

# TERMS AND CONDITIONS OF EX FARM/ DELIVERED PURCHASES FROM FIRST PRODUCER TO DUNNS (LONG SUTTON) LTD

July 2017

These are the Terms and Conditions of Trade (hereafter "Buyer's Terms") of Dunns (Long Sutton) Ltd (hereafter "Buyer") for the grain marketing year 2016/2017 which relate to all Ex Farm/Delivered purchases from first producer.

## 1. Conditions of Purchase:

All Grains and Pulses are bought by the Buyer strictly and only under the terms and conditions of the AIC Grain/Pulses contract No.1/16 including any subsequent amendments insofar as they are not inconsistent with the Buyer's Terms. We buy Oilseed Rape only on the terms of the FOSAF26A contract and Linseed only on the terms of the FOSFA9A contract including any subsequent amendments to those contracts insofar as they are not inconsistent with the Buyer's Terms. Copies of these contracts and the current version of the combinable crops passport are available as downloads from Buyer's website <http://www.dunns-ls.co.uk/accreditations/>

All seed is bought by the Buyer strictly and only under the terms and condition of the UK Seed Marketing Regulations 2011 and DEFRA seed certification standards which can be obtained from DEFRA or any OSTs or LSTS. Seed purchases additionally incorporate AIC 10/17 and 11/17 Contracts, including any subsequent amendment to those contracts, for the growing of Pulse seed, and/or the AIC 5/17 and 6/17 Contracts, or any subsequent amendment, for the growing of Cereal seed insofar as they are both not inconsistent with the Buyer's Terms.

Subject to Clause 3(v), The Buyer's Terms will prevail in the event of any conflict with any contrary contract term or condition.

## 2. Quantity

Where goods are bought on a contract quantity, as opposed to a produce of an area, the wording contained is amended as follows:-

- i. At Clause 5 ("Quantity") of the AIC 1/16 Contract is amended and "*The Seller shall have the option of delivering 5% or 15 tonnes (whichever is the lesser quantity) more or less than the contractual quantity at the contract price*" is deleted and replaced by "***The Buyer shall have the option to accept delivery of 5% or 15 tonnes (whichever is the lesser quantity) more or less than the contractual quantity at the contract price***".
- ii. At Clause 2 of the FOSFA26A and FOSFA9A Contracts, the wording "*Sellers have the option of delivering 2% more or less or 5 tons more or less of the mean contract quantity, whichever is the greater*" is replaced by "***The Buyer shall have the option to accept delivery of 2% or 5 tonnes (whichever is the lesser quantity) more or less of the mean contract quantity at the contract price.***"



### 3. Delivery

- i. The Buyer will endeavour to give the Seller two clear days' notice of delivery fixings but where this cannot be given, it shall not entitle the Seller to fail to deliver or to deem any breach of contract has occurred.
- ii. The Buyer shall have the right, by giving two working day's notice prior to the end of the original contract collection/delivery period, to extend the contract period by an additional 15 days to the original collection/delivery period and shall pay a premium of £0.50 per tonne to the original contract price.
- iii. Where contracts are bought on a delivered basis, the Buyer will not accept any liability for claims arising from delays to transport occasioned by any cause. All goods delivered to the Buyer's facilities must have the variety and any reference numbers clearly stated on the delivery documentation and Combinable Crops Passport. Any Seller delivering their own crops must comply with the current TASC Code for Road Haulage (available on request). Further sub-contracting of these deliveries can only take place with the written consent of the Buyer. All deliveries to Buyer's facilities must have the contract reference, variety, commodity and grade clearly stated on the delivery ticket/note and passport.
- iv. Where goods are bought "As Available", the Seller is responsible to notify the Buyer that the total contract quantity of grain and/or oilseeds is available for collection and/or delivery. The Buyer is entitled to the remainder of the contract period to enact collection and/or delivery but where this falls within five working days of the end of the contract period, the Buyer has the right to claim an extension to the delivery or collection period of 15 days from the end of the original contract period to enable the contract to be executed.
- v. Our purchases are concluded on the basis that these Terms ("Buyer's Terms") and/or the terms of the End Receiver are expressly incorporated into any purchase which supplement these terms. For the avoidance of doubt, the receiver of the goods is the operator of the delivery installation where the goods are to be delivered. The delivery destination is available from the Buyer when bookings/collection instructions are issued. Copies of the Receiver's Terms are available from the Buyer upon written request.

