



DUNNS (LONG SUTTON) LTD

TERMS TO APPLY TO AN OPTIONAL CONTRACT FOR GROWING CEREAL SEED

The following Terms shall apply to the contract between DUNNS (LONG SUTTON) LTD, of Winters Lane, Long Sutton PE12 9BE, (hereafter 'Dunns) and the party named in the accompanying contract, (hereafter 'the Grower').

Whereby it is agreed the Grower shall grow for harvest in the contractual year the species and variety of cereal specified in the contract and shall sell to Dunns the total produce of the contractual area. It is a condition of the contract that the area contractually specified shall not be varied and that no fields shall be substituted without the prior consent of Dunns.

Seed shall be grown to meet HVS standard and to the specified grade

1. SUPPLY OF SEED:

- a) Provided that Dunns complies with the Seed Regulations 1980 or any amendment thereof, Dunns shall not be liable in any manner for any failure of the crop being grown, or any part of such crop.
- b) The seed supplied by Dunns shall be used by the Grower for no other purpose than sowing the area specified in the contract.
- c) The seed supplied will be chemically treated and may be dangerous to the life and health of human beings and all classes of animals and poultry. All bags will be labelled to show that the seed has been chemically treated. The ultimate grower shall care for the same in such a manner as may be necessary to protect any person or animal/s from any ill-effects therefrom and shall be responsible for any claims arising from his failure to do so.

2. CROP IDENTITY NUMBER:

The Crop Identity Number shall remain with Dunns howsoever the crop is disposed of.

3. PRICE TO BE PAID FOR THE CROP.

- a) Provided the crop, or part thereof, is required by Dunns for seed usage, and that it is in the opinion of Dunns, fit and suitable for seed purposes, the price to be paid by the Dunns to the Grower shall be as specified in the contract, subject to any allowances as provided hereunder. Payment shall be made by Dunns at the end of the month following the month of clearance of the seed. The grower shall be liable for the levy arising under the HGCA Direct Levy Scheme, applicable at the date of removal of the goods from the Grower's farm.
- b) If the contract is priced at a premium over the applicable UK average HGCA price for the week of clearance of the goods, it shall be the ex farm feed price for the contract category published.
- c) Movement of part of the crop will not constitute any commitment by the Merchant to clear the whole crop at the agreed price.
- d) The Grower will be liable for any new or modified levy introduced by any statutory body prior to the date of removal of the goods.

4. PREVIOUS CROPPING:

- a) The Grower shall sow, with equipment which has thoroughly been cleaned before use, all the stock seed supplied by Dunns on clean land that in the two years prior to sowing that seed has been cropped in accordance with the rules of the Scheme then in force.
- b) To produce certified First Generation seed, the land must not have grown any other cereal species or any other varieties of the same species in the two preceding years. If the same variety had been grown in both the two years prior to planting the crop grown must have been sown only with Pre-Basic, Basic, Certified or other authenticated seed, and such cropping must be substantiated by the Grower.
- c) To produce certified Second Generation seed the land must not have grown any other cereal species in the previous year and when possible at least two years' break is desirable. The land must not have grown any other variety of the same species in the two preceding years. If the same variety was grown in either of those preceding years such crops must have been sown with, Pre-Basic, Basic, Certified or other authenticated seed, and such cropping must be substantiated by the Grower.

5. CROP FAILURE:

- i. The Grower shall promptly report to Dunns any instances of crop failure or part thereof which will be promptly confirmed in writing by recorded delivery.
- ii. The Grower shall not plough up or otherwise destroy the crop or any part of it without the prior written acceptance of Dunns.

6. ISOLATION :

- i. No other cereal crop shall be grown in the same field as the contractual seed unless it is separated from the contractual crop by an isolation strip of at least 2.0 metres width, or by a physical division.
- ii. Loose Smut in wheat or barley. Where a seed crop is grown adjacent to a crop of the same species which is heavily contaminated with Loose Smut, Dunns shall have the option of undertaking an embryo test. If the level of Loose Smut is shown to be greater than the standard laid down in the Cereal Seed Regulations currently in force, Dunns shall have the right, at their absolute discretion, to reject the crop.

7. RETENTION OF SEED LABELS:

In conformity with the rules of the Scheme, the Grower shall retain in an envelope marked with the field name and O.S. number/s all labels from each stock of seed sown from that supplied by Dunns. The envelope and its contents shall be shown to the Field Inspector on request. Two further labels shall be returned to the offices of Dunns with the cropping details.

