

Tynegrain Agriculture Buying Group

Terms and Conditions

1. DEFINITIONS

In these Terms and Conditions:

- “the Supplier” means Tynegrain Agriculture Ltd, or any other of Tynegrain Ltd’s subsidiaries or associated companies as may actually be supplying the Goods or Services to the Customer;
- “the Customer” means the person, firm or company purchasing the Goods or the Services from the Supplier (whether or not that person, firm or company is also a member of Tynegrain Ltd);
- “the Contract” means the contract between the Customer and the Supplier relating to the supply of the Goods and the Services;
- “the Goods” means the goods which the Supplier is to supply to the Customer under the Contract;
- “the Services” means the Services which the Supplier is to supply to the Customer under the Contract;

2. THESE TERMS AND CONDITIONS

- 2.1 These Terms and Conditions shall apply to all orders for Goods or Services which are placed by the Customer and (save as shall have been expressly agreed in writing by a Director/Manager of the Supplier) shall override any other terms and conditions which the Customer may seek to impose. No variation of or addition to these Terms and Conditions and no representations about the Goods or the Services will be binding on the Supplier unless confirmed in writing by a Director/Manager of the Supplier.
- 2.2 Any reference in these Terms and Conditions to any provision of an Act of Parliament or statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended from time to time.
- 2.3 The headings in these Terms and Conditions are set out for convenience only and shall have no effect on the interpretation of the individual Clauses.

3. THE SCOPE AND NATURE OF THE CONTRACT

- 3.1** The Supplier's contractual obligations to the Customer shall be limited to supplying the Goods and the Services contemplated by the Customer's order together with any variations or additions thereto which might subsequently be agreed in accordance with clause 2.1 above. The Customer must give the Supplier reasonable notice of any variations or additions that are required.
- 3.2** These terms are applicable only where Tynegrain Agriculture Ltd or of Tynegrain Ltd or another of its subsidiary companies who may act as principle.

4. PRICE

- 4.1** Subject as hereinafter provided, the price payable by the Customer under the Contract shall be the price negotiated by the Supplier on behalf of the Customer. Unless otherwise indicated, all prices or rates quoted or agreed shall be exclusive of any applicable Value Added Tax, which the Supplier reserves the right to levy at the prevailing rate on all amounts actually charged to the Customer.
- 4.2** Notwithstanding the provisions of Clause 4.1 above, the Supplier reserves the right to increase the price payable for any Goods supplied in order to reflect any increase in either the price at which the Supplier is able to obtain the Goods or the cost of supplying them which occurs between the date of the Customer's order and the date of delivery. The Supplier also reserves the right to increase the price payable in order to reflect the current rate of any applicable EU or UK government tax, duty or levy which is in force at the date of delivery.
- 4.3** All transportation, insurance, storage and other associated costs and charges incurred by the Supplier in delivering the Goods shall ultimately be for the account of the Customer and the Supplier shall be entitled to recover the same from the Customer as an additional item. In the event of the Customer for any reason failing or being unable to accept delivery of the Goods when tendered or causing despatch or delivery to be withheld through the non-payment of any sum due to the Supplier, then the Customer shall also be liable to reimburse the Supplier for all additional costs and charges thereby incurred by the Supplier.
- 4.4** The Supplier shall also be entitled to increase the Contract price to reflect any agreed variations or additions to the Customer's requirements.
- 4.5** In no circumstances shall any increase in the Contract price entitle the Customer to cancel its order or to repudiate the Contract, but the Customer shall be entitled to receive notification of any such increases as soon as possible after their occurrence.

5. PAYMENT

- 5.1** For Customers all payment terms and dates agreed to must be strictly adhered to, and be paid either directly to Tynegrain Agriculture Ltd /or be taken by way of contra from Tynegrain Ltd or any of its subsidiary companies. The Supplier reserves the right to contra all monies due from the Customer against forward grain sales and/or grain stocks held on behalf of the Customer. Tynegrain Agriculture Ltd will only offer credit terms if forward grain commitments are in place with Grainco Ltd with a value the same or higher than the goods and service being purchased.
- 5.2** Notwithstanding the provisions of Clause 5.1 above, all sums payable to the Supplier under the Contract (whether invoiced or not) shall immediately become due for payment in the event of there occurring any of the events specified in Clause 13.1 below.
- 5.3** In the case of any overdue payment, the Supplier may (without prejudice to any of its other rights) charge interest to the Customer on the amount overdue at the rate of 3% over the prevailing base rate at the time per month (or at such other rate as may be advised by the Supplier from time to time) accruing on a daily basis from the due date for payment to the date of actual payment (both before and after any judgement).
- 5.4** Payment on or before the due date is of the essence of the Contract. Accordingly the Supplier shall upon notice to the Customer be entitled to withhold delivery and/or suspend the performance of the Contract generally if at the time of the notice payment of any amount stated on any of the Supplier's invoices (whether related to the Contract or not) is then overdue. If the Customer fails within fourteen days of the notice to settle the amount outstanding under the said invoices, then the Supplier shall be entitled to terminate the Contract without further notice.
- 5.5** The Customer shall not be entitled to retain, deduct or defer any sums whatsoever which are due to the Supplier under the Contract on account of any dispute, cross-claim or set-off, which it might have with the Supplier or with any company in the same group of companies as the Supplier. Provided always that nothing in the Clause shall prevent the Customer from setting off against sums due to the Supplier under the Contract, such amounts as shall be agreed by the Supplier as being properly due to the Customer under this Contract.

