

Open-Source Licence for Seeds

Licence Agreement

Preamble

By acquiring and using the seeds purchased under the terms and conditions of this licence agreement you, as the Licensee, accept the provisions of this licence agreement. The purpose of these provisions is the free use of seeds. The Licensor is the natural or legal person who hands over these seeds to you. The Beneficiary of the licence agreement is AGRECOL e.V., a registered association.

In order to achieve the objective of free use, enhancement, cultivation, dissemination and propagation of seeds, without there being a monopoly taken advantage of by individuals, any use of the seeds is only permissible in accordance with these licensing provisions. As a Licensee, you undertake to limit the use of these seeds or the propagation of them and enhancements vis-à-vis third parties exclusively to the manner stipulated in this licence. You will in particular refrain from making any claim to plant variety rights, patent rights or any other statutorily possible exclusivity rights of the seeds or their propagation and enhancements.

Simultaneously, the licensing provisions oblige you, in turn, to subject any seeds or enhancements of the seeds obtained from the present seeds to these licensing provisions, and only to pass them on to third parties on these conditions ("copyleft"). Should you infringe the obligations arising from this licence agreement, you will forfeit your rights of use of the seeds or any seeds or enhancements obtained therefrom. In addition, the Beneficiary shall, in such cases, be entitled to require you to cease and desist and make a payment, as stipulated in this agreement (agreement to the benefit of third parties).

1. Definitions

The following definitions apply to this licence:

- 1.1. *Seeds*. Seeds, within the meaning of this agreement, shall mean, dormant generative reproductive organs, such as seeds, fruits, pseudo-fruits, fruit clusters or parts thereof, as well as any vegetative plant organs from which whole plants can be generated – by whatever method –, as well as pollen, and all informational components therein, which have in each case been placed on the market under the terms and conditions contained in this licence or has been obtained from such seeds through propagation or has been enhanced.
- 1.2. *Propagation* shall mean any type of reproduction, i.e. the new or further generation of seeds. Propagation shall also include technical methods of extracting genetic infor-

mation for the purpose of generating seeds with certain characteristics, including any methods that are unknown today.

- 1.3. *Placing on the market*: The offering, keeping in stock for distribution, keeping for sale, and any handing over of seeds to another party.
- 1.4. *Enhancements* shall mean culture or breeding of new plants, in regard to which these seeds have, under this licence agreement, been involved, at at least one point, in the course of the development – regardless of whether such enhancements concern varieties, populations or other plant groupings or individual plants or parts of plants.
- 1.5. The *copyleft* principle obliges all future plant growers to grant users of their enhancements the same rights as those that they have enjoyed themselves.
- 1.6. *Licensor*: The previous owner of the seeds, who is rightfully handing them over to the Licensee under the terms of this License, conferring the rights of use of the seeds according to Article 3.
- 1.7. *Licensee*: Anyone who takes possession of or utilises the seeds in accordance with these licensing provisions.
- 1.8. *Beneficiary*: AGRECOL e.V., Hauptstr. 15, 88379 Guggenhausen

2. Conclusion of the agreement

- (1) With these licensing provisions, the Licensor declares vis-à-vis everyone that she or he is making an offer to conclude a licence agreement on the granting of rights of the use of the seeds in accordance with the following provisions. The agreement shall materialise once the Licensee acquires the seeds, or otherwise obtains them with the consent of the prior owner, however at the latest once he or she opens the package of seeds. The declaration of acceptance does not need to be received by the Licensor.
- (2) Upon concluding the licence agreement, the Licensor hereby assigns his or her rights arising from the licence agreement, in particular the cease and desist rights and compensation rights for damage in accordance with Article 6, to the Beneficiary.
- (3) This licence agreement is to be understood as a contract under civil law. It shall, be deemed to have been accepted as being legally mandatory by all Parties, from the moment of acquiring the seeds or opening the packet, once the Licensee begins to make use of the seeds, even if the Licensee contests the terms and conditions of the licence agreement.

3. Scope of the licence rights

- (1) Upon the materialisation of the licence agreement, the Licensee will be granted the right to use all the seeds, as he or she has received them, under the terms and conditions of this licence.