8. GROWTH REGULATORS AND OTHER CHEMICALS:

Before using any chemicals on the growing crop, or on the harvested grain, which might jeopardize approval and certification, the grower shall seek the approval of Dunns. Dunns shall reply in writing. Providing the application of such chemicals is approved under the Agricultural Chemicals Approval Scheme the Grower shall strictly observe the manufacturers' instructions. If there is no suggestion that any chemical might have a deleterious effect on the seed crop such permission shall not be unreasonably withheld by Dunns. The use of any chemicals is strictly at The Growers' risk and any distortion of the growing crop may result in rejection for certification by Dunns.

9. FIELD INSPECTION:

- a) If on field inspection the crop fails to meet the quality for certification, the contract may, at the discretion of Dunns, be terminated.

- b) During the period of growth the weed seeds listed in Clause 13 (d) herein, or any weeds listed in the Plant Varieties and Seeds Act 1964 (or any amendments thereof) as obnoxious weeds, or Ergot Sclerotia, shall not be found in the crop in a quantity which Dunns – whose decision shall be final - shall consider will cause the crop to be unsuitable for seed purposes.
- c) The grower shall, at their expense, carry out any roguing required by Dunns; such roguing shall be undertaken with the intention to bring the crop to the standard required by the Scheme.

10. HARVESTING, POST-HARVEST CONDITIONING & STORAGE:

- a) The Grower shall ensure that all equipment to be used for harvesting and handling the crop is thoroughly cleaned before use.
- b) The Grower shall ensure that if the produce of the crop is to be cleaned or dried by them, then all elevator pits, elevators, conveyors, drying plant and all other equipment likely to be used are thoroughly and methodically cleaned of all cereal residue or other matter before use.
- c) The Grower shall ensure that:-
 - i. The storage and/or transportation facilities of the crop are thoroughly cleaned before use.
 - ii. They shall be clearly labelled with the variety and species of the grain content and the O.S. numbers of the fields from which the grain was harvested
 - iii. The tops of such containers shall be covered and secured so to prevent the ingress of any other materials or grains not of the same crop.
 - iv. The Grower shall ensure that seed shall not at any stage come into contact, either directly or indirectly, with any substance or material of whatever nature, especially growth suppressant which may have a damaging effect on the seed and its ability to germinate, or on the subsequent crop grown from the seed.
 - v. Crops of the same variety shall not be bulked together without prior authority from Dunns.
 - vi. If the Grower fails to dry or condition their contract crop by 31 August for autumn sowing seed or by 31 October for spring sowing seed to the standard required in clause 13 herein, so Dunns is prevented from marketing the produce for seed purposes, Dunns shall have the right, at their absolute discretion, to reject the produce of the contracted crop.

11. SAMPLING :

- a). Before delivery of the seed crop to Dunns the Grower shall submit a 3kg. representative sample of the seed. The final date of receipt of such samples shall be 30 September for autumn sowing seed and 31 October for spring sowing seed.
- b) Dunns shall, at their cost, test, or have the sample tested to determine the moisture content (dry matter basis), varietal purity, germination energy or capacity (as appropriate) and Loose Smut infection.
- c). If the test results show that the seed does not meet the contractual standards then Dunns shall by 31 December for an autumn sowing variety or by 30 March for a spring sowing variety, advise the Grower in writing of their rejection of the seed.

12. IDENTIFICATION OF THE SEED CROP:

The Grower shall ensure that each storage area containing cereals from the contracted crop whilst in store and during transportation, is clearly identified with the species and variety of the goods, the Grower's name and the O.S. number/s of the field/s from which the crop was produced. For this purpose well secured temporary tags or labels may be used. In the case of bulk containers being used the grower shall hand to the vehicle driver a document clearly bearing those same details.

13. QUALITY STANDARDS:

The bulk samples taken in accordance with Clause 11 above and the produce delivered by the Grower shall meet the following standards in respect of each and every load.

