

These terms of use ("Terms of Use") apply to all agreements with Potato Auction B.V. and any use of the services offered by Potato Auction B.V. Please read these terms carefully. You can download and print this document.

## **1. Definitions**

The following expressions in these Terms of Use have the following meaning:

- 1.1 **Provider:** every (professional) party that offers products for sale on the Online Auction through the Service by means of an offer.
- 1.2 **Account:** the private User environment created by the User on the Online Platform containing the personal and/or company details entered by the User.
- 1.3 **Buyer:** the User who concludes a purchase agreement with a Provider through the Online Auction.
- 1.4 **Bid:** an amount offered by a User for a Lot, excluding any VAT, buyer's commission and other (tax) levies due.
- 1.5 **Commission:** the percentage of the Purchase Price that the Buyer and the Provider separately owe Potato Auction after Allocation, as indicated on the Online Platform. On the website, Commission is also referred to as **Auction Costs**.
- 1.6 **Service:** the services Potato Auction offers through the Online Platform, particularly the possibility for Providers to sell Lots by means of an online, automated auction.
- 1.7 **Forum:** the system made available by Potato Auction with which Users can post and read online messages and can communicate with other Users.
- 1.8 **User:** every natural person who or legal entity that uses Potato Auction's services, with or without registration.
- 1.9 **User Material:** information from Users on the Online Platform, such as Lots, descriptions of lots, object details, photographs and specifications.
- 1.10 **Lot:** a quantity of potatoes offered for sale by a Provider on the Online Platform, in the manner indicated by Potato Auction, packaged and offered to a Buyer in the manner described on the Online Platform.
- 1.11 **Purchase Agreement:** the purchase agreement between the Provider and the Buyer regarding a certain Lot concluded through the Online Platform.
- 1.12 **Purchase Price:** the amount that the Buyer owes the Provider for the potatoes purchased by the Buyer, excluding any VAT and costs owed, and to be increased by any other (tax) levies owed.
- 1.13 **Minimum Price:** the visible minimum price a Provider wishes to receive for its Lot.
- 1.14 **Online Platform:** the digital environment of Potato Auction where Consumers can purchase the Service offered by means of the website and the underlying software from Potato Auction.
- 1.15 **Online Auction:** the digital trading market consisting of the online, automated auction of Lots by Providers on the Online Platform.
- 1.16 **Potato Auction:** the private company with limited liability Potato Auction B.V., with offices at Schaphalsterzijk 3, 9951 TW Winsum, the Netherlands, and filed with the commercial register of the Chamber of Commerce under number 66492521.
- 1.17 **Allocation:** the automated message to the Buyer that it has made the highest bid and thus purchased the Lot.
- 1.18 **Transport:** Potato Auction's authority to provide transport, following an Online Auction and using a third party to be engaged by Potato Auction, of the lot for the Buyer on conditions

to be agreed between this third party and the Buyer, at the expense and risk of the said third party.

- 1.19 **Terms and Conditions of Transport:** the option offered on the Online Platform by means of which the Provider and the Buyer can indicate how and/or on what conditions the transport of the lot offered must or can take place.
- 1.20 **Buy now price** Asking price for which the lot will be allocated to the buyer
- 1.21 **Minimum purchase quantity.** The minimum quantity in kilogrammes the buyer needs to bid on and purchase of a lot

## **2. Applicability/Amendment of these Terms**

- 2.1 These Terms of Use apply to all agreements with Potato Auction B.V. and any use of the services offered by Potato Auction B.V. The terms also apply to any use of the website of Potato Auction B.V. and all that is made available on or offered by means of the website. By using the website, the User agrees to these Terms of Use. The applicability of any other general terms and conditions is excluded.
- 2.2 The Terms of Use were drafted in the Dutch language and translated into several languages. However, the Dutch version is always binding and decisive in the event of differences in interpretation of the text.
- 2.3 Potato Auction reserves the right to amend or supplement the Terms of Use.
- 2.4 If the User continues to use the Service after an amendment to or supplement of the Terms of Use, the User thereby irrevocably accepts the amended or supplemented Terms of Use.

