

CONTRACT FARMING TERMS & CONDITIONS

BACKGROUND

- (A) The Farmer carries out the Farm Business and intends to engage the Contractor to carry out the services under the terms of this agreement.
- (B) Nothing in this agreement shall create any relationship of landlord and tenant between the Farmer and the Contractor nor shall this agreement create any partnership between the Farmer and the Contractor.

AGREED TERMS

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Conditions:

“**Commencement Date**”: has the meaning set out in clause 2.1.

“**Conditions**”: these terms and conditions as amended from time to time.

“**Contract**”: the contract between the Farmer and the Contractor for the supply of Services in accordance with these Conditions.

“**Contractor**”: Delta Farming Limited incorporated and registered in England and Wales with company number 03098890 whose registered office is at Bankside 300, Peachman Way, Broadland Business Park, Norwich, Norfolk NR7 0LB.

“**Contract Charges**”: the charges payable by the Farmer to the Contractor for the supply of the Services in accordance with clause 7.

“**Farmer**”: the person, firm or company who purchases Services from the Contractor.

“**Farm Business**”: the business of farming carried out by the Farmer on the Land.

“**Land**”: the land owned, used, operated or controlled by the Farmer on which the Contractor will perform the Services, as agreed between the parties.

“**Service Request**”: the Farmer’s order for Services, as set out in the Farmer’s written acceptance of the Contractor’s quotation.

“**Services**”: the services supplied by the Contractor to the Farmer under the Contract, as set out in the Service Request.

“**VAT**”: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

1.2 In these Conditions (unless the context otherwise requires):

- (a) clause headings shall not affect the interpretation of these Conditions;
- (b) a reference to the **Land** is to the whole and any part of it;
- (c) a **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England;
- (d) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (e) a reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- (f) words in the singular shall include the plural and in the plural shall include the singular;
- (g) a reference to one gender shall include a reference to the other genders;
- (h) a reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted as are in force as at the Commencement Date;
- (i) a reference to **writing** or **written** includes fax and email;
- (j) any obligation on a party not to do something includes an obligation not to allow that thing to be done; and
- (k) any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. BASIS OF CONTRACT

2.1 The Service Request constitutes an offer by the Farmer to acquire the Services in accordance with these Conditions. The Service Request shall only be deemed to be accepted when the Contractor issues written acceptance of the Service Request, at which point and on which date the Contract shall come into existence (“**Commencement Date**”).

2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Farmer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.3 Any quotation given by the Contractor shall not constitute an offer. The Contractor shall have no obligation to accept any Service Request.

3. SUPPLY OF SERVICES

- 3.1 The Contractor shall:
- (a) supply the Services to the Farmer using a reasonable degree of skill and diligence;
 - (b) at its own expense, provide all labour and machinery, and fuel for that machinery, necessary to carry out its obligations under the Contract efficiently, having regard to the character and situation of the Land and the farming practices in the area;
 - (c) carry out its obligations under the Contract in accordance with all applicable laws;
 - (d) not obstruct any public road, footpath, right of way or any means of access to the Land;
 - (e) comply with all reasonable and lawful directions given by the Farmer; and
 - (f) not contract to sell any produce of the Farm Business produced under the Contract.
- 3.2 On or before the provision of the Services, the Contractor shall consult with the Farmer in order to arrange the day(s) and time(s) at which the Contractor shall provide the Services on the Land. The Contractor shall not provide any Services or otherwise farm the Land unless it has first consulted with the Farmer and obtained the Farmer's consent to provide the Services at such day(s) and time(s).
- 3.3 The Contractor shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Contractor shall notify the Farmer where appropriate.
- 3.4 All Services provided by the Contractor under the Contract, and by any sub-contractor appointed by the Contractor, will be carried out under the direct personal supervision and control of the Contractor or any other individual previously agreed by the Farmer in writing from time to time.

4. FARMER'S OBLIGATIONS

- 4.1 The Farmer shall:
- (a) ensure any information given to the Contractor prior to performance of the Services (including in the Service Request) is complete and accurate;
 - (b) co-operate with the Contractor in all matters relating to the Services;
 - (c) provide the Contractor, its employees, agents and sub-contractors with access to the Land and any other facilities as reasonably required by the Contractor on the day(s) and time(s) agreed with the Contractor for performance of the Services

under clause 3.2 or at such other times as reasonably required to perform the Services;

- (d) ensure that the Land and other facilities are suitably prepared for the supply of the Services;
- (e) obtain and maintain all necessary licences, permissions and consents which may be required by the date on which the Services are to start; and
- (f) keep and maintain all materials, equipment, documents and other property of the Contractor (the "**Contractor Materials**") on the Land or the Farmer's premises in safe custody at its own risk, maintain the Contractor Materials in good condition until returned or collected by the Contractor and not dispose of or use the Contractor Materials other than in accordance with the Contractor's written instructions.

