

DUNNS (LONG SUTTON) LTD

TERMS AND CONDITIONS FOR TOLL PROCESSING BY DUNNS (LONG SUTTON) LTD.

1. Preamble, definitions and interpretation

The following terms and conditions for Toll Processing ("Terms") apply to all contracts concluded between Dunns (Long Sutton) Ltd of Winters Lane, Long Sutton, PE12 9BE ("Dunns") and the party named in the accompanying contract (the "Customer").

1.1 In these Terms, the following definitions apply:

Agreement: the agreement between Dunns and the Customer comprising of these Terms, the Contract and the Cover Sheet.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

A business day is the period between 0900 hours and 1600 hours inclusive on any day other than a non-business day when banks in London are open for business. 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 notices and claims.

CCP: has the meaning given in condition 7.3.

Commencement Date: has the meaning given in condition 1.2.

Contract: the accompanying contract between Dunns and the Customer.

Contract Period: the period beginning on the Commencement Date and ending when the Goods are collected by the Customer.

Cover Sheet: the cover sheet setting out the price of the Services which is attached to these Terms.

End User: any third party to whom the Customer sells or otherwise disposes of the Goods following the completion of the Services.

Force Majeure Event: has the meaning given in condition 17.

Goods: the seeds or pulses delivered to Dunns for Toll Processing.

Losses: all damages, liabilities, demands, costs (including any costs incurred by the End User for any additional cleaning or processing), charges, expenses, claims, actions and proceedings (including all consequential, direct, indirect, special or incidental loss or punitive damages or loss, legal and other professional fees, cost and expenses, fines, penalties, interest and loss of profit or any other form of economic loss (including loss of reputation)).

Samples: the samples automatically drawn by Dunns at the final stage of the Toll Processing, prior to bagging.

Services: the Toll Processing services provided by Dunns to the Customer.

Specification: the specification agreed between the parties either by reference to a sample or by other information provided by the Customer in order that the final analysis can be agreed.

Toll Processing: the processing and/or cleaning of the Goods by Dunns on behalf of the Customer to the Specification.

Construction. In these Terms, the following rules of interpretation apply:

- a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);



- a reference to a party includes its personal representatives, successors or permitted assigns;
- a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms **including, include, in particular** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a reference to **writing** or **written** includes faxes and e-mails.

1.2 The Agreement shall come into existence on the date stated in the Contract (“Commencement Date”).

1.3 The Agreement constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Dunns which is not set out in the Agreement. To the extent that there is any conflict between the Contract, the Cover Sheet and these Terms, the documents shall prevail in the following order:

- the Contract;
- the Cover Sheet; and
- these Terms.

1.4 These Terms apply to the Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2. Quality

2.1 Dunns shall not be liable to the extent that the Specification cannot be achieved due to the quality and/or condition of the Goods being inconsistent with the warranties given by the Customer under condition 3. The Goods shall be sampled at intake by Dunns and it shall advise the Customer if, in its absolute opinion, the Goods are not suitable for processing to the Specification for whatever reason and shall accept no liability if the Goods are in such a way defective that the agreed Specification cannot be achieved.

2.2 Dunns has the ultimate right to refuse any consignment of Goods which, in its sole opinion, are not of quality and/or condition suitable for Toll Processing.

3. Customer warranties

The Customer warrants that, upon delivery to Dunns, the Goods shall be:

- of satisfactory quality in all respects (as implied by the Sale of Goods Act 1979);
- free from all defects, including, but not limited to, those defects which are not discoverable by the exercise of due diligence on sampling;
- free of any GMO (Genetically Modified Organism); and
- comply with the provisions of the Food and Environment Protection Act 1985, the Plant Protection Products Regulations 2011 and the Pesticides (Maximum Residue Levels) (England and Wales) Regulations 2008 or the Pesticides (Maximum Residue Levels) (Scotland) Regulations 2008, or the Pesticide (Maximum Residue Levels) Regulations (Northern Ireland) 2008.



The Customer additionally warrants that the the Defra published Code of Practice for the Control of Salmonella has been observed during the production, storage, and transport of compound feeds, premixtures, feed materials and feed additives, or any amendment thereof and agrees to indemnify Dunns for any Losses suffered or incurred by it arising in connection with a breach of this warranty.

4. Indemnity

The Customer shall fully indemnify and keep indemnified Dunns on demand and hold Dunns harmless from and against all Losses suffered by or incurred by it arising out of or in connection with all and/or any claims by any End User or other third party for any defect in the Goods whether that be latent or apparent (including but not limited to mycotoxins).

5. Ownership and Risk

Ownership and the risk of any quality and/or condition of the Goods shall at all times be retained by the Customer and Dunns shall not be liable for any deterioration in the Goods in whilst in its possession.