## **3. Use**

- 3.1 The User accepts that the functionalities of the website and the related services may change and that Potato Auction has the right to completely discontinue offering certain elements, including removal of the Forum and the platform on which Users exchange information, object data and/or User Material, without being liable for this towards the User.
- 3.2 Providers offer Lots on the Online Platform and Users purchase these Lots directly from the Providers. Potato Auction only plays a facilitating and supporting role in the offer and purchase of Lots. Potato Auction offers no guarantee whatsoever, cannot control the quality, safety, lawfulness or correctness of the Lots offered, the Providers' authority to sell the Lots, and the Buyers' authority or capacity to buy the Lots. The User is aware of the fact that the Lots are owned by the Provider and that, therefore, no purchase agreement is ever created between Potato Auction and the Buyer.
- 3.3 In the event of an actual or imminent dispute between a Provider and a Buyer in the context of an Online Auction, Potato Auction is at all times entitled, as security for its own rights and those of other Users, to postpone payment of all monies of the relevant Users and to freeze any credit balances of such Users at its own discretion.

## **4. Creating an Account**

- 4.1 In order to be able to use the Service fully, the User must register by creating an Account. By opening an Account, the User declares that the information provided when creating its Account is correct and complete. The User declares that:
- a. the User acts in the performance of its profession or business;
  - b. the User complies with the Terms of Use;
  - c. the data and/or information provided by the User is correct, complete and reliable and that only the User is responsible for the same;
  - d. the User will not supply any data and/or information that is protected by copyright or in which other third-party rights are vested, unless the User is the holder of those rights or has been given explicit consent in any other way to use the data and/or information and supply these to Potato Auction;
  - e. the User will not misuse documents and certificates (such as Global GAP) added to auctions that are indicated/supplied with an auction;
  - f. to date, the User has not been sentenced for computer crime or any other criminal offence or fraud;
  - g. the User will not upload or send any viruses, worms, Trojan horses or other malicious codes;
  - h. the User will not generate any unsolicited email advertisements or spam;
  - i. the User will not pose as another User, or influence the auction's bidding process for instance by acting in a different capacity, or use software and the like that could disrupt the auction or its performance;
  - j. the User agrees that Potato Auction is entitled to check whether the data and/or information supplied is suitable and complies with the conditions and/or agreement with Potato Auction and also to remove the material supplied in whole or in part and to close the Account as referred to in Article 5 if Potato Auction believes there is reason to do so.
- 4.2 The User is fully liable for the consequences of providing incomplete or incorrect information and indemnifies Potato Auction fully against all claims from third parties, including the Tax Authorities, and against any ensuing or related damage and/or costs, which claims, damage and costs Potato Auction will cover directly from the User;
- 4.3 The User is responsible for keeping the combination of its user name and password secret. The User is, therefore, also liable for any use of the Service using its user name and password and the User indemnifies Potato Auction against any damage ensuing from the use or misuse of its user name and password. Potato Auction may assume that the User is in fact the person who registers using the User's user name and password.
- 4.4 The User must inform Potato Auction as soon as the User knows or has reason to suspect that its user name and/or password has gotten into the hands of unauthorised persons. This is quite apart from the User's own obligation to take measures as quickly as possible, such as changing its password.
- 4.5 In the interest of the Service, Potato Auction is entitled at all times to adjust or modify the manner of registration and log-in for the Service and/or the User's information.

## 5. Offering Lots

- 5.1 When offering a Lot, the Provider must provide information on the Lot offered in a clear and understandable manner, which includes but is not limited to a correct, complete and accurate description of the Lot as well as information on the condition and qualification of the Lot and any particulars and/or conditions linked to the Lot.
- 5.2 Potato Auction is not responsible or liable for the description of the Lots, including for the Provider's information and statements. Potato Auction may propose or make changes and

additions to the description of the Lot offered. The Provider indemnifies Potato Auction against any and all claims from the Buyer related to failure to meet its obligation to provide correct and complete information.