6. DELIVERY AND PERFORMANCE

- 6.1** The Supplier reserves the right to make substitutions and modifications to the specifications of the Goods and Services ordered by the Customer provided that this does not materially affect their performance. The performance of the Contract is also subject to availability and therefore, in the event that it is unable to supply any specific Goods or Services or any specific quantities of Goods and Services the Supplier reserves the right to provide suitable alternatives or suitable alternative quantities, and to make such reasonable adjustments (upwards or

downwards) to the Contract price as are necessary to reflect the change.

- 6.2** Unless otherwise indicated, the Supplier shall be responsible for arranging delivery of the Goods to the Customer's premises. Accordingly the Customer undertakes to provide a safe and convenient access for the Supplier's vehicles (or those of its agents) at each point of delivery together with safe facilities for the loading and unloading of Goods (including any assistance in loading and unloading that may be required). The placing of an order by the Customer shall be deemed to constitute authority for the Supplier's delivery vehicles to enter the Customer's premises where necessary.
- 6.3** Whether delivery be effected ex-farm, ex-store, to the Customer's premises or in any other way, any anticipated times or dates given by the Supplier in connection with the performance of its obligations under the Contract (including any times or dates given in connection with the provision of any Services) shall be by way of guidance only and shall not be of the essence of the Contract. Accordingly the Supplier shall not be liable to the Customer (either in contract or tort) for any loss or damage whatsoever (including consequential losses, loss of profit and other losses of a similar nature) which may be suffered or sustained by the Customer as a result of any failure by the Supplier to adhere to any times or dates given.
- 6.4** It shall be the responsibility of the Customer to supervise the discharge of each load and to check that the goods correspond with the contract, having inspected the same. The Customer therefore undertakes that one of its employees or agents will be present at each delivery point in order to assist with, witness and sign for the delivery.
- 6.5** All risk of loss or damage to the Goods shall pass to the Customer upon delivery of the Goods to the Customer or its agents.

7. RETENTION OF TITLE

- 7.1** Title to the Goods shall not pass to the Customer until the Supplier has received payment in full of all sums invoiced under each and every contract in existence between the Supplier and the Customer at the date of delivery together with any interest accrued thereon and other charges. In the meantime the Supplier shall retain full legal and beneficial title to the Goods and the Customer shall (a) hold the same in a fiduciary capacity as the Supplier's bailee free from any charge, lien or other encumbrance, (b) keep the Goods fully insured with a reputable insurer, and (c) keep them in such a way that they can be clearly identified as the Supplier's property. In this period the Supplier shall be entitled to recover possession of the Goods at any time and for any reason whatsoever and shall be entitled without restriction to lawfully enter upon the Customer's premises for the purpose of so removing the same. The Customer shall pay all costs and expenses incurred by the Supplier in exercising this right.
- 7.2** If, pending the passing of title in the Goods, the Customer sells or otherwise disposes of the Goods in such a manner as to pass valid title to a third party, the

Customer shall hold the full proceeds of such a sale (and pending payment the right to receive the proceeds of such a sale) on trust for the Supplier in a separate and identifiable bank account. During the same period, the Customer will pay the said proceeds to the Supplier on demand notwithstanding that any period of credit extended to the Customer may not have expired. In addition the Customer agrees that it will assign to the Supplier upon the Supplier's request all of its rights (under such a contract of sale) against any subsequent purchaser of the Goods.

- 7.3 Notwithstanding that title may not have passed to the Customer, the Supplier may maintain an action for the price of the Goods. The Supplier acknowledges that nothing in Clauses 7.1 or 7.2 above, confers any right upon the Customer to return or reject any item supplied or to refuse, defer or delay payment for them.

8. LIEN

- 8.1 Without prejudice to any other remedies available to it, the Supplier shall have a general lien on all goods and property in its possession (whether in relation to the Contract or otherwise), which are or are intended to become the property of the Customer. That lien shall lie in respect of any sums due from the Customer under the Contract.

