



# TERMS OF USE

February 1, 2014



## Terms of use

By registering for, accessing and/or using the PINTO database website, the PINTO database service (hereinafter together referred to as "PINTO") or part or all of the information and data provided therein (hereinafter referred to as "Data") however accessed, you agree that you have read, understood and agree to be bound by the present terms of use (hereinafter referred to as "Terms of Use"). The effective date of the most recent version of the Terms of Use appears on this page under the title "Terms of Use". PINTO is owned and managed by ESA European Seed Association aisbl (hereinafter referred to as "ESA"), an international non-profit association, registered under Belgian law and located in 23/15 rue du Luxembourg, 1000 Brussels, Belgium.

### I. Background

PINTO has been created with the aim of improving transparency regarding information on patents in relation to plant varieties to facilitate the assessment of the "Freedom to operate" for intended breeding programs. Although there are many publicly accessible patent databases the specific information in PINTO providing a link between a plant variety and patent(s) or patent application(s) is currently not available elsewhere and constitutes therefore the core element of PINTO.

Currently the scope of PINTO covers plant varieties commercialized in the European Economic Area (EU and EFTA countries) but may also include plant varieties that are registered in the EU and/or EFTA countries while not being commercialized in those countries. Further on, the patent information regarding the plant varieties that are included in PINTO is provided by the owners of the plant varieties on a voluntary basis. Therefore, not all plant varieties that may be covered by patents are included in PINTO and it should therefore never be considered as complete and exhaustive. Extension of the geographical scope to other countries, continents will be considered in the future. As to the material scope, PINTO not only includes plant varieties in relation to granted patents but also those in relation to published [patent applications](#).

The information included in PINTO is updated every 6 months by ESA.

### II. Your basic responsibilities as a user of PINTO

1. In order to become a user of PINTO you agree to create your personal account. You also agree that for being able to create your account you have to accept the present Terms of Use as well as our [Privacy Policy](#). You agree and acknowledge that if you intend to use PINTO and Data therefrom on behalf of your employer or any other third party such employer or third party is aware and has understood these Terms of Use.
2. You are responsible for any activity that occurs through your account which account remains personal at all times. You represent and warrant that all personal information you provide or have provided to



ESA as a user of PINTO upon registration and at all other times will be processed by ESA for the purposes and in the manner described in our Privacy Policy, which forms integral part of the present Terms of Use, and will be true, accurate, current and complete to the best of your knowledge and you agree to update your information as necessary to maintain its truth and accuracy.

3. You agree that ESA uses the e-mail address you communicate when registering for PINTO for the purpose of sending you up-dates and any information that may be relevant for your use of PINTO, in accordance with our Privacy Policy. For further information in this respect, please refer to our [Privacy Policy](#).
4. You agree that you will not seek, collect or use the login details of other users of PINTO.
5. You are responsible for keeping your password secret and secure.
6. You may not use PINTO for any illegal purpose or for any purpose other than the Permitted Use as defined under point 13 of this Section. You agree to comply with all laws, rules and regulations applicable to your use of PINTO.
7. You are solely responsible for your use of PINTO and for any information that you store in your PINTO account.
8. You must not change PINTO or another website so as to falsely imply that it is associated with PINTO or ESA in any way.
9. You must not interfere with or disrupt PINTO or servers/networks connected to it, including but not limited to, by transmitting any viruses or any code of a destructive or disruptive nature.
10. You must use PINTO taking due account of the full content of the [User Guide](#) . (You must not create accounts with PINTO through unauthorized means, including but not limited to, by using an automated device or similar tool.
11. You must not attempt to restrict another user from using PINTO and you must not encourage or facilitate violations of these Terms of Use or any other terms or rules of ESA.
12. Violation of these Terms of Use may, in ESA's sole discretion, result in termination of your account. You understand and agree that ESA cannot and will not be responsible for your conduct in PINTO and for the information you store in there as a user. You also agree that you use PINTO at your own risk.
13. You agree that you use PINTO and the Data included therein and may put such Data at the disposal of any third party (such as your employer) only for the purpose of assessing the patent status of specific plant varieties (hereinafter referred to as "Permitted Use"). You agree not to publish the Data or to make any of the Data otherwise accessible to any third party or to use the Data for any purpose other than the Permitted Use without prior written consent of the Provider and/or ESA. Any commercial use and use in legal proceedings of the Data by you or any third party is expressly prohibited. You agree that you will inform any third party to which you have provided Data that such Data have been



obtained from PINTO under the present Terms of Use and that by accepting Data they acknowledge having read and understood the present Terms of Use.