- 5.3 Potato Auction is entitled to have the texts related to a Lot translated. Potato Auction will have this translation approved by the Provider prior to placement. Following approval by the Provider, Potato Auction does not accept any liability for any errors in the texts resulting from these translations.
- 5.4 Bids can be put in on Lots placed as soon as they are published on the Online Platform. Provider has to choose and enter the duration of the auction period, in hours, when creating the lot. The Provider may not withdraw the lot before the end of the auction and may not change the conditions related to the offer. If, despite the above, a Lot is removed from the Online Auction at the Provider's request, the Provider is fully liable for any damage this causes.
- 5.5 The Provider offers Lots exclusively on the Online Platform, to the exclusion, therefore, of any other digital sales channels.

## **6. Auction Process**

- 6.1 Users are obliged to comply with the instructions on the Online Platform. If a situation occurs in relation to an Online Auction that is not provided for in these Terms of Use and/or in the event of disputes, Potato Auction decides at all times what will happen.
- 6.2 If Potato Auction deems it necessary, it is entitled at all times to render the offering of Lots by Users and the bidding on Lots by Users temporarily or permanently impossible or to remove Lots, both before, during and after an Online Auction. In such an event Potato Auction will offer Users a suitable solution, in so far as Potato Auction considers this desirable and necessary.
- 6.3 Inspection of a Lot by a potential Buyer is, in principle, always possible in accordance with the provisions of Article 8.2.
- 6.4 Participation in an Online Auction is possible for the duration determined on the Online Platform. In doing so Users may use the automatic bidding functionality which puts in bids automatically, without further intervention from the User, up to a maximum set by the User. The incremental amount by which the User automatically increases a Bid is EUR 0.0025 per kg. The minimum bid increments are also listed on the Online Platform. If a bid is put in within two (2) minutes before the end of the Online Auction, the Online Auction is automatically extended by one (1) minute at a time, until no more bids are put in during the last extended minute, after which the Online Auction closes.  
Allocation before the ending of a auction period is possible in case Provider has chosen to bid the Buy now price.
- 6.5 Providers accept that they may be paid a lower or higher Purchase Price in their own currency than they would have received if the exchange rate would be used that applies at the moment the Online Auction closes instead of at the moment of payment of the Purchase Price.
- 6.6 Each Bid is deemed to have been put in by the party through whose Account the Bid is put in. As such, the User is personally bound towards the Provider at all times by the Bids put in through the User's Account, even if a third party puts in bids through the said Account.
- 6.7 The Buyer acknowledges and accepts that if the Provider has listed a Minimum Price, no Purchase Agreement is concluded if the highest Bid is lower than this Minimum Price. The Provider may adjust this Minimum Price only after the auction has closed.

- 6.8 Any Bid put in is unconditional and irrevocable, regardless of whether the User uses the automatic bidding functionality. The User cannot invoke typing errors or mistakes.
- 6.9 The Provider is not allowed to put in a Bid on Lots offered by the Provider itself and/or to instruct others to put in a Bid on such Lots.
- 6.10 The Purchase Agreement is created as the result of automatic Allocation.
- 6.11 Additional terms and conditions may be given on the Online Platform and/or in (email) messages from Potato Auction that apply to offering Lots and/or putting in Bids.
- 6.12 The Buyer acknowledges and accepts that if the Provider has listed a Minimum purchase quantity, no Purchase Agreement is concluded if the highest Bid is made for a lower quantity than this Minimum purchase quantity..

