, the other party shall not be entitled to compensation and/or release from the agreement except where this is due to intentional acts or omissions or deliberate reckless action on the part of the management of HELIOS. In the event that delivery is still outstanding more than thirty days after the stated delivery date, the other party must send HELIOS a written notice of default. In this notice of default the other party must give HELIOS a reasonable deadline for compliance.
3. The delivery timetable starts on the date when the other party receives written confirmation of the existence of the agreement from HELIOS but in any case not before the other party has met any exceptional conditions relating to the performance of the agreement which have to be achieved by it in advance.
4. The risk of damage, destruction or loss of the goods to be delivered passes to the other party as soon as these goods have left HELIOS. Unless otherwise agreed in writing, the other party bears the risk of carriage, correct and timely carriage, and carriage insurance.
5. If the other party fails to take delivery of the goods at all, on time or in full, HELIOS is entitled to store these goods at the other party's expense and risk and to demand payment as if delivery had taken place. The other party will then also be liable to reimburse HELIOS for all additional costs incurred, which will in all cases include storage and conditioning costs.
6. Unless otherwise agreed in writing, the other party is responsible for the timely submission, completeness and accuracy of all documents needed for sale, export, import and delivery (such as documents relating to invoicing, carriage documents, plant health requirements, international certificates and/or import or export documents and/or import or export statements).

ARTICLE VI - STORAGE AND CULTIVATION

1. The other party shall be under the explicit obligation to store the goods delivered in their original packaging for maximum one day and unpack and plant in two days after the delivery.

2. The cultivation of strawberries and sweet potatoes depends on numerous continually changing cultivation conditions which are beyond the perception and influence of HELIOS, such as climate conditions, the quality and availability of groundwater, the soil, the geographic position, the grower's professional qualities. The other party and the eventual grower shall always be fully responsible for the choice of variety and the cultivation. The eventual grower shall act as a good grower during cultivation and shall observe all due care as can be reasonably expected from a grower with reasonable professional skills and actions.

ARTICLE VII - COMPLAINTS

1. The other party is explicitly required to examine the goods delivered or the work completed to ascertain whether they comply with the agreement; this must be done immediately on delivery of the goods or completion of the work or at the first opportunity thereafter if immediate examination is not possible.
2. The other party shall notify HELIOS in writing of any visible defects as soon as they are discovered, or in any event within two days of delivery. Should the other party fail to meet this deadline, it loses the right to lodge a claim with HELIOS for non-compliant goods or work. Complaints relating to the health shall be communicated to HELIOS in writing within one week of planting. Should the other party fail to meet this deadline, it will lose the right to lodge a claim with HELIOS for non-compliant goods. Complaints relating to the varietal authenticity, varietal purity and/or technical purity of the goods delivered must be made to HELIOS in writing within four weeks of delivery. Should the other party fail to meet this deadline, it loses the right to lodge a claim with HELIOS for non-compliant goods. If the other party notifies HELIOS of defects in writing, the other party must at the same time send HELIOS a notice of default and allow HELIOS at least fourteen days to remedy the matter.

ARTICLE VIII - FORCE MAJEURE

1. HELIOS cannot be held responsible for any failure to comply with its contractual obligations where the reasons for this failure are, inter alia, not due to any fault on its part or lie beyond its control. Reasons as referred to in the preceding sentence include weather conditions, war, risk of war, civil war, terrorism, unrest, molest, fire, water damage, flood, strike, occupation of premises, difficulties affecting import and export activities, government action, defective machinery, interruptions to the supply of gas, water and electricity, transport problems, loss or damage of computer data needed for the performance of the agreement, and stagnation or interruption of supplies from third parties from whom HELIOS has to obtain raw materials, equipment or parts in order to perform the agreement.

2. In the event of a failure to comply with the agreement for which the other party cannot be held responsible, HELIOS shall be entitled to dissolve the agreement in full or in part. In such an event, the other party shall not be entitled to claim any compensation from HELIOS.

ARTICLE IX - EXCLUSION AND LIMITATION OF LIABILITY

1. HELIOS' liability for all direct damage suffered by the other party as described in article 1, paragraph 2, caused by failure to comply with the agreement for which HELIOS can be held responsible, is limited to a maximum of the invoice value of the goods delivered (excluding VAT) except where this is due to intentional acts or omissions or deliberate reckless action on the part of the management of HELIOS or liability on the basis of compulsory statutory provisions. In the event of a commission contract, the liability for direct damage or loss shall be limited to the value of the total expense claims related to the contract in question in the period of maximum 1 month preceding the notice of liability.
2. HELIOS shall not be liable for any indirect damage as described in article 1, paragraph 2, except where this is due to intentional acts or omissions or deliberate reckless action on the part of the management of HELIOS or liability on the basis of compulsory statutory provisions.
3. HELIOS can never be held liable for damage or loss resulting from disappointing cultivation outcomes or yields, damage or loss resulting from the wrong choice of variety, damage or loss resulting from incorrect storage and/or the cultivation conditions or changes to the cultivation conditions as described in article VI, paragraphs 1 and 2, except where this is due to intentional acts or omissions or deliberate reckless action on the part of management HELIOS.
4. The other party shall hold HELIOS harmless against all third-party claims, such third parties including the other party's customers, government bodies, customs authorities and other authorities acting on behalf of the government, and which claims are fully or partly a consequence of the means used by HELIOS irrespective of whether this was done on the other party's instruction, to treat, preserve, condition or process the goods sold and delivered or still to be delivered. Save in the event of intent or conscious recklessness on the part of the board or subordinates with a managerial function, or in the event of liability pursuant to mandatory provisions, HELIOS shall not accept any liability for direct or consequential damage or loss as a result of the means referred to above being used.

