

**APPROVED AIC CONTRACT NOTE FOR THE GROWING OF HERBAGE SEED  
(To be read in conjunction with Seeds 13/21 (Effective from 1 February 2021))**

**Definitions**

In this Agreement:

- (a) 'Certifying Authority' means the Authority responsible for the United Kingdom Herbage Seed Certification Scheme.
- (b) 'Basic seed' means seed which is approved by the Certifying Authority for multiplication to produce certified seed.
- (c) 'Contract area' means the area of land in hectares to be sown with Basic seed.
- (d) 'Stand' means the herbage produced by the Basic seed.
- (e) 'Seed crop' means the seed harvested from the stand.

**1. Species and Field**

Subject to the provisions of this Agreement, The Grower shall grow and sell to The Merchant and The Merchant shall buy the seed crop from the stand as stated in Seeds 13/21.

**2. Terms**

- (a) In each year in which this Agreement is in operation the seed shall be entered by The Merchant for certification under
  - (i) The United Kingdom Seed Certification Scheme for herbage seed to be produced to the Higher Voluntary Standard (HVS).
  - or (ii) The OECD Certification Scheme for herbage seed produced to HVS purity standards.
- (b) BREEDER'S ROYALTY/LEVY, if any, on the seed crop shall be paid by The Merchant.  
CERTIFICATION CHARGES shall be paid as follows:
  - (i) Application for entry for Certification - By The Grower
  - (ii) Inspection fees - By The Grower  
(The Grower shall have the option of appointing a licensed inspector. If The Grower does not exercise this option by 1st February, in the year of harvest, The Grower will accept the Merchant's appointment.)
  - (iii) Uncleaned seed labels - By The Merchant
  - (iv) Official certification seed lot and testing charges on the cleaned seed - In equal shares  
- By The Grower and The Merchant

**3. Special Terms - see Seeds 13/21**

**4. Period of Agreement**

- (a) Subject to the other provisions for termination of this Agreement, the same shall continue in operation from the date for the harvest years stated in Seeds 13/21.
- (b) The Grower shall not attempt to harvest a further crop of seed from the stand after the final harvest year specified in Seeds 13/19 clause 4(a) except with the written consent of The Merchant.

**5. Supply of Basic Seed**

- (a) The Merchant shall apply to the Breeder of the Basic seed, or their agent, and sell to the Grower sufficient Basic seed to sow the Contract area as stated in Seeds 13/21.
- (b) If sufficient Basic seed is not available for the Contract area, this Agreement shall terminate forthwith.
- (c) If the percentage of analytical germination of the Basic seed is less than the standard laid down in The Seed Marketing Regulations 2011 or any amendment thereof, The Merchant shall arrange to deliver such additional seed, free of charge, as may be needed to adjust the deficiency, or if they wish, The Grower may terminate the Agreement.

- (d) The Merchant shall in no way be responsible for establishment of the stand, or failure or loss of the seed crop, or the failure of the seed crop to reach certification standard, provided The Merchant has fulfilled their obligations hereunder. Basic seed is supplied to The Grower by The Merchant in the bags sealed and labelled on behalf of a Certifying Authority. The Merchant therefore relies absolutely on the expertise of the Certifying Authority.
- (e) The Merchant may refuse to accept seed crops which fail to meet field inspection standards where Basic seed sowings by The Grower are significantly above or below the stipulated or agreed amount.
- (f) The Grower shall pay The Merchant for the Basic seed at the current price laid down by The Breeder or their agent within 28 consecutive days of the date of invoice.

Terms: As stated in Seeds 13/21

## **6. Production and Field Inspection**

In each year in which this Agreement is in operation:

- (a) Given reasonable notice, The Grower shall permit The Merchant or their representative to inspect any stage of the production or preparation of the stand or seed crop.
- (b) The Grower and The Merchant shall observe the current rules for isolation, field inspection and certification as laid down by the Certifying Authority.
- (c) The Grower shall, at their own expense, take every practical measure to ensure the eradication of those weeds whose seed might contaminate the harvested seed crop, such as wild oats, docks, blackgrass, couch, brome grass etc, and to ensure the removal of off-types prior to official inspection.
- (d) Before using any chemical on the growing crop, which may materially affect the growth pattern of the crop, The Grower shall first seek, and receive in writing, the permission of The Merchant. Provided such chemical has approval under the Control of Pesticides Regulation 1986 or any amendment thereof or the Plant Protection Products Regulations 2011 or any amendment thereof, and the manufacturer's instructions are strictly observed, such permission shall not unreasonably be withheld. However, the application of any such chemicals and their effect on the final seed crop shall remain the responsibility of The Grower.
- (e) If the stand is recommended for rejection by the Field Inspector, The Grower shall inform The Merchant within 3 consecutive days after being informed of such recommendation. The Grower shall not harvest seed in any year from a stand which has been rejected in that year by the Certifying Authority without the prior written consent of The Merchant.