## **7. Payment**

- 7.1 At the end of the Online Auction, the User that has put in the highest Bid receives an automatically generated Allocation from Potato Auction.
- 7.2 Together with the automatic Allocation, Potato Auction issues, on behalf of the Provider, a pro forma invoice for the Purchase Price and a pro forma invoice for the buyer's commission. The Provider gets a receipt for the purchase price to be received and a pro forma invoice for the provider's commission and any VAT due. The provider's commission will be deducted from the purchase price to be paid. For both the Provider and the Buyer, the provider's commission totals 2% of the purchase price, with a minimum of EUR 125 excl. VAT for each. The final invoice and completion statement are sent as soon as delivery has taken place, at which time any differences with the specifications of the lot offered, such as weight, can be corrected and settled.
- 7.3 The Buyer must pay the Purchase Price and the buyer's commission and the Provider must pay the provider's commission, as based on the aforementioned pro forma invoices, within 3 working days by payment into a third-party account managed by Certo Escrow on behalf of Potato Auction.
- 7.4 The Buyer or Provider may have Potato Auction arrange for transport with the necessary documentation and/or provide additional services. A separate invoice will be sent for this as soon as agreement has been reached on the conditions and rates. Before transport takes place and/or additional services are provided, this invoice will be paid into the third-party account managed by Certo Escrow on behalf of Potato Auction, unless agreed otherwise in writing between Potato Auction and the client.
- 7.5 The Buyer ensures that all amounts are received as net amounts and is therefore responsible and liable for any and all (bank) costs, (withholding) tax, levies and/or deductions. The email message contains a link to Potato Auction's online payment page. Payment is made using any of the payment methods listed there.
- 7.6 The User accepts that Potato Auction drafts and sends invoices on behalf of the Provider. The Provider remains responsible at all times for the accuracy and completeness of the invoice and Potato Auction accepts no liability whatsoever in this respect.
- 7.7 If the Buyer fails to pay the invoice offered within the payment term stated, it is automatically in default towards Potato Auction and the Provider, without notice of default being required. From the moment of default, the Buyer owes interest equalling the statutory commercial interest. On behalf of the Provider, Potato Auction sends a final reminder regarding the amount owed to the Provider. If payment is still not made, Potato Auction may

- pass on the claim for collection. All extrajudicial costs incurred by Potato Auction related to the late payment will then be at the Buyer's expense. The extrajudicial costs are determined in accordance with the Dutch Act on the Standardisation of Extrajudicial Collection Costs (Wet Normering Buitengerechtelijke Incassokosten) and amount to at least EUR 40.
- 7.8 If Potato Auction, also on behalf of the Provider, starts a collection procedure in order to collect the Purchase Price, the Provider is obliged to cooperate and to retain the Lot, not transfer its title and not encumber it during the collection procedure. However, the Provider may not oblige Potato Auction to collect the Purchase Price (after all). If Potato Auction informs the Provider that it does not intend to proceed to collect (the remainder of) the Purchase Price, the Buyer accepts that the Provider is entitled to either continue the collection procedure independently or to dissolve the Purchase Agreement with immediate effect, without notice of default being required. Potato Auction may send the statement of dissolution to the Buyer on behalf of the Provider. If the Provider continues the collection procedure, Potato Auction will give the Provider all of the information it requires, including identification details of the Buyer.
- 7.9 Dissolution of the Purchase Agreement does not affect the indebtedness of the buyer's commission by the Buyer.
- 7.10 In the event of dissolution due to non-performance by the Buyer of its payment obligation, the Buyer is liable for all damage and costs incurred by Potato Auction as a result, which amounts at any rate to a sum equalling the provider's commission that Potato Auction missed out on.
- 7.11 In the event of dissolution due to non-performance by the Buyer of its payment obligation, the Buyer moreover forfeits a penalty to the amount of 50% of the Purchase Price or, if this is higher, 50% of the sales amount estimated by the Provider in advance.
- 7.12 Potato Auction pays the Purchase Price to the Provider (after deduction of the provider's commission) only after actual receipt of the Purchase Price and buyer's commission from the Buyer.
- 7.13 Potato Auction will make an effort to pay the Purchase Price (after deduction of the provider's commission) within three weeks after delivery of the Lot by the Provider. Notwithstanding the above, Potato Auction has the right to suspend payment to the Provider, particularly if the Buyer has reported a dispute due to damage to or non-conformity of the Lot, for instance.

