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Model agreement for responsible contract farming

with commentary





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A. Introduction

Contract farming has existed for decades for many agricultural commodities in most countries. Contract farming involves an agreement between the producer and the buyer on terms and conditions for the production and marketing of farm products, usually including the price to be paid, quantity and quality demanded, delivery dates, and sometimes detailed information on inputs and production methods.

The more recent growth of contract farming is largely linked to transformations in food and agriculture systems, with increasingly integrated global supply chains. Contract farming has gained prominence in the last few years as an alternative business model to large-scale farmland investments (or “land grabs”) that have proven so controversial.

Global principles and guidelines for contract farming

A number of important global principles and guidelines now exist to help governments, agribusinesses, farmers, and civil society organisations improve the governance of agriculture and food systems (Smaller, 2014b). These include the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries (VGGT) of the Committee on World Food Security (CFS), the CFS Principles for Responsible Investment in Agriculture and Food Systems (CFS-RAI), the OECD-FAO Guidance for Responsible Agricultural Supply Chains, and the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming (the Legal Guide).

The UNIDROIT/FAO/IFAD Legal Guide on Contract Farming

The model is aligned with and draws on the Legal Guide, and offers example language to operationalise the principles elaborated in the Guide. The model provides simplified model provisions that can be used and customised by the parties, and which must be adapted to the specific context and legal system. Governments and development agencies interested in promoting contract farming can also use the model. The model provides a concise commentary for each provision, but for a more

detailed discussion, users should refer to the Legal Guide, which describes common contract farming terms, discusses the legal issues and problems that commonly arise, and illustrates how these can be addressed in different legal systems.

The model agreement for responsible contract farming

The Model Agreement for Responsible Contract Farming is a simple and practical legal tool to support the implementation of global principles and guidelines and make responsible investment a reality. It is designed to address some of the inequalities in contract farming that disadvantage producers; to help create more equitable and sustainable business relationships as well as a transparent business environment for contract farming schemes; and to ensure the producer is paid a fair price for their goods in a timely manner. It can help create strong incentives on both sides to respect the terms of the agreement and build trust between the parties.

The model agreement does not create a one-size-fits-all blueprint; it must be adapted to the realities of the specific commodity, local context and domestic legal system, and supported by each party's independent legal advice. The model agreement provides generic provisions that are common to most agricultural production contracts and can be adapted. An adaptable word version of the model agreement is available at bit.ly/templategeneric. To illustrate how the agreement can be adapted for a specific product, two commodity-specific templates have been prepared, one for tomatoes and the other for coffee, available at bit.ly/templatetomatoes and bit.ly/templatecoffee.

This model is for a production agreement between the agricultural producer (the seller, typically an individual producer or a producer organisation) and the buyer (or contractor, typically an agribusiness company engaged in processing or marketing activities).¹ The model is not adapted to livestock production contracts where a farmer raises livestock on behalf of its owner. This type of arrangement is closer in nature to a services agreement rather than a production contract, and requires a number of specific provisions covering issues such as livestock health, veterinary fees, management of manure, and feed quality that are not included in the model.

Risks and benefits of contract farming

There are a number of benefits and risks to contract farming for the producer and the buyer. The key benefits for the producer are increasing income through long-term and stable access to more remote and lucrative markets and a transparent pricing mechanism, as well as access to new technologies, improved inputs, technical assistance and credit facilities. Importantly for the producer, contract farming can allow them to obtain these benefits while not having to give up control or possession of their land. The key benefits for the buyer are controlling commercial risks by agreeing on a price or mechanism for determining the price in advance, and controlling production risks by securing a stable supply of agricultural produce in the required quantity and quality, and often produced using a specified method. Access to land is also an important motivation for the buyer: through contract farming the buyer can indirectly access land that is not available for purchase or lease for integrated production business models.

The key risks for the producer arise principally from the power imbalance between them and the buyer. This power imbalance often results in an unequal allocation of the risks and unfair, or non-transparent, pricing mechanisms and inspection processes. Furthermore, the producer is often tied to using expensive inputs or taking loans required by the buyer and can take on unsustainable levels of

¹ The terms "buyer" and "contractor" are synonymous in the context of contract farming. In this model agreement, the term buyer is used to throughout.

debt. Working conditions may also be inferior to those in formal employment. Importantly, there is a significant gender bias in who can participate in contract farming: the majority of beneficiaries are men, who are more likely to hold the title to land (UNCTAD and World Bank, 2014; UNIDROIT/FAO/IFAD, 2015).