### III. Conditions of your use of PINTO

#### A. General Conditions

1. ESA reserves the right to modify or terminate PINTO or your access to PINTO for any reason, subject to reasonable prior notice and without liability to you. You can also terminate your account at any time, without notice and without any liability to ESA. If ESA terminates your access to PINTO or you terminate your own account, information you might have stored in your PINTO account will no longer be accessible through your account. It may however be stored in PINTO for a certain period of time to the extent permitted under applicable law. Upon termination of either PINTO itself or your account, all rights granted to you in the present Terms of Use will also terminate immediately.
2. ESA reserves the right to modify conditions for access to PINTO for any reason, at any time and without any liability to you. However, in case such modification of the access conditions takes place ESA notifies you via an e-mail message to the e-mail address you indicated in your account 8 days prior to the modification taking effect.
3. ESA reserves the right to change the present Terms of Use from time to time. If ESA changes the Terms of Use an updated version will reflect those changes and ESA will notify you reasonably in advance before the modified terms become effective. Nevertheless, you agree that ESA may notify you of the modified terms, indicating the new effective date under the title "Terms of Use", by posting them on the PINTO website, and that your use of PINTO after the effective date of the modified terms constitutes your agreement to such modified terms. Therefore, you should review the present Terms of Use and any modified terms before using PINTO. The modified terms will be effective as of the time of posting, or a later date if specified in the modified terms, and will apply to your use of PINTO from that point forward.
4. ESA reserves the right to refuse access to PINTO to anyone for any legitimate reason at any time.
5. There may be links from PINTO, or from communications you receive concerning PINTO from ESA to third-party websites or information. There may also be links to third-party websites or information in images or texts within PINTO. (For example, PINTO includes the feature that when you click on the patent numbers in the list of results you get when performing a search you are redirected to another public database containing further information regarding the patent.) ESA does not control any of these third-party websites or any of their content. You acknowledge and agree that ESA is in no way responsible or liable for any such third-party website, services, content or information.
6. PINTO primarily provides the information whether an individual plant variety is related with one or more individual patents or published patent applications in one or more European countries (hereinafter referred to as "["Patents"](#)"). Therefore the information which is included in PINTO regarding the Patent at question is limited to the name of the title holder, the publication number and the title of the Patent and a link to the file of the Patent in another public database. It is your individual responsibility to check all



further information regarding the Patents by following the provided link and by any other means in order to get more extensive knowledge.

7. ESA has protected the PINTO name and logo as Community trademarks therefore those may not be copied or used, in whole or in part, without the prior authorization of ESA.
8. The information included in PINTO is provided to ESA by individual parties who in the EU or EFTA countries commercialize (or possibly only register) plant varieties that may fall under the scope of a Patent (these actors are hereafter referred to as “the Providers”). This information therefore does not constitute the property of ESA but remains the exclusive property of the Providers of the information. ESA however claims protection (by copyright and sui generis rights) on the PINTO database itself in line with Directive 96/9 of the European Parliament and of the Council on the legal protection of databases.
9. The plant varieties included in PINTO may be related with one or several Patents. The fact that a plant variety is included in PINTO with reference to one or more Patents does not mean that there are no other Patents, unpublished patent applications or patents or patent applications outside the European countries that may - now or in the future - potentially cover the plant variety. Similarly, the fact that a plant variety is not included in PINTO does not automatically mean that such plant variety is not, or may not become, covered by any Patent, unpublished patent application or patent or patent applications outside the European countries.
10. The plant varieties included in PINTO may or may not be protected by plant variety rights. This information is not provided in PINTO but is available [elsewhere](#) and ESA expects you to act in full respect of those rights.
11. Inclusion of a plant variety in PINTO does not necessarily mean that the plant variety is (still) commercially available in the EU and/or EFTA countries. Some plant varieties may no longer be commercialized in the EU and/or EFTA countries and some may only have been subject to registration in the EU or EFTA countries.
12. Besides the information on the individual plant varieties PINTO contains explanations on various issues related to the main content and purpose of PINTO. These explanations are provided for pure information purposes and ESA will not be liable to you for the completeness or accuracy of such information.

## B. Disclaimers

1. Although it is the intention of ESA to offer PINTO as a service which is available in a continuous manner, there will be occasions when PINTO may be interrupted for maintenance, updates, repairs, or due to failure of telecommunication connection or equipment or for any other reason. ESA will not be liable to you for any suspension or discontinuation of PINTO.
2. Although it is the aim of ESA that PINTO contains only information which is correct it will happen that not all information will be accurate and correct at all times. Neither ESA nor the Providers of the information will be liable to you or to any third party for the potential inaccuracy of the information included in PINTO.