## **8. Delivery and collection of the Lots**

- 8.1 The Provider is obliged to deliver the Lot to the Buyer to whom the Allocation has been made, in accordance with the specifications given for the Lot and any conditions determined by the Provider when putting the Lot up for auction. After Potato Auction has received payment and the Provider has received payment confirmation from Potato Auction, the Provider is obliged to make the Lots sold available to the Buyer for collection within the term agreed and in the packaging agreed.
- 8.2 The Provider must make the Lot purchased available for collection by the Buyer within thirty (30) calendar days after the date of availability for delivery of the Lot reported by the Provider. Within this term, the Buyer always has the right to inspect the lot physically or have it inspected by an inspector to be appointed by the Buyer. This term may only be deviated from if, at the time the Agreement was concluded, the Provider and the Buyer made other

arrangements for delivery (such as regarding the term for collection) and the Buyer and the Provider have each immediately informed Potato Auction of such other arrangements by email. If the Buyer fails to collect the Lot within the agreed term, the Buyer is legally in default due to its failure to act, therefore without having to be declared in default in this matter by the Provider. The Provider is obliged to immediately inform Potato Auction of this default by email. In such event the Agreement between the Users is deemed dissolved and the Provider is entitled - at its own discretion - to sell the Lot to a third party, for example, without being bound to the Buyer to pay back the purchase price and/or damages paid, while the Provider is free to claim damages from the Buyer due to the Buyer's non-performance. If the Provider fails to deliver the Lot within the agreed term, the Provider is legally in default due to its failure to act, therefore without having to be declared in default in this matter by the Buyer. The Buyer is obliged to immediately inform Potato Auction of this default by email. In such event the Agreement between the Users is deemed dissolved and the Buyer is entitled - at its own discretion - to no longer collect the Lot, for example, without being bound to the Provider to pay any damages, while the Buyer is free to claim damages from the Provider due to the Provider's non-performance.

- 8.3 The costs of any export documents are at the Provider's expense. The Provider is obliged to ensure that the documents required for export can be applied for, if necessary by engaging a service provider to do so.
- 8.4 The location of delivery is the address made known by the Buyer. The risk of damage and/or loss of Lots rests with the Provider until the moment they are collected by the Buyer or by a transport company engaged by the Buyer, with or without Potato Auction's intermediation.
- 8.5 In relation to payment of the Purchase Price (after deduction of the provider's commission) by Potato Auction, signing for receipt at the collection location is considered proof of correct, complete and undamaged receipt by the Buyer. The Provider accepts that Potato Auction is entitled to refuse other proof of receipt in relation to payment of the Purchase Price (after deduction of the provider's commission) by Potato Auction.
- 8.6 In the event of non-performance by the Provider of its delivery obligation under this article, even after having been given proper notice of default, the Provider is in default and Potato Auction is entitled to dissolve the Purchase Agreement on behalf of the Buyer. The declaration of default and the declaration of dissolution may be sent to the Provider by Potato Auction on behalf of the Buyer. In such an event the Provider is obliged, among others, to pay the Buyer's damage, without prejudice to any other right. The Provider will then be obliged to repay any Purchase Price it may have received to Potato Auction. Potato Auction will refund the Purchase Price to the Buyer only after actually receiving it from the Provider.
- 8.7 Dissolution of the Purchase Agreement pursuant to this article does not affect the indebtedness of the provider's commission by the Provider.
- 8.8 In the event of dissolution due to non-performance by the Provider of its delivery obligation under this article, the Provider is liable for all damage and costs incurred by Potato Auction as a result, which amount to a sum at least equalling the buyer's commission that Potato Auction missed out on.
- 8.9 In the event of dissolution due to non-performance by the Provider of its delivery obligation under this article, the Provider moreover forfeits a penalty to the amount of 50% of the Purchase Price or, if this is higher, 50% of the sales amount estimated by the Provider in advance.