5. If a court of law decides in a particular case that HELIOS is not entitled to claim the exclusions and/or limitations of liability as set out in paragraphs 1 to 4, then HELIOS liability for direct and indirect damage shall in any event be limited to no more than the sum (including interest and costs) which could be claimed under any liability insurance in accordance with common industry practices and market standards, taken out by HELIOS to be increased by the policy excess.
6. If the other party is a consumer, then the statutory provisions apply in place of the provisions set out in this article.

ARTICLE X - TERMS OF PAYMENT

1. Goods delivered by HELIOS shall be paid for within 30 days of the invoice date, unless otherwise agreed in writing.
Payment shall be made in the Netherlands in one of the following way: into a bank or giro account held by HELIOS at a bank or a branch of a bank established in the Netherlands.
2. The other party shall not be entitled to payment adjustment on the part of HELIOS. This provision shall not apply to consumers meeting the statutory requirements for payment adjustment.
3. The invoice sum shall be payable immediately on demand once the deadline referred to in paragraph 1 has passed. The other party shall then be in default by operation of the law without any requirement to send notice of default.
4. Once the deadline referred to in paragraph 1 has passed, HELIOS shall be entitled to charge statutory late-payment interest pursuant to section 6:119a of the Netherlands Civil Code on the outstanding amount from the date on which the other party was first in default until the date on which payment is made in full. The statutory interest pursuant to section 6:119 of the Netherlands Civil Code shall be charged to consumers.
5. Payments made by the other party are used first to pay all costs due, then to pay interest, and then to pay the longest outstanding invoices, even if the other party states that the payment relates to a later invoice.
6. If the other party is persistently late in paying the amounts owed as described in paragraph 1, it shall be liable for paying all extra-legal costs, court costs and legal fees incurred by HELIOS . These costs shall also include other and/or higher costs than the estimated court costs set out in law.

7. Without prejudice to the provisions laid down in paragraph 3, the other party shall be in default by operation of the law if it applies for bankruptcy or is declared bankrupt, applies for or obtains suspension of payments, ceases operations or is wound up, or enters into a statutory arrangement for paying off its debts. No notice of default shall be required.

ARTICLE XI - PROVISION OF SURETY

1. If HELIOS has good reasons to be concerned that the other party may fail to meet its obligations under the agreement, HELIOS shall be entitled to postpone compliance with its own obligations before or during performance of the agreement until the other party has provided a surety of compliance with all its obligations under the agreement; this surety is to be provided at HELIOS' request and to its satisfaction. This provision applies even if the relevant payment deadline has not yet passed.
2. Once the deadline laid down by HELIOS for provision of the surety has passed, the other party shall be in default by operation of the law and HELIOS may dissolve the agreement without judicial intervention by making a written declaration. HELIOS also reserves the right to full compensation.

ARTICLE XII - RESERVATION OF TITLE

1. The goods delivered by HELIOS remain the property of HELIOS until the other party has complied with all the following obligations under all agreements entered into with HELIOS:
 - the consideration or considerations relating to goods delivered or to be delivered;
 - the consideration or considerations relating to services provided or to be provided by HELIOS under The agreement;
 - any claims for non-compliance by the other party relating to one or more agreements entered into with HELIOS
2. Goods delivered by HELIOS that are covered by a reservation of title pursuant to paragraph 1 may only be sold on in the context of normal business activities. The other party shall not be entitled to pledge the goods delivered or to attach any other right to them.
3. In accordance with section 3:237 of the Netherlands Civil Code, HELIOS reserves the future right of pledge to goods which have become the property of the other party under the terms of paragraph 1 and that are still in the other party's possession; the purpose of this is to give HELIOS greater surety in respect of any claims that it may have, now or in the future, against the other party. This reservation of the right of pledge also applies to goods delivered by HELIOS that

are treated or processed by the other party, which would normally eliminate the reservation of title by HELIOS