6. Final Quality

The determination of the final quality of the Goods shall be based on the Samples. The Samples shall be retained by Dunns for a period of six months following the end of the Contract Period in case of any dispute in the quality and/or condition of the Goods and both parties agree that an analysis of the Samples shall be carried out by SGS (UK) Ltd (or such other company which is agreed by the parties) in the event of dispute and that this will be done prior to either party claiming arbitration in accordance with conditions 13 and 14. Grains and pulses will be sampled in accordance with the procedure laid down in ISO 24333 (2009) – Cereals and cereal products. Sampling and oilseeds will be sampled in accordance with the procedure laid down in ISO 542 (1990)- Oilseeds sampling, or any amendments thereto or as agreed between the parties.

7. Delivery

7.1 Dunns shall notify the Customer in writing when the Goods are required to be delivered to its premises giving a minimum of two clear Business Days' notice whenever possible. If the Customer is unable to deliver the Goods on the date requested in the notice, then it should notify Dunns in writing as soon as possible (and in any event one Business Day before the date requested in the notice). Upon receipt of notification from the Customer that it is unable to deliver the Goods at the proposed date, Dunns shall notify the Customer of a new proposed delivery date within a reasonable timeframe.

7.2 Where goods are delivered, the Customer must observe the TASC Code of Practice during the delivery and/or collection of the Goods and shall employ or contract a haulage contractor who is accredited by this, or an equivalent, code of practice. Dunns shall weigh the Goods upon receipt and, except in the case of manifest error, the weights recorded by Dunns shall be final. In cases where the Customer arranges delivery or collection, while Dunns will use all reasonable endeavors to limit waiting time, it will not be responsible for any Losses arising as a result of any delay in loading or unloading the Goods.

7.3 A Combinable Crops Passport ("CCP") shall accompany each delivery of Goods and must state that the deliveries are accredited to Red Tractor Standards (UK Farm Assurance) through an annually audited certification scheme stating membership number and membership scheme. The CCP must additionally certify if any post-harvest pesticide application has been applied to the goods and guaranteed the goods to be GMO free.



8. Price

The price for Toll Cleaning shall be as stated in the Cover Sheet.
A charge for weighing shall be added to the Toll Processing charge.

9. Limitation of Liability

9.1 Nothing in these Terms shall limit or exclude Dunns' liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

9.2 Subject to condition 9.1, under no circumstances whatsoever (unless otherwise agreed in writing) will Dunn's total liability exceed the sum of the value of the commodity per tonne weight (as stated in the Cover Sheet) multiplied by the number of tonnes of Goods in respect of which the claim arises.

9.3 Subject to condition 9.1, Dunns will accept no liability whatsoever even to the limit agreed above for any loss of profit, indirect and/or consequential loss including, but not limited to, any loss outside of those listed above even if communicated to him by the Customer before processing and/or of which he may at any time become aware.

10. Insurance

Dunns shall not be responsible for insuring the Goods and the Customer should make arrangements to cover the Goods against all risks to the full insurable value thereof.

11. Claims

Dunns shall not be liable for any claim unless it has been notified in writing by recorded delivery to their offices by the Customer within 21 days of the Customer having knowledge of the cause of the claim or of the Goods being delivered by Dunns to the Customer, whichever is the later. Dunns shall not be liable hereunder for any loss or damage to the extent that the same is caused or contributed to by a breach of any of the Customer's obligations under the provisions of this Agreement.

12. Charges, Payments and Lien

12.1 Dunns' charges shall be payable at such periodic intervals or on the expiry of such period of credit as may have been agreed between the parties as recorded in the Cover Sheet.

12.2 Without prejudice to any other rights Dunns may have against Customer, if any sum due under this Agreement and not genuinely in dispute is not paid within 7 days of becoming due, Dunns may at its absolute discretion sell or dispose of any or all of the Goods in its possession as agent for the owner or Customer and for that purpose may open or break open (without being liable for any damage unavoidably caused thereby) any box or other package and the balance of the proceeds of any such sale after deducting the costs thereof and incidental thereto shall be applied in satisfaction of all such sums due and upon accounting to Customer for the residue (if any) Dunns shall be discharged from all liability whatsoever in respect of such Products.

Dunns shall not otherwise use or deal with the Goods except in the course of and for the performance of its duties.



12. Arbitration

13.1 Any dispute (other than a claim for an unpaid debt or as provided under (b) below or a matter which can be resolved in accordance with condition 6) arising out of this Agreement 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, (obtainable from the registered office of the Confederation and/or <https://www.agindustries.org.uk/legal/arbitration/> (the "AIC Rules"), which shall be deemed to be incorporated into this Agreement and all parties shall be deemed to have knowledge of the AIC Rules. In the event of any dispute in a string of which this Agreement forms part, the parties to this Agreement must provide such information as may be required by the arbitrator appointed by the Agricultural Industries Confederation, the number of arbitrators shall be one (the "Arbitrator").

b. If a dispute involves legal or technical problems of great complexity which are beyond the knowledge and competence of the Arbitrator to resolve, or if a dispute of necessity involves a third party who is not subject to arbitration, either party may, in writing, before the time for commencing arbitration proceedings has lapsed 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 this condition. 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 judgment (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.