## **7. Crop Failure**

- (a) The Grower shall report promptly to The Merchant all instances of failure of the crop so that when possible, and by mutual agreement, a resowing can be made.
- (d) The Grower shall not plough up, or destroy, or make other use of the stand, or any part of it, detrimental to seed production during the period of this Agreement without the prior written consent of The Merchant, which shall not be unreasonably withheld.

## **8. Harvesting and Delivery**

- (a) The Grower shall not use a desiccant on the stand, without the prior written consent of The Merchant.
- (b) The whole of the seed crop shall be properly harvested from the field or stacked and covered by The Grower in accordance with the rules of the Certifying Authority.
- (c) The Grower must ensure that the seed does not at any stage whilst in their care and/or possession come into direct or indirect contact with any substances, such as for instance a growth suppressant, which may have a deleterious effect on the seed, its ability to germinate properly or its subsequent growth.
- (d) The Grower shall thresh and make available the seed crop to The Merchant for collection in bulk, to be accompanied by documents clearly identifying the seed (The Grower's name, species, variety and National Grid Reference Number of the fields in which the seed was grown) or, if mutually agreed, collection may be made in sacks properly labelled (labels to be supplied by The Merchant).
- (e) The Merchant shall collect the seed crop at a date not later than the 31st day of December following harvest, or as agreed between the parties.
- (f) The seed crop shall be made available for collection free on lorry at The Grower's premises in a sound, dry, well matured condition for seed purposes, free from smell and/or infestation, fit to keep in bulk or sacks with safety during transit and for the purpose of this paragraph 'dry' shall mean at not more than moisture content set out in Seeds 13/19

- (g) **Pesticide Residues:** The Seller warrants that the seed on delivery complies with the provisions of the Food and Environment Protection Act 1985 or any amendment thereof, the Plant Protection Products Regulations 2011 or any amendment thereof and legislation pertaining to permitted pesticide maximum residue limits applicable for the region of the UK in which the goods have been grown. The Seller must notify The Buyer in writing whether or not any post harvest chemical treatment has been applied to the seed by or on behalf of The Seller or a previous owner and must supply written details of that treatment prior to collection/delivery. The precise form of such notification is a matter for agreement between Buyer and Seller. All parties involved in the transmission of information required by this clause must take all reasonable steps to avoid delays.

## 9. Testing on Delivery

- (a) Immediately on receiving the seed crop at their premises, The Merchant shall arrange for a licensed sampler to take a representative sample for the determination of the percentage moisture content and, if this be in excess of 10 per cent in the case of clover seed, or in excess of 14 per cent in the case of other seeds, shall at once inform The Grower.
- (b) The Merchant shall arrange for a licensed sampler to take a representative sample of the seed crop for determination of purity and germination, either on receiving the seed crop at their premises, or if the seed has not yet been received by The Merchant and continues to be under The Grower's control, then not later than the 31st day of December in the year of harvesting.
- (c) The Merchant shall at their own expense arrange for the purity and germination tests on this sample to be carried out as soon as possible at a Satellite or Official Seed Testing Station.
- (d) The results of all such tests shall, on receipt, be notified to The Grower. In the event of a disagreement between The Grower and The Merchant regarding the percentage of germination or purity of the seed crop, they shall jointly appoint an Official or Licensed Sampler to draw, seal and send samples for testing to a Satellite or Official Seed Testing Station, whose figures shall be deemed to be final, and whose charges shall be paid by The Grower.
- (e) Subject to mutual agreement to the contrary The Merchant's obligations as to sampling, detailed above, shall not preclude them from continuing with any necessary processing of the seed crop while awaiting the results of any tests.

