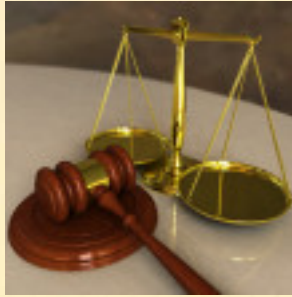


ASTA



asta  
first - the seed®

The logo features the word "asta" in a bold, lowercase, sans-serif font. A green circle is positioned above the letter 'i'. Below "asta" is the tagline "first - the seed" in a smaller, lowercase, sans-serif font, followed by a registered trademark symbol (®). The entire logo is set against a light blue background with a subtle pattern.



White Paper

Basic Terms, Conditions, and Standards of

# SEED SALES CONTRACTS

# BACKGROUND FOR THE WHITE PAPER

- ✘ ASTA members can use ASTA arbitration services for Seed Trade Disputes
- ✘ Many times ASTA can't facilitate the arbitration if the Seed Trade Agreement is not done right
- ✘ Seed Trade Agreements need to cover some basic elements of the trade to go to arbitration
- ✘ The following presentation covers the basic elements that should be in a Seed Trade Agreement to arbitrate any disputes

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- ✘ This presentation does not constitute nor substitute for independent legal advice. This is a general outline that is intended to provide basic guidance on the fundamental elements that should be present or considered when drafting contracts for the sale of seed. You should always seek competent legal advice.



# OVERVIEW

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- ✘ A contract needs to be a written document
- ✘ A contract is a meeting of the minds in a risk sharing venture that needs to define the object and performance terms of the transaction( A contract for the sale of a Mustang may mean a horse to you and a sports car to me and therefore is not a meeting of the minds and not a contract.)
- ✘ A contract needs to be clear to everyone on what is being agreed upon

# INTRODUCTION

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- ✘ A seed sales contract is an Agreement between two or more parties that details the agreed upon arrangements of the sale or transfer of seed from one party to the other
- ✘ Contracts should address all of the possible concerns of both parties
- ✘ Essential basic aspects of a seed trade must be covered and be part of a contract before any disputes are able to be arbitrated utilizing ASTA's arbitration services

# CONTRACT ESSENTIALS

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- ✘ Date
- ✘ Legal names of Parties
- ✘ Reference to Governing Rules
  - I. Typically specify NORAM or ISF seed rules
  - II. Any exceptions to those rules must be specified in the contract

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## ✘ Quantity

- I. Indicate the total quantity of the transaction (Kilograms, Pounds, Bushels, Units by Seed Count, Units by weight)
- II. About or Approximately typically authorizes a quantity of 5% more or less (NORAM ISF rules)

## ✘ Species and Variety of Seeds

- I. Provide a complete list of the type of seeds that are being traded in the contract

## ✘ Description of the Seed Quality

Following is a partial list of examples ( Each seed Specie will have individual needs and standards)

- I. Percentages of Purity
- II. Minimum or Maximum Germinations Percentage
- III. Moisture Percentage
- IV. Weed Seed Percentage
- V. Inert Matter
- VI. Crop Year
- VII. Minimum or Maximum GMO Percentages
- VIII. Seed Origin

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## × Price

- I. NORAM seed rules states that the price should be included according to Incoterms (the point of delivery and title transfer)
- II. The price should be spelled out so that all parties and anyone else with an interest can understand the price.
- III. The price should be specified by the unit of measure for the seed being traded

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## ✘ Shipping Timelines and Terms

- I. The contract should define the intended shipping timeline for the seed along with any early shipment premium or late shipping penalties
- II. Usual shipping terms are defined in the NORAM and ISF rules

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## ✘ Payment conditions

- I. The contract needs to establish the agreed upon timing (due date of payment) and method of payment (Check, EFT, Wire Transfer, Escrow)
- II. Considerations should include whether payments will be advance payments, payments upon harvest, payments to be made in installments, and if bonuses will be paid at later times
- III. Determine any circumstances that may change payment terms
- IV. Determine any penalties for late payments (i.e. interest charges)