13. Time Limits for Claiming Arbitration

Arbitration shall be claimed in accordance with the AIC Arbitration Rules within the following time limits: (i) in relation to any aspect of consignment quantity, quality or condition of the Goods that is discoverable by the exercise of reasonable diligence upon delivery of the Goods, arbitration shall be claimed within 28 days of the date of the arrival of the Goods at their ultimate destination in the United Kingdom, (ii) in relation to all other claims including without limitation claims for quantity, quality or condition not discoverable by the exercise of reasonable diligence upon delivery of the Goods, arbitration shall be claimed within 90 days of the delivery of the Goods which are the subject of the arbitration; or (iii) if an assessment has been made under condition 6 but either of the parties have reason to disagree with the outcome of the assessment, arbitration may be claimed within 28 days of the assessment being issued. In the event that arbitration is not claimed within the time limits prescribed above all courses of action relating to the subject claim whether by way of arbitration or in any Court are deemed waived and shall be barred absolutely unless the board of the Agricultural Industries Confederation shall in its absolute discretion determine otherwise.

14. Termination and Insolvency

Without limiting its other rights or remedies, either party may terminate the Agreement by with immediate effect by giving notice to the other party if either party to this Agreement ("the affected party"):

a. commits a material breach of any term of the Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

- b. suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership), is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (being a partnership) has any partner to whom any of the foregoing apply;
- c. commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- d. has a petition filed, a notice given, a resolution passed, or an order made, for or in connection with the winding up of that affected party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that affected party;
- e. has a creditor or encumbrancer attach or take possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- f. has an application made to court, or an order made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given, or an administrator is appointed over the affected party;
- g. the holder of a qualifying floating charge over the assets of that affected party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- h. any event occurs or proceeding is taken with respect to the affected party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 15(b) to 15(g) (inclusive);
- i. the affected party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- j. the affected party's financial position deteriorates to such an extent that in the opinion of the other party ("the innocent party") the affected party's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy,

15. Consequences of Termination

On termination of the Agreement for any reason:

- the Customer shall immediately pay to Dunns all of Dunns' outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, Dunns shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 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 Agreement which existed at or before the date of termination or expiry;
- clauses which expressly or by implication survive termination shall continue in full force and effect;
- the Goods shall be removed by the Customer from the custody or control of Dunns by such date as may have been agreed between the parties. In absence of such agreement, and otherwise where reasonably necessary, Dunns may at any time by notice in writing to the Customer require the removal of the Goods within 28 days from the date of such notice . If the Goods are not removed then Dunns shall be entitled to sell or otherwise dispose of all of any part of the Goods in accordance with condition 12.2.

16. Force Majeure

17.1 Neither Dunns nor the Customer shall be responsible for delay in delivering the Goods to Dunns and or completion of the Services (whichever is applicable) occasioned by a Force Majeure Event. A "Force Majeure Event" shall be defined as any Act of God, action by any government, civil war, terrorism, strike (including dock and/or shipping strikes within the United Kingdom), lock-out, combination of workmen, break-down of machinery, power failure, adverse weather

conditions or fire, provided that the party invoking this condition dispatches written notice to the other party within five Business Days of the occurrence, or not later than five Business Days after the beginning of the Contract Period, whichever is the later. Unless otherwise agreed in writing, the party invoking the Force Majeure Event shall be entitled to an extension (the first extension) of not more than 30 days from the end of the Contract Period.

Dunns shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

If the Force Majeure Event prevents Dunns from providing any of the Services for more than six weeks, Dunns shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the Customer.

17. Miscellaneous

18.1 Assignment and other dealings.

Dunns may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement and may subcontract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

The Customer shall not, without the prior written consent of Dunns, 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 Agreement.

18.2 Notices.

18.2.1 Any notice or other communication given to a party under or in connection with the Agreement 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 condition, and shall be delivered personally, sent by pre-paid first class post or other next Business Day delivery service, commercial courier, fax or e-mail.

18.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in this condition; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business 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 e-mail, one Business Day after transmission.

18.2.3 The provisions of this condition 18.2 shall not apply to the service of any proceedings or other documents in any legal action.

18.3 Severance.

18.3.1 If any provision or part-provision of the Agreement 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 condition shall not affect the validity and enforceability of the rest of the Agreement.

18.3.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

18.4 **Waiver.** A waiver of any right under the Agreement or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further

exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 No partnership or agency. Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

18.6 Third parties. A person who is not a party to the Agreement shall not have any rights to enforce its terms.

18.7 Variation. Except as set out in these Terms, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by both parties.

17.8 Governing law. This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

18.9 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@gleadell.co.uk

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