

Gleadell Agriculture Limited

Terms and Conditions for Seed Treatment and Grain Cleaning

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

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

Charges: the charges payable by the Customer for the supply of the Services in accordance with condition 5.

Commencement Date: has the meaning set out in condition 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with condition 11.7.

Contract: the contract between Gleadell and the Customer for the supply of Services in accordance with these Conditions.

Cover Sheet: the cover sheet setting out details of the Services.

Customer: the person or firm who, or which purchases Services from Gleadell.

Deliverables: the deliverables set out in the Order produced by Gleadell for the Customer.

Force Majeure Event: has the meaning set out in condition 9.1.

Gleadell: Gleadell Agriculture Limited a company registered in England and Wales with company number 00534118 with its registered office at Lindsey House, Hemswell Cliff, Gainsborough, Lincolnshire, DN21 5TH.

Order: the Customer's order for Services as set out in the Cover Sheet or otherwise in writing as agreed by both parties.

Services: the seed treatment and/or grain cleaning services to be supplied by Gleadell to the Customer as set out in the Specification.

Specification: the treatment specified for seed as selected by the Customer and delivered to Gleadell.

1.2 Construction. In these Conditions, the following rules apply:

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

1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;

1.2.3 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;

1.2.4 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

1.2.5 a reference to **writing** or **written** includes faxes and emails.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

- 2.2 These Conditions shall be deemed to be accepted by the Customer upon Gleadell sending a written confirmation of Order and arriving on site in order to provide the Services at which point and on which date the Contract shall come into existence (Commencement Date).
- 2.3 The Contract 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 Gleadell which is not set out in the Contract.
- 2.4 Any samples or advertising issued by Gleadell, and any descriptions or illustrations contained in Gleadell's brochures or on its website are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract 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.
- 2.6 Any quotation given by Gleadell shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

3. SUPPLY OF SERVICES

- 3.1 Following the Commencement Date, Gleadell will give the Customer an approximate date for performance of the Services within an estimated period of 14 days. This date shall be an estimate only and time shall not be of the essence for performance.
- 3.2 Gleadell will contact the Customer to confirm a date for performance as soon as possible prior to the proposed date for performance.
- 3.3 In relation to seed treatment, Gleadell shall supply the Services to the Customer in accordance with the Specification selected by the Customer in all material respects.
- 3.4 Gleadell 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 Gleadell shall notify the Customer in any such event.
- 3.5 Gleadell warrants to the Customer that the Services will be provided using reasonable care and skill.
- 3.6 Gleadell will test a sample of the Customer's seeds or grains:
 - 3.6.1 prior to performance of the Services; and
 - 3.6.2 after the performance of the Services.
- 3.7 Gleadell will offer the following seed tests:
 - 3.7.1 germination;
 - 3.7.2 viability; and
 - 3.7.3 thousand grain weight.
- 3.8 Gleadell shall have the right to refuse to perform the Services if it determines, at Gleadell's sole discretion taking into account the results of any testing or otherwise, that the seeds or grains provided by the Customer are unsuitable for the Services. In such circumstances:
 - 3.8.1 Gleadell will notify the Customer that it will not be performing the Services;
 - 3.8.2 the Contract will be deemed to be terminated; and
 - 3.8.3 notwithstanding termination, conditions 4.2.3 and 8 will continue to apply.

4. CUSTOMER'S OBLIGATIONS

General obligations

- 4.1 The Customer shall:

- 4.1.1 co-operate with Gleadell in all matters relating to the Services;
- 4.1.2 provide the necessary equipment to supply the seed or grain into Gleadell's machinery;
- 4.1.3 provide the necessary equipment to deal with the offtake from Gleadell's machinery;
- 4.1.4 provide Gleadell with such other information and materials as Gleadell may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 4.1.5 provide Gleadell, its employees, agents, consultants and subcontractors, with access to the Customer's premises, and other facilities as reasonably required by Gleadell;
- 4.1.6 prepare the Customer's premises for the supply of the Services (including a hard surface and sufficient space for operation of Gleadell's machinery and suitable cover in the event of wet weather);
- 4.1.7 obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start;
- 4.1.8 following performance of the Services, ensure that any dust and other waste products resulting from the performance of the Services are removed;

Additional obligations for seed treatment

- 4.1.9 notify Gleadell what Specification is required;
- 4.1.10 ensure prior to performance that the quality of any seed or grain to be presented for treatment is:
 - 4.1.10.1 free from disease; and
 - 4.1.10.2 of an acceptable level of germination,
- 4.1.11 remove all bags of treated seed after treatment;
- 4.1.12 ensure that any farm saved seed which is treated is for the Customer's own use only and will not be sold to a third party; and

Additional obligations for grain cleaning

- 4.1.13 ensure that all seed is of a suitable quality for the cleaning process and for the final purpose for which it is intended to be used.
- 4.2 If Gleadell's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - 4.2.1 Gleadell shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays Gleadell's performance of any of its obligations;
 - 4.2.2 Gleadell shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Gleadell's failure or delay to perform any of its obligations as set out in this condition 4.2; and
 - 4.2.3 the Customer shall reimburse Gleadell on written demand for any costs or losses sustained or incurred by Gleadell arising directly or indirectly from the Customer Default, including (but not limited to) a call out charge of £100 (one hundred pounds).