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## × Condition of seed

- I. The contract must specify the unit of measure or weight for the seed, the stage of conditioning the seed should be in, and any quality tolerances for seed condition type
- II. Packaged seed should establish net weight per unit or any predetermined minimum number of seeds per unit or package
- III. Packaged seed should also specify the type of, and the material of the package that the seed will be transferred in

# ADDITIONAL CONSIDERATIONS, PRIMARILY IN GROWER CONTRACTS

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## × Title to the crop

- I. Include provisions that establishes who has title to the crop and at which times
- II. Most grower contracts identify that the grower does not acquire any rights, title, or interest in the seed and that the crop belongs to the Buyer
- III. The Agreement should address if the crop in its entirety must be delivered to the Buyer
- IV. Title determination affects who bears the risk of loss or can claim financial interest in the crop

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- IV. The contract should address the right of third parties and specify whether the grower is allowed to encumber or cause any lien to be placed upon the property of the seed crop
  - V. The Agreement should establish the superiority of the Buyer's claim relative to the claim of a lien holder
  - VI. The Agreement should establish whether the grower is an independent contractor and not an agent or representative of the other party

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## × Obligations of Grower

- I. Typically the grower is receiving a premium for producing a seed crop and the Agreement should establish product standards or acceptance provisions and priorities from the grower
- II. The contract could specify what the grower will provide, such as specified acres, tillage, planting, cultivation, fertilizer, irrigation, agronomic management, harvest, and any other services that the grower is required to do for the seed crop
- III. The contract may define the buyers rights if the grower fails to perform their responsibilities and the buyers rights to payment for any of the growers responsibilities the buyer provides due to negligence or default by the grower

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## ✘ Intellectual Property Rights

- I. The contract should specify and explain any applicable intellectual property rights that are involved with the seed at issue and how that affects the grower's rights

# TYPICAL UNIVERSAL CONTRACT PROVISIONS

## ✘ Entire Agreement

- I. This provision establishes that the written contract encompasses the entire Agreement between the parties
- II. This provision prevents subsequent attempts to use oral modifications of other evidence to seek change to the terms of the Agreement

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## ✘ Force Majeure Clause

- I. This clause excuses the parties from liability or obligation when an extraordinary event or circumstance beyond their control prevents any of the involved parties from fulfilling their obligations under the contract (such as an earthquake, a war, or an “act of God”)

## × Venue

- I. Contracts need to contain language that details how any resolution for lack of performance will occur
- II. This provision specifies how and where any disputes to the Agreement that the involved parties can't resolve will be resolved
- III. The contract should establish if arbitration, or court action will be used to resolve disputes
- IV. Arbitration settlement should define the arbitration body, if the arbitration is binding, and the rules that should prevail in the arbitration such as NORAM and ISF Seed Rules
- V. Any court settlement should define which court and laws will prevail
- VI. Any provisions of the selected rules that are not acceptable for this seed trade transaction must be explicitly specified in the contract

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## × Severability

- I. This provision establishes the validity of the rest of the Agreement if any part of the Agreement is deemed invalid or unenforceable

## × Waiver

- I. This establishes the continued validity of the provisions in the Agreement if any part of the Agreement is temporally or permanently waived by any party

## × Assignments

- I. This provision establishes whether the Agreement is assignable to any other party and/or if the Agreement is binding on the parties heirs and assigns

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## ✘ Signature Area

- I. Should include: Date Signed, Signature of agreeing parties, Printed Name of agreeing parties, Title of signatures
- II. May include a statement that attest by the signers that they have the authority to commit and bind their entity if not a single proprietorship

# SUMMARY

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- ✘ First and foremost: Always seek competent legal advice when drafting binding agreements
- ✘ He said, they said does not work: Seed trading Agreements need to be written, signed, and dated
- ✘ Plan for disputes: Put provisions in the Agreement to specify how any disputes will be resolved such as ASTA arbitration
- ✘ Be specific: An Agreement is a risk sharing venture and needs to specify the details of that risk sharing

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- ✘ ASTA provides Arbitration services utilizing AAA
  - ✘ Seed Trading Agreements need to contain certain provisions in order for ASTA to arbitrate using NORAM or ISF rules
  - ✘ When you have an irresolvable dispute contact ASTA to initiate any desired arbitration for Seed Trading Agreements