There also are important risks for the buyer. The greatest risk for the buyer is that the producer will sell the produce to another buyer, a practice known as side-selling, or not comply with the agreed quality or quantity of produce or delivery schedule. The producer may also fail to repay the buyer for credit or inputs provided once the produce has been sold to another party.



B. Preparing for negotiations

The legal framework

An agreement between the producer and the buyer is signed within the context of the applicable private law principles and rules and the broader regulatory environment. The widely recognised principles underpinning contractual relationships are cooperation, good faith, reasonableness, consistency, transparency, full disclosure of information, and the preference for giving effect to the spirit and intention of the contract where possible. Parties should bear these in mind when entering contractual negotiations, and may wish to include a provision in the contract reaffirming their joint commitment to these principles.

Most agricultural production contracts establish purely domestic legal relationships (even when the buyer is part of a multinational group), typically governed by the producer's domestic legal system. Even if the agreement does not expressly refer to the domestic law, parties should be aware that a domestic law can override or nullify a contractual provision and so should take care to inform themselves of relevant laws which apply to their situation.

Countries increasingly recognize the special nature of agreements between a producer and buyer, and enact specific legislation aimed at increasing certainty and transparency in these agreements, protecting the producer from unfair practices and encouraging stable relationships. This may be implemented through special provisions within general contract or agriculture laws, commodity-specific laws, or through standalone legislation. Special legislation may require the provision of certain pre-contractual information to minimise information asymmetries. It may also proscribe certain business practices which are deemed unfair and provide for dispute resolution. Where the buyer is a public entity, the specific rules for public procurement will apply. Where no special legislation exists, by default, general contract law will apply.

In addition to the specific or general contract law and the terms of the contract itself, other laws and regulations will influence the formation and implementation of the contract, particularly regarding technical specifications. This could include laws and regulations pertaining to food safety and quality,

plant health, pesticides, fertilizers, seeds, access to agricultural finance, competition and consumer protection, human rights, labour, and natural resources governance. It is strongly advised that the model provisions provided here are adapted to the specific domestic legal environment.

The stages in the contracting process

The process of forming the agreement is important because it shapes the obligations that will bind the parties over the duration of the agreement. It involves negotiations and the preliminary exchange of information, offer and acceptance, as well as drafting.

There are several practical steps the parties can take to enhance the fairness and transparency of the contract, ensure its terms are well understood by both parties, and ultimately increase the likelihood that it will be respected by both parties. For instance, where the offer is made by the buyer (as is usually the case), the buyer should provide the offer in writing and give the producer adequate time to consider it and seek independent advice about its terms. When the producer is constrained by a low education level, poor literacy or a language barrier, third-party facilitators may play a key role in the negotiation process to ensure the contractual terms are explained and drafted in a language accessible to the producer. Such third-party facilitators may be producer organisations who represent their members and negotiate predetermined terms and conditions on their behalf. In some cases, a public entity may have authority to bring the parties together and oversee the contract negotiation and conclusion.

The form and content of the contract

Agricultural production contracts may take many forms. To account for the diversity of products, stages of the supply chain, legal systems and social norms, several important components are present in most written agreements to enhance transparency and convey complete information. These include:

1. **The parties**, including names and addresses of the signatories.
2. **The purpose**, providing the reason for the contract, including the name of the specific goods to be produced.
3. **The production site**, where the size and location of the farming area should be specified in as much detail as possible. Where land is leased or rented, evidence of land-use agreements should be provided and the owner's approval may be required.
4. **Obligations of the parties**, which describe what and how much the farmer is expected to produce and how it should be delivered, and what support the buyer is required to provide, including, where applicable, inputs and/or technical assistance.
5. **Input provision**, including a specific description of the inputs to be provided by the buyer, when and where they will be delivered, and how repayment by the producer will be calculated and made.
6. **Price and payment**, explaining the price to be paid or how it will be calculated, as well as when, where, and how payment will take place.
7. **Third parties**, describing the relationships with others who may contribute to the contract's success. This may include financial institutions such as banks or quality assurance certification bodies.
8. **Excuses**, defining acceptable justifications for failing to comply with the contract, such as force majeure.
9. **Remedies**, including a description of ways in which one party can be compensated for the failure of the other to meet its obligations.