5. CHARGES AND PAYMENT

- 5.1 The Charges for the Services shall be as set out in the Order.
- 5.2 If, following the completion of the Services, the Customer requires the Services (or any part of them) to be repeated, Gleadell reserves the right to increase the Charges accordingly.
- 5.3 Gleadell shall invoice the Customer on completion of the Services.
- 5.4 The Customer shall pay each invoice submitted by Gleadell:
 - 5.4.1 within 30 days of the date of the invoice; and
 - 5.4.2 in full and in cleared funds to a bank account nominated in writing by Gleadell.
- 5.5 All prices are subject to the addition of VAT as applicable.
- 5.6 Gleadell reserves the right to increase the price of the Services to reflect any increase in cost to Gleadell due to any tax, duty, levy or other payment whatsoever imposed upon the Services after the date of the Contract by the European Union or any national government.
- 5.7 If the Customer fails to make any payment due to Gleadell under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 6% per cent 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 Customer shall pay the interest together with the overdue amount.
- 5.8 The Customer 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). Gleadell may at any time, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Gleadell to the Customer.

6. LIMITATION OF LIABILITY

- 6.1 Nothing in these Conditions shall limit or exclude Gleadell's liability for:
 - 6.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 6.1.2 fraud or fraudulent misrepresentation; or
 - 6.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 6.2 Gleadell is not an accredited tester of seeds and grains and accepts no liability whatsoever for the effectiveness of the Services and, subject to condition 6.1, Gleadell will have no liability whatsoever to the Customer, whether in contract, tort (except in the case of Gleadell's negligence), breach of statutory duty, or otherwise, including for:
 - 6.2.1 any loss of profit;
 - 6.2.2 any indirect loss; and
 - 6.2.3 any consequential loss, in each case arising under or in connection with the Contract.
- 6.3 Gleadell's total liability to the Customer in respect of all losses arising under or in connection with the Contract shall in no circumstances exceed the price paid by the Customer for the Services.
- 6.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 6.5 This condition 6 shall survive termination of the Contract.

7. TERMINATION

7.1 If the Customer:

- 7.1.1 has a receiver or liquidator appointed to any of his property or business undertaking goes into administration or makes an application for a corporate voluntary arrangement; and/or
- 7.1.2 announces that it is ceasing to trade; and/or
- 7.1.3 fails to make payment as due, suspends payment and/or notifies any of its creditors that it is unable to meet debts or that it is about to suspend payment of its debts; and/or
- 7.1.4 convenes calls or holds a meeting of creditors; and/or
- 7.1.5 being an individual trader becomes bankrupt or makes any composition or scheme of arrangement with his creditors; and/or
- 7.1.6 being a body corporate convenes calls or holds any meeting for the purpose of going into liquidation other than for the purpose of reconstruction, or amalgamation by the making of an order, or the passing of a resolution for winding up,

then Gleadell shall have the right without prejudice to any other rights and remedies available to cancel and/or suspend or to refuse to accept any further deliveries and/or to terminate the contract at any time after becoming aware of any of the circumstances listed in conditions 7.1.1 to 7.1.6 above providing that when exercising any of the above rights Gleadell informs the Customer in writing of its intention to exercise such right or rights within 28 days after becoming aware of the relevant occurrence.

- 7.2 Whenever any of the rights set out in this condition 7 are exercised by Gleadell then Gleadell will not be liable to pay any compensation to the Customer in respect of such exercise.

8. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- 8.1.1 the Customer shall immediately pay to Gleadell any outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted Gleadell shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 8.1.2 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
- 8.1.3 conditions which expressly or by implication survive termination shall continue in full force and effect.

9. FORCE MAJEURE

- 9.1 For the purposes of the Contract, **Force Majeure Event** means an event beyond the reasonable control of Gleadell including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Gleadell or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or

subcontractors.

- 9.2 Gleadell shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Contract as a result of a Force Majeure Event.
- 9.3 If the Force Majeure Event prevents Gleadell from providing any of the Services for more than six weeks, the Customer shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to Gleadell.

10. DISPUTE RESOLUTION

- 10.1 All disputes arising out of the Contract shall be referred to arbitration in accordance with the Arbitration Rules of the Agricultural Industries Confederation as are in force at the date of the Contract (**Arbitration Rules**).
- 10.2 Where arbitration has been claimed by either party in accordance with the Arbitration Rules and, subject to condition 10.3, a claim exists by either party on the manufacturer or producer of the goods in dispute, the arbitration process may be stayed to enable Court proceedings to be entered into between either party and the manufacturer and/or producer of the goods. In these circumstances, any time limit contained within the Arbitration Rules will be extended by the number of days which the court action has taken.
- 10.3 Arbitration proceedings must be commenced within 28 consecutive days of the performance of the Services.
- 10.4 These Conditions are governed by English law and in respect of all disputes arising (save those which are to be referred to arbitration in accordance with the provision of this condition 10) the parties agree to submit to the exclusive jurisdiction of the Courts of England.

11. GENERAL

11.1 Assignment and other dealings.

- 11.1.1 Gleadell 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.
- 11.1.2 The Customer shall not, without the prior written consent of Gleadell, 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.

11.2 Notices.

- 11.2.1 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 (if it is a company) or its principal place of business (in any other case) 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 working day delivery service, commercial courier, fax or email.
- 11.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in condition 11.2.1; 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 email, one Business Day after transmission.
- 11.2.3 The provisions of this condition shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

11.3.1 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 condition shall not affect the validity and enforceability of the rest of the Contract.

11.3.2 If any provision or part-provision of the Contract 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.

11.4 **Waiver.** A waiver of any right under the Contract 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 Contract 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.

11.5 **No partnership or agency.** Nothing in the Contract 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.

11.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

11.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Gleadell.

11.8 **Governing law.** The Contract, 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.