### 4. Amendment of Time Limits

- i. Claims  
Always subject to clause 4(iii) below, the Buyer will endeavor to confirm claims in accordance with Clause 21(b) of AIC 1/16 but should any time limit not be adhered to, it will not be grounds for any breach of contract.
- ii. Oilseed Rape  
Where Oilseed Rape has been bought, first analysis under Clause 11 of the FOSFA26A will be by the ultimate Buyer of the goods, a FOSFA analyst or by the Buyer's TASC accredited laboratory. Analysis for moisture, admixture and oil content will be passed to the Seller within 28 days of the arrival of goods at their ultimate destination. The goods may be subject to analysis including but not limited to analysis for Erucic Acid, Glucosinolates, Free Fatty Acid and Benzo-Alpha Pyrene. It is agreed between Buyer and Seller that these quality specifications are not apparent, discovered or



discoverable by the exercise of reasonable due diligence at the point of delivery to the Buyer (any such defect and/or deficiency hereafter "a Latent Defect") and are subject to time limits as per Clause 4 (iii) (c) below.

iii. Latent Defects

Notwithstanding any provision of AIC 1/16 or FOSFA26A or of any terms to the contrary, the following time limits shall apply to any claim for any remedy, including, for the avoidance of doubt, the rejection of goods, that arises from any defect and/or deficiency in the quality or condition of the goods that was not apparent, discovered or discoverable by the exercise of reasonable diligence at the point of delivery to the Buyer ("a Latent Defect"). For the avoidance of doubt, a defect and/or deficiency of the goods is agreed between the Buyer and the Seller to include, but not be limited to, chemically treated seed of any type, glass, ceramics, metal, stones, soil, thistle head, weed seeds, dead and/or alive infestation whole or in part.

In respect of any claim arising from a Latent Defect:

(a) the time by which the Buyer is to confirm claims for the purposes of clause 21(b) and 21 (c) of AIC 1/16 is hereby amended so that the Buyer shall confirm claims within 120 consecutive days following the discovery of the Latent Defect giving rise to the claim; and

(b) the time limit for claiming arbitration in clause 25 of AIC 1/16 is amended so as to provide that arbitration shall be commenced within 120 consecutive days following the discovery of the Latent Defect.

(c) In respect of any claim arising from a Latent Defect for Oilseed Rape, the time limit for passing any claim is 120 consecutive days following the discovery of the Latent Defect giving rise to the claim. The time limit for claiming arbitration in respect of Latent Defect in Oilseed Rape is agreed so as to provide that arbitration shall be commenced within 120 consecutive days following the discovery of the Latent Defect.

(iv) Rejection

Where on the terms of the contract or at law the Buyer has a right to reject the goods, the Buyer shall not by reason of having sieved, dressed, sorted or otherwise processed the goods be deemed to have accepted the goods or otherwise to have lost the right to reject the goods whether under section 35 of the Sale of Goods Act 1979 (or any statutory replacement or modification thereof) or otherwise.

(v) Statutory Rights

The remedies afforded to the Buyer in clauses 18 and 21 of AIC 1/16 are additional to any statutory remedy that may be available to the Buyer and nothing in those clauses or in this clause [3(v)] shall be interpreted so as to diminish or extinguish any statutory remedy that exists in favour of the Buyer.



## **5. Dispute Resolution**

Buyers at all times trade under AIC and FOSFA contracts which incorporate a written agreement to determine disputes by arbitration. No other provisions for dispute resolution shall be applied other than the Arbitration Rules of AIC and FOSFA respectively.

## **6. Contract Confirmation**

Each transaction will be confirmed by email or in writing on a computer generated form (Contract Confirmation). Buyback contracts will have Buyback Terms attached. When the Seller receives the confirmation, it is their responsibility to check that all the details are correct. If the Seller finds any details with which they do not agree they must contact the Buyer forthwith. Failure to advise alleged errors immediately will render the Seller liable to the confirmed details. The Buyer will issue to the Seller a monthly statement showing all outstanding contracts held on the Sellers account. If the Seller has any query regarding any contract listed they must contact the Buyer immediately to seek clarification of any issue.