10. **Duration, renewal and termination**, providing details on the duration of the contract, arrangements for its extension or renewal, and reasons for termination.
11. **Dispute resolution**, introducing ways of addressing potential disagreements between the buyer and producer.
12. **Signatures**, provided by the parties, ideally in the presence of witnesses.

Definitions

The Parties may wish to include a set of definitions based on an agreed interpretation of central terms to enhance the clarity, completeness and fairness of the agreement. These should focus on potentially controversial issues and terms, and be based as much as possible on internationally recognised standards. The Legal Guide is a helpful reference.



C. The model agreement

This section provides model provisions and options for an agricultural production contract. The model provisions are accompanied by commentary that explains the importance of each provision and the different options. Words or letters in [square brackets] indicate content that will be specific to each contract and should be inserted by the parties during negotiation, or provide for different options, such as how to set the price for the goods. Optional provisions are indicated, these may only be relevant for certain types of agricultural production contracts, such as training and technical assistance on the application of inputs. Please note: an easily adaptable word version of the model provisions without the embedded commentary can be downloaded at bit.ly/templategeneric.

1. The parties

The contract should start by identifying the parties, including the name and contact information of the producer and the buyer. The contract typically involves a producer and a buyer in a bilateral arrangement, and the model contract focuses only on this two-party relationship, although in some cases other entities may participate in the arrangement, such as supply chain participants, creating a multi-party contract.

Two criteria are generally relevant to characterise an agricultural producer: the nature of the produced goods and the activity undertaken. The producer carries out production on an independent and professional basis, whether individually or as part of a group (crucially, employees fall outside of this definition). The buyer is the party commissioning the production from the producer and providing a certain degree of guidance, for example, inputs (such as seed, fertiliser), services (such as planting advice), and finance and control over the production process (such as requiring a particular planting and harvest schedule). The buyer is normally an entity that manufactures or processes the produce and then sells it to the final consumer or onward along the supply chain.

PRACTICAL STEPS OF FAIR CONTRACTING

The contractual terms should ideally reinforce the practical steps of fair contracting: giving the producer time to review the contract, seek advice, and properly understand their obligations. In other commercial legal relationships characterised by an imbalance of power (such as franchisor/franchisee), the domestic law may require the weaker party to confirm that these steps were taken before the contract can be signed. The model provisions below insert these confirmations into a contractual term, ultimately protecting the interests of both parties by helping to ensure the terms of the deal are well understood, as a lack of understanding of contractual obligations is a common source of non-compliance (UNIDROIT, 2014).

PROTECTING THE RIGHTS OF WOMEN FARMERS

It is preferable that the person performing most of the work under the contract, often a woman, be included as a party to the contract (de Schutter, 2011), as this will ensure she has legal standing to enforce the terms of the contract in her own right and may have greater control over the proceeds of the contract. It may be difficult, however, to avoid the culturally embedded practice of the male household head signing the contract regardless of who is the primary labourer. The contract may also disrupt the food production activities of women householders on the production site. Buyers should be aware of these issues and take steps to avoid exacerbating gender inequalities (UNIDROIT/FAO/IFAD, 2017), including by taking active steps to identify women householders who should be incorporated as a party to the contract. This may include directly questioning the male farmer or, where feasible, visiting the production site. Where a woman householder is being incorporated as a party to the contract, responsible buyers will take extra care to ensure that she has had the opportunity to read (or have read to her) and understand the terms of the contract, and independently agree to the obligations imposed on her, including their implications for any domestic food production activities.

MODEL PROVISION

1 THE PARTIES

- 1.1 This contract is made at [insert place] on [insert date] between [insert name and address of Buyer, organisation or business registration number, if available], the “Buyer,” and [insert name/s and address of Producer or producer organisation, identity or organisation number, if available], the “Producer.”
- 1.2 The Producer warrants that:
 - (i) No less than 10 days before the signature of this Agreement, the Producer received a [copy of this Agreement]/[a written offer incorporating the terms of this Agreement].
 - (ii) The Producer has read this Agreement or had this Agreement read to him/her by an independent third party and had a reasonable opportunity to understand this Agreement before signature.
 - (iii) The Producer has had the opportunity to seek the advice of [an independent legal advisor]/[producer organisation] on this Agreement before signature.

2. The purpose

The contract should outline succinctly the reasons underlying the contract, usually with reference to the commodity to be produced by the producer and purchased by the buyer. The parties may wish in this section to include a provision in the contract reaffirming their joint commitment to the principles of good faith, reasonableness, and cooperation.