- 8.10 The Buyer which has put in the highest Bid is obliged to collect the Lot within the term stated in the description of the Lot or as agreed separately. If no term is stated or agreed, the Buyer is obliged to collect the Lot within a reasonable term. If the Buyer fails to collect the Lot in time, fails to honour agreements with the Provider and/or refuses to or is in default of providing information or following the Provider's instructions as needed for delivery of the Lot, Potato Auction has the right, following a warning of the Buyer by email, to pay the Purchase Price (after deduction of the provider's commission) to the Provider. In that case, the Buyer has no claim whatsoever towards Potato Auction for repayment of the Purchase Price or any form of compensation. In that case, the Provider is obliged to keep the Lot available for collection by the Buyer.
- 8.11 If the Purchase Agreement is dissolved due to non-performance by the Buyer of its collection and cooperation obligation under this article, this does not affect the indebtedness of the buyer's commission by the Buyer.
- 8.12 If the Purchase Agreement is dissolved due to non-performance by the Buyer of its collection and cooperation obligation under this article, the Buyer is liable for all damage and costs incurred by Potato Auction as a result, which amount to a sum at least equalling the provider's commission that Potato Auction missed out on.
- 8.13 If the Purchase Agreement is dissolved due to non-performance by the Buyer of its collection and cooperation obligation under this article, the Buyer moreover forfeits a penalty to the amount of 50% of the Purchase Price or, if this is higher, 50% of the sales amount estimated by the Provider in advance.
- 8.14 Potato Auction is entitled to offset the amounts referred to above with the Purchase Price to be returned to the Buyer.
- 8.15 The Buyer acknowledges and accepts that special regulations and/or provisions may apply to the import of Lots under cross-border Purchase Agreements, including but not limited to customs rights, VAT, import levies and clearance costs. The Buyer must take cognisance of such regulations before entering into the Purchase Agreement. Any additional costs related to the above are exclusively at the Buyer's expense.
- 8.16 Any complaints and disputes between the Provider and Buyer must be reported to Potato Auction as soon as possible. Although the Buyer and the Provider must, in principle, resolve disputes in mutual consultation, Potato Auction will, where necessary, make every reasonable effort to mediate between the Provider and the Buyer. If the Provider and the Buyer do not find a solution and Potato Auction still has possession of the Purchase Price, the Provider and the Buyer hereby accept that Potato Auction has the final right to decide whether the Purchase Price is returned to the Buyer or paid out to the Provider. Potato Auction will not become liable to pay the Provider or the Buyer any damages or compensation as a result. Potato Auction is not a party in any dispute.
- 8.17 Provider may require ware potatoes to get packed and treated with germination inhibitors by a packer of his choice. Potato Auction in this case reserves the right to arrange this. The costs for this including the transportation costs to the packer will be charged to the Buyer.

## **9. Use of the Service/User Material**

- 9.1 Use of the Service and the Online Platform, including the technical and other resources required for the User, such as hardware and internet connection, is at the User's expense and risk.
- 9.2 The User guarantees that it is authorised to use the Online Platform with due regard for the Terms of Use.