## 10. Processing

- (a) Any moisture in excess of 10 per cent in the case of clover seed, or in excess of 14 per cent in the case of other seeds, may be dried out by The Merchant.
- (b) The Merchant may reject the crop if, on receipt at The Merchant's premises, the moisture content is in excess of that stated in Seeds 13/19.
- (c) When the crop has been processed and finished The Merchant shall be free to dispose of the extractions unless agreed to the contrary at the time the Contract is made.
- (d) If after being properly cleaned on an efficient plant the seed crop fails to meet the purity standards in the Scheme specified in Clause 2(a) The Grower, within 14 consecutive days of receipt of advice to that effect from The Merchant, may require the seed crop to be recleaned, the charge for this to be agreed.
- (e) If after recleaning the seed crop still fails to meet the said standard The Merchant may reject it.
- (f) If, after drying, cleaning and a reasonable period of storage, to allow for breaking of dormancy or failure in germination, the percentage of germination of the seed crop is below the higher per cent but above the lower per cent stated in Seeds 13/19, The Merchant shall accept it at a reduced price to be negotiated and if it is below the lower per cent stated in that clause The Merchant may reject it.
- (g) Notwithstanding any other provisions in this Agreement, it is expressly agreed that providing The Merchant has taken reasonable steps to store the seed crop from the time of receipt, The Merchant shall not be liable to The Grower for any decrease in the percentage of germination between the time of arrival and the time of final testing, prior to acceptance or rejection or any loss arising thereby, and accordingly, in the event of such decrease The Merchant shall be entitled to reject the seed crop, notwithstanding that the initial tests before or following arrival indicated an acceptable percentage of germination.

## 11. Acceptance/ Rejection

- (a) If after any necessary drying and cleaning the seed crop meets the said standards of purity and germination and has qualified for certification, The Merchant shall accept it.
- (b) If The Merchant has not already done so under one of the preceding clauses, they shall notify The Grower in writing of their decision to accept or reject any seed crop within 14 consecutive days of receipt of the results of the final test or of receipt of confirmation of certification, whichever is the later.

## 12. Rejected Seed Crops

- (a) If the seed crop is of a variety protected by Plant Breeder's Rights, The Grower shall sell to The Merchant, and The Merchant shall buy, the entire seed crop, subject to the provisions of Clause 13(c).
- (b) In the event of rejection of the seed crop in accordance with this Agreement, within 7 consecutive days of notification of such rejection, The Grower may elect to sell the seed crop to a third party after obtaining The Merchant's consent in writing, which shall not be unreasonably withheld. If The Merchant has not been informed of such election within 14 consecutive days of the sending of notification of the rejection, The Merchant shall be free to dispose of the rejected seed crop at the best price obtainable and remit the proceeds to The Grower.

Irrespective of whichever party shall dispose of the crop, The Grower shall pay to The Merchant any costs and charges properly incurred by The Merchant in connection with the crop.

## 13. Price

- (a) Payment shall be calculated on the weight of the certified cleaned seed at the time of acceptance at the moisture content specified in Clause 10(a) less any agreed charges for drying, cleaning and any other charges properly incurred in accordance with this Contract.
- (b) Subject to the above for seed crops accepted under Clause 11(a) the price, method and time of payment shall be as stated in Seeds 13/19.
- (c) For seed crops which The Merchant is entitled to reject under Clause 10, but which he decides to accept, or which The Merchant is required to purchase under Clause 12(a), the price shall be the fair value of the seed crop decided by agreement between the parties, or failing agreement, by Arbitration under Clause 21.
- (d) If, by agreement between parties, the seed crop has not been processed before the 31st day of December in the year of harvesting, The Grower may require on or before the 31st day of January next following, payment forthwith on account of 60 per cent of the estimated value of the seed crop, providing the seed crop is in The Merchant's warehouse and providing initial purity and germination tests are satisfactory, unless otherwise agreed by both parties.

## 14. Records

- (a) The Grower shall ensure that detailed records are kept of all species/varieties grown and stored on The Grower's farm.
- (b) If the seed crop grown under this Contract is of a protected variety, then the British Society of Plant Breeders and/or the Breeder's representatives shall have access to the records relating to the seed crop.
- (c) Each party to the contract shall be responsible for the timely completion of any documentation required by the other concerning any aspect of production, certification or seed aid.