- (2) The seeds may be used for any purpose, and by anyone who accepts the terms and conditions of this licence, in particular also for enhancement.
- (3) The Licensee may pass on the seeds to others, propagate them, enhance them and disseminate propagated or enhanced seeds, however only on the condition that he or she provides a copy of the licence agreement to all other parties to whom he or she disseminates such seeds, which will also legally bind any third parties to this licence agreement, and provides the Beneficiary, with evidence of having done so, upon request. This legal binding of said parties may be carried out in writing or verbally, or by way of an implicit declaration of consent on the part of such third party. Enhancements are, after being disseminated, to be regarded as "seeds" within the meaning of this licence.
- (4) The copyleft principle obliges the Licensee to impose the same rights and obligations on the future owners of the seeds, any seeds propagated from the latter or enhancements of the seeds as he or she personally acquired and assumed. Any limitation of the rights in the seeds vis-à-vis third parties going beyond that, in particular any limitation based on statutorily granted special protective rights (plant variety rights, patent rights, trademark rights, copyrights, etc.) is prohibited and illegitimate.

4. Plant material index

- (1) The Beneficiary may provide its own plant material index, in which all groupings of seeds (identified according to characterization criteria) and their enhancements are included. Any enhancements undertaken by the Licensee have to be provided to the Beneficiary in the form of a viable and propagatable seed sample for incorporation into the plant material index.
- (2) The plant material index will be published by the Beneficiary on its website once it has been prepared.
- (3) The use of any varieties and enhancements that are included in this plant material index may not be limited in any way other than through the provisions of this licence agreement.
- (4) The origin and properties of the material will be published by the Beneficiary in the plant material index, and can be reviewed there at any time.

5. Rights of third parties and governmental prohibitions

Should the Licensee be obliged to deviate from these licensing provisions, based on rights of third parties or governmental prohibitions, in whole or in part, when utilising the seeds, he or she may only use the seeds and propagations thereof for personal, non-commercial purposes.

6. Lapse of the rights upon infringing the licensing provisions

- (1) Should the Licensee infringe these licensing provisions, his or her rights of use of the seeds or their enhancements will lapse immediately. A claim may in particular be made against the Licensee by the Beneficiary, to ceasing and desisting from disseminating the seeds, propagating the seeds or enhancing the seeds as well as to compensate damages.
- (2) The expiry of the rights of use in accordance with paragraph 1 shall not have any influence upon the rights of other users, as long as the latter do not infringe the licensing provisions themselves.

7. Applicable law, place of jurisdiction, any other provisions

- (1) These licensing provisions shall be subject to German Law.
- (2) Should one of the above clauses transpire to be invalid, it shall not affect the validity of the remainder of these licensing provisions.
- (3) Should the Licensee be a trader, legal person under public law or special public law funds, the place of jurisdiction shall be Berlin.
- (4) The Beneficiary shall be entitled to assign his or her rights arising from this agreement in writing to third parties at any time.
- (5) Should one of the provisions of this licence agreement be or become invalid, ineffective or unenforceable, this shall not affect the validity of the remaining licensing provisions. Rather, the provision concerned shall be replaced by a valid and effective provision which comes closest to the economic intention of the contracting parties, in particular the objectives of the licence agreement laid down in the recitals.

Appendix

In order to be able to provide anyone with the rights to freely use the seeds in accordance with these licensing provisions, every time the seeds are passed on the following or a substantially equivalent reference to the applicability of this licence and its source is to be displayed clearly and attached.

Open source licence for seeds – text for the package:

Seeds with the same rights and obligations for all

By acquiring or opening the packet of these plant seeds you accept, by way of an agreement, the provisions of a licence agreement where no costs shall be incurred to you. You especially undertake not to limit the use of these seeds and their enhancements, for instance by making a claim to plant variety rights or patent rights on the seeds' components. You shall pass on the

seeds, and propagations obtained therefrom, to third parties only on the terms and conditions of this licence. You will find the exact licensing provisions at www.opensourceseeds.org/licence. If you do not wish to accept these provisions, you need to refrain from acquiring and using these seeds.

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