- 9.3 The User guarantees that the User Material it makes available is correct, cannot harm Potato Auction or third parties in any way, particularly not on the basis of race and religion, does not contain any third-party personal particulars, does not infringe laws and regulations and is not contrary to these Terms of Use. Moreover, the User guarantees that the User Material does not refer to or contain a link to other websites. The User indemnifies Potato Auction against any claim arising from the User Material made available by the User.
- 9.4 When using the Service, the User will comply with all applicable laws and regulations.
- 9.5 The User guarantees that, when using the Service and the Online Platform, it will respect the objective as described in these Terms of Use and will in no way attempt to bypass the prescribed manner of use. In particular, the User will not directly contact other Users to conclude a purchase agreement behind Potato Auction's back. In case of violation of this provision, the User is held to pay Potato Auction the missed buyer's and provider's commission, as well as any other damage incurred by Potato Auction.
- 9.6 The User retains all intellectual property rights to its User Material. Potato Auction has the right to publish User Material and/or reproduce it for all purposes deemed necessary by Potato Auction, free of charge and unencumbered and regardless of the continued existence of the User's Account. This licence does not end the moment that the User or Potato Auction removes the User's Account and/or the User discontinues use of the Service. In so far as applicable and in so far as possible, the User hereby waives its moral rights to User Material.
- 9.7 The User acknowledges and accepts that Potato Auction is not obliged to inspect and/or review the User Material. As such, Potato Auction is considered to have no knowledge of this whatsoever. Potato Auction is neither responsible nor liable for the content of the User Material.
- 9.8 Potato Auction reserves the right to remove, abridge or otherwise modify the User Material for the Online Platform if it sees reason to do so, without accepting any responsibility or liability for the content thereof as a result, without becoming liable for any damage, and without being bound to pay any form of compensation. This article does not affect other rights and authorities of Potato Auction and Potato Auction reserves the right to take other (legal) measures, including but not limited to the provision of User's personal details to third parties.
- 9.9 The User owes Potato Auction an immediately payable penalty of EUR 500 (in words: five hundred euros) for every violation of this article and for every day, including part of a day, that such a violation continues, all this without prejudice to Potato Auction's right to recover all damage actually incurred.

## **10. Availability and interruption of the Service**

- 10.1 Potato Auction does not guarantee that (all elements of) the Service and/or the Online Platform will be accessible at all times and without interruptions or failures. Potato Auction is not liable towards or liable to pay damages to the User for the (temporary) unavailability of the Service or the Online Platform.
- 10.2 Potato Auction is entitled at all times to make any changes and/or improvements to the Service and/or the Online Platform without prior notification. Potato Auction is moreover entitled to (temporarily) decommission the Service and/or the Online Platform and/or to limit use thereof if it deems it necessary.

## **11. Intellectual Property Rights/Privacy/Use of Materials**

- 11.1 All intellectual property rights to the website and the information posted on it, the Online Auction, the Service and all other activities are vested in Potato Auction or its licensors.
- 11.2 It is explicitly not permitted to copy or publish the Service, the Online Platform, User Material that does not originate with the User and/or information and/or data or to use these directly or indirectly for commercial purposes or any purpose other than those mentioned in these Terms of use, unless Potato Auction or the relevant entitled party have explicitly agreed to this in writing.
- 11.3 The User may not remove or bypass the technological measures taken by Potato Auction B.V. to protect its intellectual property rights.
- 11.4 The User guarantees towards Potato Auction that in participating in the auction it does not infringe any third-party intellectual or other (property) right. If Potato Auction is held liable by a third party for infringement of an intellectual or other (property) right, Potato Auction will be fully indemnified by the User against any and all damage and additional costs that may be incurred by Potato Auction as a result of such infringement.
- 11.5 All personal and other details and other information, including User Material and information collected by Potato Auction, are considered a legally protected database. The User may only request or reuse details from the database if and in so far as allowed under these Terms of Use.
- 11.6 The personal and other details provided by the User to Potato Auction will be stored and processed in accordance with applicable law and regulations.
- 11.7 Following a report of use of illegal user material, Potato Auction may proceed to removing/blocking this. Potato Auction will not do so if there are good reasons to doubt the correctness of the report or the legitimacy of the evidence supplied or if a weighing up of the interests does not require it to do so.
- 11.8 In respect of a report made by the User, the User is liable, to the exclusion and with indemnification of Potato Auction and all its affiliated companies, as well as its board of management, directors, employees, representatives and legal successors, for any third-party claim related to the blocking or removal of User Material or the discontinuation of activities. The User is also liable for all damage Potato Auction may incur as a result of such a claim.