3. **PINTO is set up based on the voluntary contribution of the Providers. The contribution of each Provider depends on its own interpretation and may not always extend to all varieties that relate to Patents and that are commercialized or registered in the EU and/or EFTA countries. Further on, PINTO is updated twice a year. Therefore PINTO is not and will never be a complete and fully correct inventory and cannot serve as a tool for complete FTO (Freedom to Operate) searches. It is one tool to help such FTO searches but you agree that you are solely responsible to check other sources of information to complete your FTO search and you use PINTO accordingly. Also, ESA reserves the right to remove any information from PINTO for any reason, at any time without prior notification and will not be liable to you for the removal of such information.**
4. **Therefore you acknowledge and agree that, if a Provider has provided Data with regard to one particular Patent, variety and/or crop, this does not mean that 1) such Data will be up to date at any particular time, 2) such Provider will also provide information with regard to any other Patent, variety or crop for inclusion into PINTO, and/or 3) any company affiliated with such Provider will provide information for inclusion into PINTO.**
5. **No information in PINTO should be understood as an affirmative statement with respect to the validity and/or enforceability of any Patent. The fact of the relation of a plant variety to one or more Patents should not be understood as an affirmative statement that the plant variety or its use in breeding is covered by any such Patent. The scope of a Patent and its enforceability with respect to any particular variety may change during examination or in consequence of legal changes.**
6. You are solely responsible for your use of PINTO and the Data therein. Your use of PINTO and the fact that you check and use the information provided therein, or anything in these Terms of Use, by no means entail any arrangement with, authorization, license or consent of the Patent holder or Patent applicant i) to any use by you or by any third party of the plant varieties included in PINTO that require a specific authorization, or ii) to any use by you or any third party covered by any Patents or other intellectual property rights (included in PINTO).

#### **IV. Limitation of Liability**

1. ESA and each and all Providers do not assume any liability for the materials, information and opinions provided on, posted to, or otherwise available through PINTO or for any conclusions or opinions that you or a third party may derive from the access to and use of PINTO. Reliance on these materials, information; conclusions and opinions is solely at your own risk. To the fullest extent permissible pursuant to applicable law, under no circumstances will ESA or each and all Providers be liable to you or to anyone else for any loss or damages of any kind that are directly or indirectly related to: (the content of) PINTO; your use of, inability to use, or the performance of PINTO; any action taken in connection with an investigation by law enforcement authorities regarding your or any other party's use of PINTO; any errors or omissions in the functioning of PINTO; or any damage to any user's computer, mobile device, or other equipment including for latent/hidden defects in PINTO.



2. You agree that in the event you incur any damages or losses that arise out of ESA's or a Provider's acts or omissions linked to PINTO, such damages or losses do not entitle you to an injunction preventing any exploitation of PINTO and you will have no rights to restrain the development, production, distribution, advertising or exploitation of PINTO or the information included therein.
3. By accessing PINTO you understand that you may be waiving rights with respect to claims that are at the current times unknown or unsuspected.

## V. Indemnification

You agree to defend (at ESA's or a Provider's request), indemnify and hold ESA and each Provider harmless from and against any claims, liabilities, damages, losses, and expenses arising out of or in any way connected with any of the following: (i) your access to or use of PINTO; (ii) your breach or alleged breach of these Terms of Use; (iii) your violation of any third-party right, including but not limited to, any intellectual property right; (iv) your violation of any laws or rules; or (v) any misinformation made by you. You will cooperate as fully required by ESA or the relevant Provider in the defense of any claim. ESA and the Providers reserve the right to assume the exclusive defense and control of any matter subject to indemnification by you, and you will not in any event settle any claim without the prior written consent of ESA or the relevant Provider.

## VI. Privacy and security

ESA is committed to safeguard your privacy. By creating your account and accessing and using PINTO, you agree to provide your personal data to ESA and that ESA handles such data in the manner and for the purposes described in our [Privacy Policy](#), which forms integral part of the present Terms of Use. ESA shall handle your personal information in accordance with the [Privacy Policy](#) and applicable data protection laws.

## VII. Intellectual Property Rights

1. Except for the information supplied by Providers, and except for content belonging to third parties PINTO and all materials therein, including, without limitation, software, images, text, graphics, illustrations, logos, trademarks, trade names, photographs, audio, videos, look and feel (the "Content"), and all Intellectual Property Rights related thereto, are the exclusive property of ESA.
2. Except as explicitly provided herein, nothing in these Terms of Use shall be deemed to create a license in or under any such Intellectual Property Rights, and you agree not to sell, license, rent, modify, distribute, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works from any materials or Content accessible through PINTO. Use of the Content or materials for any purpose not expressly permitted by these Terms of Use is strictly prohibited.



## **VIII. Dispute Settlement**

You agree that any dispute arising from the present Terms of Use and its practical application including but not limited to your use of PINTO will be solved in an amicable settlement to the extent possible. In case such settlement is not possible you agree that all disputes will be referred to the Commercial Court of Brussels.

## **IX. Final Provisions**

The present Terms of Use are governed by Belgian law.

Should any provision of the present Terms of Use be entirely or partially invalid or there is a request by national law or authorities to modify certain provisions hereof, the validity of the other provisions shall be unaffected.

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