- 8.2 Pursuant to that lien, the Supplier shall be entitled after giving fourteen days' written notice to the Customer to dispose of any goods or property held by it under the lien, and keep the proceeds of sale thereof in diminution of the said sums and all costs and expenses incurred in effecting the sale. The Supplier shall be entitled to dispose of the goods or property in such a manner as it thinks fit.

9. LIMITATION OF LIABILITY

- 9.1 All of the Goods and Services to be supplied under the Contract are supplied on the basis that the Customer is neither a consumer nor deals as a consumer within the meaning of the Unfair Contract Terms Act 1977. The Supplier also contracts on the basis that the Customer has satisfied itself as to the suitability of the Goods for use and/or resale by it in accordance with its own specialised knowledge and skill without placing any reliance on the skill or judgement of the Supplier's, agents or employees. However, where the Goods or the Services are supplied under a consumer transaction as defined by the Consumer Transactions (Restrictions on Statements) Order 1976, the statutory rights of the consumer shall be unaffected by anything set out in these Terms and Conditions.

- 9.2 The Supplier will not in any circumstances accept liability for Goods damaged in transit unless the Customer gives the Supplier written notice of the damage within three working days of delivery. Nor will the Supplier accept any liability for any defective Goods or Services supplied, unless the Customer gives the Supplier written notice of the defect or defects in question within ninety days after the relevant delivery or completion date (save where the defect or defects are of a nature which would normally be apparent upon reasonable inspection, in which

case the notice of defect or defects must be given within fourteen days of discovering the same).

- 9.3** Without prejudice to Clause 7.1 above, all Goods, which are returned to or replaced by the Supplier, shall become the property of the Supplier.
- 9.4** Subject as hereinafter provided, the Supplier's potential liability to the Customer (both in contract and tort) in respect of all claims which the Customer may bring against it arising out of the Contract and/or the quality or performance of the Goods or Services supplied thereunder (including liability for consequential losses, loss of profit and other losses of a similar nature), shall be limited in aggregate to a sum not exceeding the final Contract price as calculated in accordance with Clause 4 above.
- 9.5** It is the Customer's responsibility to ensure that the Goods comply with any legislation or regulation relating to their use and the Supplier shall not therefore incur any liability whatsoever in respect thereof. Neither will the Supplier incur any liability in relation to any Goods which have been subjected to any incorrect, abnormal or improper use, modification or application whether by the Customer or by any third party.
- 9.6** The Supplier shall not in any circumstances be liable to the Customer in respect of failure of any crop to yield to the degree suggested in any advice given by the Supplier or any of its agents or employees.
- 9.7** Notwithstanding anything herein contained, the Supplier is not in any way seeking to exclude or restrict its potential liability for damage in the nature of death or personal injury caused by its negligence or that of its employees, agents or sub-contractors.
- 9.8** For the avoidance of doubt and without prejudice to the provision of this Clause 9 or the Supplier's title to the Goods referred to in Clause 8, the provisions of Clause 35 (A) of the sale of Goods Act 1979 (as amended) shall not apply to any Contract.
- 9.9** The Supplier's liability under any Contract shall be limited as set out in this Clause 9 and for the avoidance of doubt, any terms implied by statute, common law or otherwise are expressly excluded from this Agreement except where the Goods or the Services are supplied under a Consumer Transaction as referred to in Clause 9.1 above.
- 9.10** The Supplier cannot guarantee that the Goods are free from genetically modified material. The Supplier does not accept any liability howsoever arising by the traces of genetically modified material.
- 9.11** Save for any warranties or conditions, which may be implied by statute, no warranties or conditions are given about the goods whatsoever.

10. THIRD PARTY GUARANTEES

Whenever possible, the Supplier shall upon request, and subject to being indemnified by the Customer for any liability which it may thereby incur to third parties, assign to the Customer the benefit of any guarantees or warranties which are provided to it by third parties in relation to the Goods.

11. CANCELLATION OF ORDERS

Subject as hereinafter provided, orders for Goods or Services which have been accepted by the Supplier may not be cancelled or suspended without the Supplier's prior written consent which consent the Supplier may give or withhold in its absolute discretion.

12. FORCE MAJEURE

In the event that the normal course of the Contract is frustrated, prevented, interrupted, hindered, delayed or rendered unduly expensive in any way whatsoever through war, rebellion, civil commotion, strike, lock out or industrial dispute, fire, explosion, earthquake, act of God, flood, drought or bad weather, the unavailability or late delivery of supplies, the inability to secure labour or by any other cause whatsoever beyond the Supplier's control, then the Supplier shall have the right to cancel the Contract or to defer its performance for as long as such force majeure shall continue.