## **12. Liability**

- 12.1 Potato Auction accepts no liability whatsoever for damage resulting from provision of the Service, including but not limited to damage ensuing from or related to the use of the Online Platform and/or the Service or an illegal act or otherwise, in so far this is allowed under compulsory law.
- 12.2 Among others, Potato Auction can never be held liable for any damage resulting from conclusion of a Purchase Agreement as Buyer or as Provider, including but not limited to damage as a result of the fact that the User has concluded unfavourable agreements, for example because more or less is paid for the Lots purchased than the expected value or the catalogue value.
- 12.3 In so far as Potato Auction, despite the above, would be liable for damage of whatever nature, it is liable only for payment of the direct damage incurred by the User as a result of a failure or unlawful act attributable to Potato Auction.
- 12.4 If and in so far as Potato Auction would be liable for damage of whatever nature, its liability is limited at any rate to a maximum of EUR 500 (in words: five hundred euros).
- 12.5 The User must report any damage to Potato Auction in writing as soon as possible. Any claim to damages lapses after the end of six months.

### **13. Guarantees and indemnities**

- 13.1 The User is liable towards Potato Auction for all damage and costs incurred or made by Potato Auction as a result of an attributable failure to perform by the User in respect of the Terms of Use or any other unlawful act towards Potato Auction. The User indemnifies Potato Auction against all costs made and damage incurred.
- 13.2 The User guarantees that the User Material shared by way of the Service is unencumbered and that it is not encumbered with any third-party intellectual property rights, and that the User Material does not infringe or contravene any third-party rights and that its use is not otherwise unlawful towards third parties.
- 13.3 The User indemnifies Potato Auction against all third-party claims, of whatever nature, relating to the payment of damage, costs, interest, taxes, levies and/or deductions relating to or ensuing from its User Material, its use of the Online Platform, the Service and/or a violation of these Terms of Use and/or any third-party rights, including but not limited to intellectual property rights.
- 13.4 The indemnification obligations in this article also apply to all companies affiliated with Potato Auction as well as its board of management, directors, employees, representatives and legal successors.

### **14. Term and termination**

- 14.1 The User may discontinue its use of the Service and remove its Account at all times. Potato Auction has the right to refuse removal of its Account if the User still needs to perform any obligation towards Potato Auction or other Users.
- 14.2 If the User acts in contravention of these Terms of Use or any other provision under compulsory law, Potato Auction is entitled to immediately discontinue the User's activities in relation to the Service and to discontinue and/or remove its Account and to impose any other suitable sanction related to the use that Potato Auction considers suitable, without Potato Auction being liable or held to pay damages as a result.

### **15. Miscellaneous**

- 15.1 Potato Auction is entitled to transfer its rights and obligations ensuing from these Terms of Use to third parties. Potato Auction will inform the User accordingly.
- 15.2 Nullity, nullification or the non-binding nature of a provision in these Terms of Use does not affect the validity of the other provisions. If one or more provisions are or become null, nullified or not binding, Potato Auction will replace the null and/or invalid part (as regards the specific User or the specific situation) by provisions that are valid and the legal effects of which, given the content and intent of these Terms of Use, are as much in agreement with the invalid part as possible.
- 15.3 In so far as these Terms of Use relate to any (limitation or exclusion of) liability of Potato Auction, the relevant stipulations also extend to all companies affiliated with Potato Auction as well as its board of management, directors, employees, representatives and legal successors, in so far as any liability should be vested in them.

### **16. Choice of forum/applicable law**

- 16.1 These Terms of Use, the use of the Service and the Online Platform are governed by Dutch law, unless otherwise provided in or pursuant to provisions under compulsory law. The same

applies to disputes ensuing from the Terms of Use, the use of the Service and the Online Platform, as well as to all Purchase Agreements between Providers and Buyers.

- 16.2 Rules of international private law may have as a result that laws other than Dutch law (also) apply to transactions with other Users.
- 16.3 All disputes arising between the User and Potato Auction will be brought before the competent district court in the Northern Netherlands, unless compulsory law dictates that the dispute is to be brought before a different court.