## 15. Notices

- (a) All notices required to be served or information passed on under this contract shall be communicated without delay by telephone or by rapid written communication. Notices which are served or passed on by telephone shall be confirmed by rapid written communication within one business day. Methods of rapid written communication for the purposes of this clause shall be defined as either fax, e-mail, or other electronic means, or by letter sent by first class post no later than the subsequent business day. If receipt is contested, the burden of proof shall be on the sender who shall, in the case of a dispute, establish, to the satisfaction of the arbitrator(s) or board of appeal appointed pursuant to the Arbitration clause, that notice was actually transmitted to the addressee.
- (b) Notices received after 1600 hours on any business day shall be deemed to have been received on the next business day.
- (c) A notice to a broker named in this contract is a notice to a principal.

## 16. Protected Varieties

When this Contract relates to seed of a variety protected by Plant Breeder's Rights under the Plant Varieties Act 1997 (or any amendment thereof), the Grower, upon reasonable notice, shall permit The Breeder, or any duly appointed agent of The Breeder, (upon giving notice to the Contracting Merchant) accompanied by The Merchant, or their representative, to enter upon The Grower's land to inspect the sowing, growing and cultivation of the crops.

## 17. Property and Risk

Risk will pass on delivery. Should delivery be taken by The Merchant of the seed crop before completion of the tests prescribed under the Seed Certification Scheme defined in Clause 2 and the Seed Marketing Regulations current at the date the crop is submitted for certification, property shall not pass until it has been established that the crop has reached the required standards, and until such time The Merchant reserves the right to reject the produce in question, or to accept it at a price agreed under Clause 13 of the Contract.

## **18. Product Liability Insurance**

The Grower is strongly advised to have insurance to cover claims from The Merchant for product liability, e.g. delivery of the wrong variety, or any other claim for which he may be held legally liable. This advice will be referred to at any time should it become necessary.

## **19. Voluntary Cessation of Business**

- (a) The Grower shall be relieved of their obligations hereunder if, being a tenant, they are, during the continuation of this Agreement, obliged to surrender to their Landlord the Contract hectareage provided they give to The Merchant as much notice as is reasonably possible.
- (b) Either party may be relieved of their obligations hereunder on assigning their rights and/or obligations to some third party, providing such assignment is acceptable to the other party to this Agreement, whose consent to such assignment is not to be unreasonably withheld.

## **20. Force Majeure**

Neither Buyers nor Sellers shall be responsible for delay or the consequences of delay in delivery of goods or any part thereof occasioned by an Act of God, action by any Government, strike (including dock and/or shipping strikes within the United Kingdom), lock-out, combination of workmen, breakdown of machinery, power failure or fire, provided that the party invoking this Clause despatches written notice to the other party within 5 business days of the occurrence, or not later than 5 business days after the beginning of the movement period whichever is the later. For the avoidance of doubt, neither party shall have the right to rely on, as Force Majeure, any strike which is limited to the employees of that party or its subcontractors, or any delay or default of that party's subcontractors in the performance of their obligations. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than 30 consecutive days from the end of the movement period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancelling the Contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 days. If at the conclusion of the second extension period delivery is still prevented, the Contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non-fulfilment under this clause, provided that the party invoking this Clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.

## **21. Insolvency** If either party to this Contract ("the Affected Party")

has a Receiver, Administrative Receiver or Administrator appointed in respect of any of its property or business undertakings;  
or announces that it has ceased, or intends to cease to trade (except where such announcement is due to a forthcoming retirement whilst honouring all existing contracts);  
or suspends or is about to suspend, payment of its debts or fails to pay, or is unable to pay or admits or states its inability to pay its debts as they fall due;  
or disposes of or threatens to dispose of all or a material part of its assets whether by one or a series of transactions (other than for the sole purpose of and followed by reconstruction or amalgamation made known to and approved by the other party);  
or convenes, calls or holds a meeting of its creditors or makes or proposes any arrangement or composition with its creditors;  
or states an intention to make or give notice of a voluntary arrangement under Part 1 of the Insolvency Act 1986;  
or has a resolution or petition (other than for the sole purpose of and followed by reconstruction or amalgamation of one party of which notice has been given to the other party who has approved it) passed for the winding up or voluntary winding up or liquidation;  
or is dissolved, or applies for an Interim Order under Part VIII of the Insolvency Act 1986;  
or a Bankruptcy Petition or a Statutory Demand in bankruptcy is presented or served;  
or suffers to the levy or enforcement of any execution, distress, sequestration, detention or other process on any of its property or premises;  
or if a party being a partnership, any of the above events occurs with respect to the partnership or to any partner therein (hereafter called "Act of Insolvency")  
then, notwithstanding any previous arrangement between the parties for deferred payments, the full or full remaining price for any goods delivered shall become immediately due and payable by the party committing an Act of Insolvency.