## **7. Communication**

If the Seller needs to contact the Buyer concerning a particular contract they must quote the contract reference number as this will allow the Buyer to answer any queries quickly and efficiently.

## **8. Farm Assurance**

Unless stated at the time of trade, all transactions (unless specifically shown on the contract confirmation, or where a Seller has informed us that they are not farm assured) will be deemed to be accredited by an audited farm assurance scheme which adopts Red Tractor Standards or an equivalent recognised by AIC. We require to be informed of the Seller's assurance scheme and scheme number, or any amendment to the scheme and/or number if these have not previously been made known.

## **9. Renewable Energy Directive (RED)**

Goods destined for the Bio-fuels industry and all oilseeds must be compliant with the Renewable Energy Directive (RED) in all respects.

## **10. Farm Sampling/Collections**

We endorse the Red Tractor Farm Assurance Standards which state that all farmers should take representative samples as their grain is put into store. We are able to supply sample bags and to collect samples from the Seller's identified locations. We will continue to offer our sampling service for Sellers who are unable to provide samples. However, we are unable to sample grain stored in enclosed confined spaces e.g. bins.

By taking samples or making analyses we accept no liability for analytical results. We continue to invest in the latest laboratory equipment and the most up to date technology, however, our analytical results and services, which are provided free of charge, are only a guide to quality and are not to be taken as being contractually definitive or binding. Contractual determination of the quality and condition of the goods will generally be made at the point of delivery.



All seed will be required to be sampled and tested prior to movement as per DEFRA standards. However, Buyers will not accept any liability for analytical results resulting from the farm sample testing. Contractual determination of the quality and condition of the goods will be made at the point of delivery only.

#### **11. Dusts**

Post-harvest applications of Diatomaceous Earth (silica dust) and its derivatives are not acceptable and no goods so treated will be accepted as part of any consignment.

#### **12. Prohibited Substances in Horse Feed**

We subscribe to the Universal Feed Assurance Scheme's Compound Feeds Code of Practice 2012, including Appendix 7 thereto which addresses the control of Naturally Occurring Prohibited Substances ("NOPS") in equine feeds. All goods supplied for use in the manufacture of equine feeds shall comply with the Code in all respects and Sellers warrant that all goods to be supplied to Buyers for such use do so comply. Without prejudice to any other remedy that Buyers shall have, should Buyers notify Sellers of the presence of NOPS in any goods supplied, Suppliers shall use their best endeavours to cooperate with Buyers to identify the source(s) of the NOPS and thereafter to ensure that further supply is prevented.

#### **13. Labelling Requirements on Oilseed Rape**

All conventional EU and non-EU origin oilseed rape delivered must adhere to the following statement: "This statement applies to conventional rapeseed of EU and non-EU origin. In compliance with the Regulation on genetically modified food and feed, and the Regulation concerning the traceability and labelling of genetically modified organisms, we (the Seller) hereby confirm that rapeseeds delivered to Buyers from harvest year 2012 are not subject to the labelling requirements specified in the regulations below\* and that the necessary steps are taken to preserve the conventional integrity of these raw materials.

\* Regulation (EC) No. 1829/2003 of the European Parliament and of the council of 22 September 2003 on genetically modified food and feed. Regulation (EC) No 1830/2003 of the European Parliament and of council of 22 September 2003 concerning the traceability and labelling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC. A standard form Grain Passport complying with the above statement must be used with every consignment and must show the applicable registration number. Non-standard passports will not be accepted.

#### **14. Radiation/Irradiation**

Suppliers warrant that wheat has not been subjected to irradiation or a level of radioactivity in excess of that permitted by a regulatory body having the force of law in the United Kingdom or the European Community.

#### **15. Food Safety**

In accepting our Terms and Conditions of Purchase, Sellers acknowledge and recognise their obligations relating to the provisions of the Food Safety Act 1990 or any subsequent amendment and EU Regulations pertaining to food safety and



confirm that each delivery will conform to those obligations.

#### **16. Mycotoxins**

The Seller warrants that all goods conform to EU Regulations relating to mycotoxins.