13. TERMINATION

13.1 In addition to any termination rights set out above and without prejudice to any other rights it may have, the Supplier may by notice in writing to the Customer terminate the Contract with immediate effect in the event that:

- a.** The Customer at any time makes default in or commits a breach of any of the terms of the Contract provided that if the default or breach is remediable, the Supplier has given the Customer notice of such breach and the breach has not been remedied within seven days thereafter;
- b.** The Customer at any time suffers any distress or execution to be levied on any of its property or assets in any jurisdiction;
- c.** the Customer at any time calls any meeting of or makes or offers to make any arrangements or composition with its creditors;
- d.** the Customer, being a company, at any time has a receiver or administrator (or like equivalent) appointed anywhere in the world over its undertaking, property or assets or any part thereof or suffers any resolution or petition to wind up its business (other than for the purposes of a bona fide amalgamation or reconstruction) to be passed or presented in any jurisdiction;

- e. the Customer, being an individual, at any time commits any act of bankruptcy or has a petition or receiving order in bankruptcy presented or made against him anywhere in the world; or
- f. the Customer shall at any time be unable to pay its debts within the meaning of the Insolvency Act 1986 (or any amending legislation).

13.2 Upon any lawful termination of the Contract (but again without prejudice to any other rights which it may have) the Supplier shall be entitled to immediately recover from the Customer (notwithstanding that any period of credit extended to the Customer may not have expired) all sums then due to the Supplier under the Contract (including any interest and other charges properly levied thereunder).

14. INVALIDITY OF ANY CONTRACTUAL TERM

If any Clause or Sub-Clause or part thereof contained in these Terms and Conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the remainder of the Clause or Sub-Clause and of the remaining Clause and Sub-Clause of these Terms and Conditions shall not be affected thereby.

15. WAIVER

No waiver by the Supplier of any particular default or breach of Contract by the Customer shall be considered as a waiver of any subsequent default or breach of the same or of any other provision of the Contract.

16. ASSIGNMENT

The Customer may not assign or transfer the benefit or burden of the Contract without first obtaining the written consent of the Supplier which consent the Supplier may give or withhold in its absolute discretion.

17. APPLICABLE LAW AND DISPUTE RESOLUTION

17.1 The construction, validity and performance of the Contract shall be governed in all respects by the laws of England.

17.2 Subject (where applicable) to the provisions of any relevant FOSFA / AIC contracts which may be in force from time to time in relation to the Contract, and subject as hereinafter provided, all disputes or questions which may arise out of or in connection with or in relation to the Contract shall be decided by the English Courts.

17.3 However, save for any claims for the recovery of any amounts due and payable under the Contract which are not disputed in good faith, if any dispute or difference as to the construction of the Contract or any other matter or thing of whatsoever

nature arising thereunder or in connection therewith ("the Dispute") shall arise as between the Supplier and the Customer, then representatives of them shall first meet within ten days of a written request from either party to the other, in a good faith effort to resolve the Dispute without recourse to legal proceedings.

- 17.4** If the dispute is not resolved as a result of such a meeting, structured negotiations shall be entered into with the assistance of a neutral advisor or mentor ("Neutral Advisor"). Either the Supplier or the Customer may propose the appointment of a Neutral Advisor.
- 17.5** If the Supplier and the Customer are unable to agree on a Neutral Advisor or if the Neutral Advisor agreed upon is unable or unwilling to act, then the Supplier and the Customer shall within fourteen days from the date of the proposal to appoint a Neutral Advisor or within fourteen days of notice to either of them that the Neutral Advisor agreed is unable or unwilling to act, jointly apply to the Centre for Dispute Resolution ("CEDR") to appoint a Neutral Advisor.
- 17.6** The Supplier and the Customer shall within fourteen days of the appointment of the Neutral Advisor meet with him/her in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiations to be held in London. If considered appropriate, the Supplier and the Customer may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- 17.7** Unless conducted with a written legally binding agreement all negotiations connected with the Dispute shall be conducted in confidence and without prejudice to the rights of the Supplier and the Customer in any future proceedings.
- 17.8** If the Supplier and the Customer accept the Neutral Advisor's recommendations or otherwise reach agreement on the resolution of the Dispute, such agreement shall be produced in writing and once it is signed by their duly authorised representatives, shall be binding on the Supplier and the Customer.

18. NOTICES

- 18.1** Any notice required to be given hereunder shall either be delivered personally, or sent by first class post, facsimile transmission, email or other comparable means of communication.
- 18.2** Any notice given by facsimile transmission or email (or, comparable means of communication) shall be deemed duly sent and received on the date of transmission.
- 18.3** Any notice given by post and not returned to the sender as undelivered shall be deemed to have been duly served forty-eight hours after delivery to the postal services and proof that the envelope containing any such notice was properly addressed and sent by first class prepaid post and was not returned to the sender shall be sufficient that such notice has been given.