4.2 If the Contractor's performance of its obligations under the Contract is prevented or delayed by any act or omission by the Farmer or failure by the Farmer to perform any relevant obligation ("**Farmer Default**");

- (a) the Contractor, without limiting its other rights or remedies, shall have the right to suspend the performance of the Services until the Contractor until the Farmer remedies the Farmer Default, and to rely on the Farmer Default to relieve it from the performance of any of its obligations to the extent that the Farmer Default prevents or delays the Contractor's performance of any of its obligations;
- (b) the Contractor shall not be liable for any costs or losses sustained or incurred by the Farmer arising directly or indirectly from the Contractor's failure or delay to perform any of its obligations as set out in this clause 4.2; and
- (c) the Farmer shall reimburse the Contractor on written demand for any costs or losses sustained or incurred by the Contractor arising directly or indirectly from the Farmer Default.

4.3 The Farmer shall be solely responsible for keeping any records in relation to its agricultural and other operations (whether carried out under the Contract or otherwise) including, without limitation, those required to demonstrate compliance with laws relating to environmental protection, environmental pollution, disposal of waste, water abstraction.

5. LICENCE TO ENTER

5.1 Subject to the terms of the Contract, the Farmer grants the Contractor, its employees, agents, and any sub-contractors licence to enter the Land solely for the purpose of carrying out the

- Contractor's obligations under the Contract. This licence is granted in common with the Farmer and all others authorised by the Farmer (so far as is not inconsistent with the Contractor's obligations under the Contract).
- 5.2 The Farmer and the Contractor acknowledge that:
- (a) no relationship of landlord and tenant between the Farmer and the Contractor is created by this licence;
 - (b) the Farmer retains control, possession and management of the Land and the Contractor has no right to exclude from the Land the Farmer or anyone authorised by the Farmer; and
 - (c) the Farmer retains ownership of all crops and all produce of the Farm Business produced under the Contract.
- 6. VARIABLE INPUTS**
- The Farmer will have sole responsibility for deciding on the procurement of all seed, fertiliser, sprays and other variable inputs reasonably required from time to time in order for the Contractor to provide the Services.
- 7. CONTRACT CHARGES AND PAYMENT**
- 7.1 The Contract Charges for the Services shall be on a time and resource basis, and shall be calculated in accordance with the Contractor's standard daily fee rates, which shall be notified to the Farmer in the Contractor's quotation and from time to time.
- 7.2 In calculating the Contract Charges for the Services, the Contractor may take into account the following matters:
- (a) the cost of seed, fertiliser, sprays in store and other stores as reasonably required in relation to the Land;
 - (b) the labour and machinery, and fuel for that machinery, reasonably required to provide the Services on the Land;
 - (c) type and nature of the crops growing or to be grown on the Land;
 - (d) soil fertility of the Land and the drainage of the soil on the Land; and
 - (e) any other costs or expenses that the Contractor reasonably estimates will be incurred in providing the Services on the Land.
- 7.3 The Contractor shall invoice the Farmer on the last day of each calendar month in respect of the Services supplied during that month. The Farmer shall pay each invoice submitted by the Contractor:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated by the Contractor in writing.
- Time for payment shall be of the essence of the Contract.
- 7.4 All amounts payable by the Farmer under the Contract are exclusive of VAT. Where any taxable supply for VAT purposes is made under the Contract by the Contractor to the Farmer, the Farmer shall on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.5 If the Farmer fails to make any payment due to the Contractor under the Contract by the due date for payment, the Farmer shall pay interest on the overdue amount at the rate of 4% per annum above Lloyds Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Farmer shall pay the interest together with the overdue amount.
- 7.6 The Farmer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Contractor may at any time without limiting its other rights and remedies set-off any amount owing to it by the Farmer against any amount payable by the Contractor to the Farmer.
- 8. INSURANCE**
- 8.1 The Farmer will procure and maintain each of the following:
- (a) at the expense of the Farm Business, insurance for buildings, fixed equipment, and plant and machinery on the Land belonging to the Farmer and used for the Farm Business; and
 - (b) at the Farmer's own expense, insurance for injury to, or death of, any person and loss or damage to any real or personal property on the Land.
- 8.2 The Farmer shall on request supply copies of all insurance policies required by this clause 8, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 9. TERMINATION**
- 9.1 Without limiting its other rights or remedies, either party may terminate the Contract by giving the other 3 months' written notice.