4. If the other party fails to comply with its obligations, or if there are good reasons to fear that it may fail to comply with its obligations, HELIOS shall be entitled to recover goods delivered title to which is reserved as referred to in paragraph 1 from the other party or from third parties holding them on the other party's behalf. The other party shall cooperate fully with this; failure to do so renders it liable to pay an immediate penalty of 10% per day of all the sums owed by it to HELIOS.
5. HELIOS must be immediately notified in writing by the other party of any rights claimed or attached by third parties to goods delivered subject to reservation of title.
6. The other party undertakes:
 - to take out and maintain insurance covering goods delivered subject to reservation of title against fire and water damage and theft, and to submit the insurance policy to HELIOS for inspection;
 - to pledge all claims made by the other party on insurers with regard to goods delivered subject to reservation of title to HELIOS when first requested to do so by HELIOS, as described in section 3:239 of the Netherlands Civil Code;
 - to pledge all claims received by the other party towards its customers in the context of selling on goods delivered by HELIOS subject to reservation of title to HELIOS when first requested to do so by HELIOS, as described in section 3:239 of the Netherlands Civil Code;
 - to label goods delivered subject to reservation of title as being the property of HELIOS

ARTICLE XIII - BREEDER'S RIGHT AND RESEARCH RESULTS

1. Without the prior written consent of HELIOS, plants of varieties, propagating material and/or plant material of varieties protected by a breeder's right applied for and granted in the Netherlands and/or any other country or by a contractually agreed perpetual clause, must not:
 - be used to produce or further propagate the variety;
 - be treated or processed with the intention of propagation;
 - be marketed;
 - be resold;
 - be conditioned for purposes of propagation;
 - be exported;
 - be imported;
 - or be stocked for any of these objectives.
2. In order to inspect the goods delivered or the products resulting from such goods, HELIOS and its designated employees or third parties shall at all times

have the right to access the other party's establishment and/or all buildings and/or grounds and/or plots managed and/or controlled by the other party, in or on which the goods delivered or products resulting from such goods are located. HELIOS shall inform the other party of an intended inspection in good time. The other party shall be under the obligation to grant access immediately. The other party shall also be under the obligation, at HELIOS first request, to provide access to and a copy of its records which HELIOS considers to be relevant to the research.

3. The products originating from goods delivered to the other party shall only be sold by the other party under the variety name.
4. If the other party finds a mutant (being an essentially derived variety) in a protected variety, it shall immediately inform HELIOS accordingly by means of a registered letter. The other party states that it is aware of the fact that the finder of a mutant of a protected variety requires the consent of the holder of the breeder's right of the mother variety to commercially operate the mutant; the other party undertakes not to carry out any activities to commercially operate the mutant without the prior written consent of HELIOS. Commercial operation shall be defined as any or all of the activities described in paragraph 1. The other party shall submit testing material of the mutant to HELIOS within two months of HELIOS first request to such effect.
5. The other party shall provide all cooperation requested by HELIOS. – including cooperating in collecting evidence – in the event that HELIOS becomes a party in proceedings concerning breeder's rights or other intellectual or industrial property rights.
6. In the event of a commission contract for research, the other party shall become the owner of the research results and all reports provided electronically or otherwise when the work has been completed, to the extent that such research results and reports are part of the work commissioned. HELIOS shall be and continue to be the exclusive owner of the knowledge, experience and knowhow necessary to accept and perform the work commissioned. HELIOS shall be allowed to use and/or continue to use for its own purposes any expanded knowledge, experience and knowhow gained while performing the work - without being liable to pay any compensation for this.

ARTICLE XIV - RIGHT OF RETENTION

1. HELIOS shall be entitled to retain goods of the other party presently in its possession or which will come into its possession in the future until the other party has complied with all its obligations towards HELIOS under the agreement in force.
2. The other party continues to bear the risk of goods subject to this right of retention.

ARTICLE XV - EXPIRY OF CLAIMS

The other party's right to lodge claims expires four weeks after the claim first arose.

ARTICLE XVI - CONSUMER TRANSACTIONS

If the other party is a consumer, the provisions of these terms of trade shall not apply where they fall within the scope of section 6:236 of the Netherlands Civil Code or where they are otherwise in conflict with compulsory statutory provisions.

ARTICLE XVII - CONVERSION

If any provision of these general terms of trade is invalid or is nullified it will be replaced -by operation of the law

Where possible- by a provision that comes as close as possible to meeting the purpose of the invalid or nullified provision.

The parties must where necessary hold reasonable consultations with each other regarding the text of this new provision.

The other this new provision. The other provisions of the general terms of trade remain in force unless this is impossible in view of compulsory statutory rules.

ARTICLE XVIII - DISPUTES AND APPLICABLE LAW

1. All offers made by and agreements entered into with HELIOS shall be governed by Dutch law. The United Nations Convention on Contracts for the International Sale of Goods ("Vienna Sales Convention") shall not apply.
2. Subject to the provision set out in article VII, any disputes arising between HELIOS and the other party shall be adjudicated exclusively by the court of Arnhem, unless compulsory statutory rules require otherwise.