****Each delivery or consignment shall stand as a separate contract.**

- a) Germination shall not be less than 95% for wheat, barley and oats.
- b) The total percentage of damaged seed (including split and sprouted grains) and miscellaneous admixture shall not exceed 2% (by weight). If this level is exceeded then a charge for disposal of inert matter e.g. chaff, straw, weed seeds, dust & soil will be made.
- c) The specific weight shall not be less than 64kg/hectolitre for barley and 76kg/hectolitre for wheat.
- d) The produce shall be free from Ergot and injurious weed seeds especially Wild Oats (*Avena Fatua*), Sterile Brome (*Bromus Sterilis*), Wild Radish (*Raphanus Raphanistrum*), Cleavers (*Galium Aparine*), Wild Tares (*Vicia Hirsuta* and *Vicia Testasperma*), Corn Cockle (*Agrostemma Githago*), Darnel (*Lolium Temulentum*), Couch (*Agropyron Repens*). A sample of 2kg shall not contain any cereal seed of another variety or species. Inert or any other matter shall not exceed such that in the opinion of Dunns normal cleaning processes cannot bring the goods to certification standard.
- e) The produce shall be dry, clean, well matured and in marketable condition for seed purposes and in this connection 'dry' shall mean not more than 15.0% moisture content, both on the farm and at the point of delivery (see Clause 14). It is a condition of the contract that the crop so delivered shall be of good colour, quality and appearance consistent with the season.
- f) Where the crop is barley, a test for Loose Smut may be carried out on approx. 1000 embryos, and if this exceeds 0.2% while the crop has achieved the required standard for Loose Smut in the field at the inspection stage, then Dunns has the right to reject the crop.
- g) The crop shall, in addition to the other requirements of this contract, conform to the certification standards of the Scheme as to the presence of weeds, other cereal seeds, or other species.
- h) Crops grown under the contract which are accepted as seed must conform to the quality standards required for Intervention under EU rules and regulations.

14. DRYING:

If the moisture content of the crop as delivered exceeds 15.0% Dunns may either:

- i. Dry the seed and in such case the cost of drying to the contract level with resultant loss in weight shall be charged to the Grower's account.
- ii. Reject the grain or
- iii. Accept the grain with moisture above 15.0% and deduct a penalty of £1.00 per tonne for each 0.5% (or part thereof) moisture above 15%, to cover allowances incurred by the subsequent sale or disposal of the removed screenings.

15. SCREENINGS:

- a) The produce shall be delivered by the Grower with a screening percentage of not more than 10% by weight (the 'agreed' percentage).
- b) The screening percentage of the produce shall be calculated on the following basis:-
The Grower having submitted to Dunns a 2kg sample of the bulk pursuant to Clause 11 hereof, ii) Dunns will pass a representative 100 grams of this sample over a 2.5mm slotted hole sieve and the quantity passing through this sieve will be weighed. This weight will then be expressed as a percentage of 100 grams.
- c) If the screenings percentage exceeds the contractual limit, Dunns has the option to either (i) deduct £1.00 per tonne for each 0.5% or part thereof over the contractual limit or (ii) reject the crop for seed.

- d) If cleaning out-turns exceed 10% by weight Dunns have the option to deduct £1.00 per 0.5% or part thereof above 10%.

16. DELIVERY :

- a) The whole of the crop purchased by Dunns shall be made available by the Grower for collection in clean containers as required, at Dunns's option during the period from 1 August to 31 December in the case of autumn sown varieties or 1 November to 30 April in the case of spring sown varieties unless mutually agreed otherwise in writing.
- b) The Grower shall supply detailed bulk consignment notes, which shall be completed in respect of each load delivered.
- c) In case of bulk delivery the Grower shall ensure that the vehicle has been thoroughly cleaned before loading commences. Vehicles presented in a state not fit to be loaded should be rejected by the Grower without costs falling upon them.
- d) Dunns shall collect the crop from the farm and the Grower shall make it available for collection on hard standing.
- e) In case of unreasonable delay in the loading of vehicles collecting the goods, the Grower shall be responsible for any loss that results from the delay and shall pay any demurrage charged.
- f) The Grower shall advise Dunns of their estimate of the total produce of the crop at the time delivery of the first bulk sample and Dunns will arrange haulage to cover the contracted tonnage. Should there remain a balance which it would not be economical to collect the Grower will dispose of any such seed for feed purposes, and in such instances will do so only when the permission of Dunns and the Breeder and their Agent has first been obtained. In this situation no seed premiums will be payable on such balances.
- g) The Grower shall be responsible for weighbridge charges on loads collected from their farm. Should the Grower wish to weigh or check-weigh elsewhere then such costs will be to the Grower's account.
- h) Post Harvest chemical treatment declaration forms (Combinable Crops Passport) completed and signed by the Grower, must be presented with each load.