- 9.2 Either party may terminate the Contract with immediate effect by giving written notice to the other party if any of the following events occur in relation to the other party:
- (a) they are in material breach of any of their obligations under the Contract which breach is irremediable or (if such breach is remediable) fail to remedy that breach within 10 working days of being notified in writing to do so;
 - (b) they suspend, or threaten to suspend, payment of their debts or are unable to pay their debts as they fall due or admit inability to pay their debts or (being a company or limited liability partnership) are deemed unable to pay their debts within the meaning of section 123 of the Insolvency Act 1986; or (being an individual) are deemed either unable to pay their debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
 - (c) they commence negotiations with all or any class of their creditors with a view to rescheduling any of their debts, or make a proposal for or enter into any compromise or arrangement with their creditors other than (being a company) for the sole purpose of a scheme for their solvent amalgamation with one or more other companies or their solvent reconstruction;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with their winding up (being a company) other than for the sole purpose of a scheme for their solvent amalgamation with one or more other companies or their solvent reconstruction;
 - (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over them (being a company);
 - (f) the holder of a qualifying floating charge over their assets (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - (g) a person becomes entitled to appoint a receiver over their assets or a receiver is appointed over their assets;
 - (h) (being an individual) they are the subject of a bankruptcy petition or order, or they make an application for a bankruptcy order;
 - (i) a creditor or encumbrancer attaches or takes possession of, or an execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of their assets and such attachment or process is not discharged within 14 working days;
- (j) any event occurs, or proceeding is taken, with respect to them in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(b) to clause 9.2(i) (inclusive);
 - (k) they suspend or cease, or threaten to suspend or cease, carrying on all or a substantial part of their business;
 - (l) (being an individual) they die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing their own affairs or become a patient under any mental health legislation; or
 - (m) (being a company) they are struck off from the Register of Companies or otherwise cease to exist.
- 9.3 Without prejudice to its other rights and remedies, the Contractor may terminate the Contract with immediate effect by giving written notice to the Farmer in the event that the Farmer fails to pay its Contract Charges on or before the date that such amount falls due, and the Contract Charges remain outstanding for a period of 7 days or more.
- 10. CONSEQUENCES OF TERMINATION**
- 10.1 On termination of the Contract (for any reason):
- (a) the Farmer shall immediately pay to the Contractor all of the Contractor's outstanding unpaid invoices and interest, and in respect of Services supplied but for which no invoice has been submitted, the Contractor shall submit an invoice which shall be payable by the Farmer immediately on receipt;
 - (b) the Contractor's licence to enter the Land will end following collection of all Contractor Materials on the Land (or otherwise on the Farmer's premises). The Farmer permits the Contractor to enter the Land or Farmer's premises (as the case may be) to take possession of the Contractor Materials. Until they have been returned, the Farmer shall be solely responsible for their safe keeping and will not use them for any purpose;
 - (c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - (d) any provision of the Contract that expressly or by implication is intended to come into or continue in

force on or after termination of the Contract shall remain in full force and effect.

11. LIABILITY AND INDEMNITY

11.1 Nothing in the Contract excludes the liability of the Contractor:

- (a) for death or personal injury caused by the Contractor's negligence; or
- (b) for fraud or fraudulent misrepresentation.

11.2 Subject to clause 11.1 and provided that the Contractor has consulted with the Farmer pursuant to clause 3.2, the Contractor shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for any loss, expense, damages or costs suffered (whether directly or indirectly) by the Farmer arising under or in connection with the Contract including (without limitation) any:

- (a) damage to produce;
- (b) failure to maximise the produce yielded from the Land;
- (c) loss of profits;
- (d) loss of business;
- (e) depletion of goodwill or similar losses;
- (f) loss of anticipated savings;
- (g) loss of goods;
- (h) loss of use;
- (i) loss or corruption of data or information;
- (j) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

11.3 Subject to clauses 11.1 and 11.2, the Contractor's total liability to the Farmer, whether in contract, tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise arising under or in connection with the Contract shall be limited to 50% of the total Contract Charges paid under the Contract.

11.4 Provided that the Contractor has consulted with the Farmer pursuant to clause 3.2, the Farmer shall indemnify the Contractor and keep the Contractor indemnified against all liabilities, expenses, costs (including, but not limited to, any solicitors' or other professionals' costs and expenses), claims (including, but not limited to, claims for death or personal injury and claims for damage to real or personal property unless caused by negligence on the part of the Contractor or its employees), damages and

losses suffered or incurred by the Contractor arising out of or in connection with any breach of the Contract by, or any act or omission of, the Farmer or its employees, workers, sub-contractors (if any) or agents or any other person with the actual or implied authority of any of them.

12. GENERAL

12.1 Assignment and other dealings.

(a) The Contractor may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

(b) The Farmer shall not, without the prior written consent of the Contractor, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

12.2 Confidentiality.

(a) Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2(b).

(b) Each party may disclose the other party's confidential information:

(i) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.2; and

(ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

(c) Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

12.3 Entire agreement.

(a) This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently

- or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 12.4 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
- (a) waive that or any other right or remedy; or
- (b) prevent or restrict the further exercise of that or any other right or remedy.
- 12.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.7 **Agency or Partnership.**
- (a) Nothing in the Contract is intended to, or shall be deemed to, constitute the Contractor the agent of the Farmer, or authorise the Contractor to make or enter into any commitments for or on behalf of the Farmer.
- (b) Nothing in the Contract is intended to, or shall be deemed to, establish any partnership between the Farmer and the Contractor.
- 12.8 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 12.9 **Notices.**
- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.9(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one working day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 12.10 **Third parties.** No one other than a party to the Contract shall have any right to enforce any of its terms.
- 12.11 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with the law of England and Wales.
- 12.12 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.