#### **17. Ergot**

All goods must be **totally** free of Ergot.

#### **18. Rodent Droppings**

All goods must be **totally** free of rodent or any other animal droppings.

#### **19. CIPC**

CIPC is widely used by potato growers as a sprout suppressant and it is applied as a fog during the storage period contaminating the fabric of the store including concrete floors, walls and roof. It cannot be completely removed even if the store is extensively cleaned and can persist for several years. Cereals stored in these stores can subsequently show poor germination and levels of CIPC above legal limits.

#### **20. Bio Solids (Human Waste/Sludge)**

By entering into a transaction, sellers are understood to be aware that crops grown on land that has had any form of Bio-solids (human waste or sludge) applied will be restricting the number of outlets for their grain. Currently there are numerous buyers whose terms do not permit the application of Bio-solids to land. If crops are from land that has had any form of human waste and/or sludge applied this must be notified to the Buyer prior to entering into any contract. Sellers may be liable for additional haulage for delivery of goods to a different end receiver if they fail to notify the Buyer at the time of contract.

#### **21. Moisture**

Any amendments to contract terms issued by Maltsters Association of Great Britain (MAGB) and/or National Association of British and Irish Millers (NABIM) and/or Agricultural Industries Confederations (AIC) including those relating to moisture and moisture allowances will be incorporated and be effective as at the date of transaction.

#### **22. Temperature**

Grain over 26°C on delivery may, at our absolute discretion, be subject to a cooling allowance or rejection. Any grain found to be above the outside ambient temperature may be subject to rejection.

#### **23. Haulage**

Sellers must be aware of their legal responsibilities in dispatching overweight lorries. Some end users may charge for tipping off excess weight and Sellers may be paid for only the legally allowed tonnage as per current legislation. The Buyer will pass to the Seller any reasonable costs incurred by hauliers due to excessive loading times or on-farm delay. The Buyer will make every effort to avoid capacity load charges however all such charges, except where specified in the contract, shall be passed as received from hauliers.



#### **24. Sampling**

Goods will be sampled in accordance with ISO24333 or equivalent in house procedure.

#### **25. Variety**

Where the Buyer and seller agree that a specific variety or varieties are to be supplied against the contract, this becomes a condition of the contract and additionally becomes the description of the goods. The Buyer reserves the right to reject the goods or, where the goods on first inspection the goods are accepted and subsequently enter the food chain, to claim damages where the seller has failed to supply the stated variety or varieties as per the contractual agreement.

#### **26. Cleavers in Oilseed Rape and Pulses**

Oilseed Rape and Pulses bought under any contract may be assigned to a sub-buyer who requires goods to be free of cleavers (Galium aparine). If any inclusion of cleavers are detected upon examination at the point of delivery, the goods may be rejected. A Seller who does not declare an admixture of Cleavers at the time of contract and whose goods are found to subsequently contain cleavers will be liable for all costs flowing from such a rejection.

#### **27. MODERN SLAVERY ACT 2015**

The Modern Slavery Act 2015 came into force in October 2015, the act encompasses human trafficking, slavery, servitude and forced or compulsory labour. The Company are committed to the rights and well-being of the people who work for us and our suppliers. As such, we're committed to taking the appropriate steps to ensure that everyone who works for us benefits from a working environment in which their fundamental rights and freedoms are respected. Our company policy promotes freedom of association and clearly defines that forced labour is unacceptable. We ensure all of our employees are legally entitled to work, registered to pay the appropriate tax and National Insurance contributions and that relevant legislation relating to health and safety, Working Time Regulations, pension enrolment and minimum wage are followed.

As a valued trading partner our expectation and requirement is that your business operates and is committed to the same ethical standards as we are, ensuring the rights and well-being of your own employees and those within your own direct supply chain.

We recognise that the issue of slavery and human trafficking is a global issue and often difficult to detect; therefore, open communication with our supply chain is critical to ensure that any issues are detected and resolved. We welcome and encourage our trading partners to discuss any queries or concerns you may have relating to this legislation. If you have any questions or require any guidance relating to slavery or human trafficking, then please contact our Human Resource Department: [HR@leadell.co.uk](mailto:HR@leadell.co.uk)

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