17. REJECTION :

- a) If the bulk as delivered does not correspond to any of the samples taken in accordance with Clauses 11, 13, 14 and 15 hereof or if the crop fails to reach the specified standard and grade under the Scheme then Dunns may at their absolute discretion reject the crop.
- b) If the crop fails to reach the standard for which it is entered under the Scheme Dunns may accept the crop as seed at feed price as stated in the HGCA bulletin, (less an amount equivalent to any current levy) or may reject the crop at their absolute discretion.
- c) If after collection/delivery the crop is found not to be suitable for seed Dunns may at their discretion sell the crop for milling or for feed at the current ruling commercial price and account the Grower for the price received less all expenses.
- d) If, for any reason, the crop or any part thereof, is rejected for seed purposes such crop (or part crop) may not be sold by the Grower for seed purposes.
- e) The Grower shall pay any transport, storage, and demurrage expenses arising through rejection of the crop or any part of it.
- f) In the event that the Grower cannot be contacted regarding a rejected load then Dunns is empowered to dispose of the grain at the best available price for feed/milling/malting etc and credit the Grower with the price received less any expenses incurred by Dunns.
- g) If the cereal variety listed in the contract becomes out-classed, or suffers a cultural defect previously undetermined during the current growing season or is not required for seed usage then no premiums will be payable by Dunns.

18. PROPERTY AND RISK :

- a) The property in such part of the crop as shall reach the prescribed quality shall pass to and shall be at the risk of Dunns when the produce is delivered to them or to their Order and it has been established that the crop reaches the standards required by this contract and until such time Dunns reserves the right to reject the crop or to accept it at a price agreed with the Grower. Until such time the Grower shall be responsible for the safe storage of the seed and is advised to insure the seed against loss by fire, flood and similar occurrences and accidental contamination
- b) It is expressly agreed that the Grower shall be insured (Product Liability Insurance) against delivering any seed that is contaminated with another variety. This insurance shall include any consequential loss incurred by Dunns as a result of sowing this seed.

19. EU CAP REFORMS :

In the event of changes in policy being imposed on the UK agricultural industry, that have a direct or indirect effect of this agreement then Dunns shall have the right to re-negotiate the terms of the contract in the light of such changes.

20. PROTECTED VARIETIES :

When the contract related to seed of a variety protected by Plant Breeders Rights under the Plant Varieties and Seeds Act 1964 the following conditions apply:

- a) The Grower shall permit the Breeder or any duly appointed agent of the Breeder to enter upon their land to inspect the sowing, growing, cultivation and storage of the crop.
- b) The Grower shall permit the Breeder or any duly appointed agent of the Breeder, and in particular the British Society of Plant Breeders or it's representative to have access to the records relating to the seed crop for the purposes of extracting or verifying facts and figures relating to the crops production.
- c) The Grower must not sell produce rejected by Dunns under Clause 17 hereof to any other person for seed purposes.

21. FORCE MAJEURE :

If any unforeseen failure or delay on the part of the Grower or Dunns in the performance of all or any of their respective obligations herein (other than the payment of money owing) is due to an act of the Queen's enemies or is due to an action of any authority under emergency powers, or is due to fire, flood, or other inevitable accident, strike, combination of, or restriction of work by the workmen of the Grower or of Dunns, or of any person, firm or Company, then such failure or delay, to the extent to which it is so due, shall not constitute any default or breach of contract on the part of the Grower or of the Company and no damages shall be payable. Force Majeure is not a reason for cancellation of the contract by either party but an arrangement whereby the performance of the contract may be resumed when the obstruction to the performance is cured or removed.

22. DISPUTE RESOLUTION :

Any dispute (other than a claim for an unpaid debt) arising out of the Contract shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Limited, (obtainable from the registered office of the Confederation or from Dunns) and both parties shall, by making this contract, be deemed to have knowledge of such rules and to have elected to be bound thereby.

23. TIME LIMITS FOR CLAIMING ARBITRATION

All claims for arbitration shall be made within 12 months of the harvest of the crop.

24. ASSURANCE:

All crops applicable to the contract must be grown and stored on a farm under an accredited, recognisable and audited farm assurance scheme.

24. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999:

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

25. DOMICILE:

The contract shall be deemed to have been made in England, and the construction, validity and performance thereof shall be governed in all aspects by English law.