The party not committing an Act of Insolvency ("the Innocent Party") shall have the right, upon giving written notice to the other party, without prejudice to any other rights and remedies available to the Innocent party, to cancel and/or suspend and/or to refuse to make or accept any further deliveries and to close out and settle the Contract as detailed below.

The Affected Party shall serve written notice of the relevant Act of Insolvency by fax, e-mail or other electronic means or by letter sent by means of a recorded delivery to the Innocent Party. Where proof is available that such notice was served within two business days of the occurrence of the Act of Insolvency, the Innocent Party shall have the right to close out the Contract which shall be settled at the market price on the first business day following the occurrence of the Act of Insolvency.

In all other circumstances, the Innocent Party, upon learning of the occurrence of the Act of Insolvency shall have the right to close out and settle the Contract at either:

- (a) the market price on the first business day following the Innocent Party becoming aware of the Act of Insolvency, or
- (b) at the market price on the first business day following the occurrence of the Act of Insolvency.

## 22. Arbitration

Any dispute (other than a claim for an unpaid debt and as provided under (b) below) arising out of this Contract shall be referred to arbitration as follows:

- (a) Unless otherwise agreed, the dispute shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Limited, (obtainable from the registered office of the Confederation and/or <https://www.agindustries.org.uk/legal/arbitration> ), and all parties shall, by making this Contract, be deemed to have knowledge of such rules and to have elected to be bound thereby.
- (b) If a dispute involves legal or technical problems of great complexity which are beyond the knowledge and competence of Arbitrators to resolve, or if a dispute of necessity involves a Third Party who is not subject to arbitration, either party, before the time for commencing arbitration proceedings has elapsed, can, in writing, request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts. Should such consent be unreasonably withheld, or no answer received within 28 days, the party making the request shall be at liberty to commence Court proceedings, leaving it to the other party, if the other party so wishes, to apply for a stay of proceedings invoking the Arbitration Clause. The Court will then decide whether the arbitration or the Court proceedings should continue. Time for commencing arbitration proceedings shall not run (or if started not continue to run) from the date of such request until the Court has given a final ruling (this including any appeals) as to the proper venue for the dispute to be heard, providing Court proceedings are commenced within 28 days of the receipt of any refusal or 56 days from the date of the request if no answer to it is received.

## 23. Time Limits for Claiming Arbitration

Arbitration proceedings must be commenced as regards claims relating to quantity, quality or condition within 24 months from the date of delivery of the seed to The Grower, and as regards other claims within 90 days from the last day of the movement period of the resultant crop. Where the contract giving rise to the arbitration is one of a series of contracts a reasonable extension of time to commence arbitration proceedings will be allowed to those in the 'string'. In the case of disagreement as to what constitutes 'a reasonable extension' this will be referred to the arbitrator/s as a preliminary issue. Subject to paragraph 22 (b): i) the making of an award should be a condition precedent to any Court action, excepting that which is expressly referred to in Clause 44(3) of the Arbitration Act 1986 (or any amendment thereof) by either party or any person claiming under either of them and ii) in the event that arbitration is not claimed within the time limits prescribed above all courses of action relating to the claim, whether by way of arbitration or in any Courts of Law, are deemed waived and shall be barred absolutely unless the Arbitration Tribunal shall in its absolute discretion determine otherwise.

## 24. Business Day/ Non-Business Days

A business day is the period between 0900 hours and 1600 hours inclusive on any day other than a non-business day. Saturdays, Sundays and officially recognised national holidays applicable throughout the United Kingdom and any days which the Agricultural Industries Confederation Limited may declare as non-business days for specific purposes shall be deemed non-business days for the purpose of passing of notices and claims.

## 25. Contracts (Rights of Third Parties) Act 1999

Pursuant to S.1(1)(a) of the Contracts (Rights of Third Parties) Act 1999, the parties intend that no term of the contract may be enforced by a third party.

## 26. Domicile

This contract shall be deemed to have been made in England, and the construction, validity and performance thereof shall be governed in all respects by English Law.

IN WITNESS whereof the parties hereto have set their hands this day and year before written.

For and On Behalf of

For and On Behalf of

.....

.....

(Signature of The Grower)

(Signature of The Merchant)