MODEL PROVISION

2 THE PURPOSE

- 2.1 The Buyer agrees to buy [insert commodity] produced by the Producer, and the Producer agrees to produce and sell to the Buyer [insert commodity], “the Goods,” in accordance with the provisions set out below.
- 2.2 *[Optional: The Parties affirm their intention to faithfully execute their respective obligations under this Agreement in accordance with the principles of good faith, reasonableness, efficacy, loyalty, and fair dealing, and will at all times endeavour to preserve the spirit and intent of this Agreement by behaving consistently and cooperatively, and providing necessary information in a timely and transparent manner.]*

3. The production site

The contract should identify the land under production with respect to the particular contract, specifying, for example, the number of hectares and geographic location. Accurate definition of the size and location of land may be particularly important in determining the content and scope of parties’ obligations in contracts where the Buyer is purchasing the whole production from a designated plot, or where the delivery and acceptance will take place on the production site. In some cases, such as contracts pertaining to the collection and delivery of wild products which are to be collected or foraged, or where the quantity of goods is not determined with reference to the land under production, it will not be necessary to include this provision to specify the production site.

The producer should be a legitimate tenure right holder of the land, whether formal or informal, to account for customary land tenure systems, in accordance with the VGGT.

MODEL PROVISION

3 THE PRODUCTION SITE

- 3.1 This Agreement relates to Goods produced on [specify size of land area in hectares], located at [insert GPS co-ordinates/nearest town or village/other applicable way to specify], *[optional: and held under title [insert title deed/land registration number/certificate/other proof of title or use right]].*

4. The product

Product quantity

The agreement defines the amount of produce the buyer will purchase from the producer. This amount may be expressed in a number of ways, including the whole production in a specified production site or a percentage thereof, a specified quantity, a minimum quantity, a quota based on allocation among producers, a variable quantity, or a quantity to be determined later based on field tests.

EXCLUSIVE OUTPUT ARRANGEMENT

Many agricultural production contracts require the producer to agree to sell only to a particular buyer—an exclusive output arrangement. This may be because of the financial cost of providing inputs to the producer or because of proprietary seeds used in the production process. The prohibition against selling to another party may be explicitly stated in the contract. The same effect can be achieved by linking the producer's obligation to reserve all its production for the buyer to the buyer's undertaking to buy the whole production.

If the intention is for the buyer to buy the whole production, the meaning of whole production should be clearly specified. That is, if it is all goods produced on a specific production site, then the size and location of the site needs to be stipulated. If it is all goods produced from inputs, such as seeds or fertiliser, provided by the buyer, then this needs to be explicitly stated.

Given concerns about side-selling, an exclusivity clause will protect the interests of the buyer when the producer is to deliver their whole production. Limited exceptions to exclusivity can be allowed for small quantities that the producer may keep for household consumption or sale on the local market.

NON-EXCLUSIVE OUTPUT ARRANGEMENT

If the buyer wants to purchase less than the producer's whole production, the parties can agree to purchase a specified quantity, a minimum quantity, a quota based on allocation among producers, a variable quantity, or a quantity to be determined based on field tests. The downside of these types of arrangements for the producer is that they must bear the risk of under-production. The upside for the producer is that they can sell any excess production to third party buyers, if such buyers exist.

In such arrangements, there are no restrictions on third party sales once the producer has met its commitment to the buyer. The producer may grant the buyer the right of first refusal, and if so it is important to stipulate when this right must be exercised to prevent the goods deteriorating while the buyer is deciding whether to purchase the excess production.

In some cases, the buyer may wish for the quantity to be determined after the contract is concluded, for example, depending on the orders the buyer receives. These arrangements are risky for the producer because decisions to sow or plant must be made well before harvest, when the buyer would assess market demand and decide what quantity to purchase. To manage this risk, and protect the interests of the producer, the contract must include a clear basis for determining the quantity to be purchased and the time when such a determination is to be made.

4 THE PRODUCT

PRODUCT QUANTITY

[Option 1: Exclusive output arrangement]

- 4.1 The Producer agrees to deliver exclusively to the Buyer all the Goods produced [on the Production Site]/[using the Buyer's Inputs]. The Producer shall not enter into any other marketing arrangements with any other buyer for the Goods produced [on the Production Site]/[using the Buyer's Inputs], for the duration of this Agreement, unless expressly authorised by the Buyer in writing. The Producer shall not deliver Goods to the Buyer which were not produced on the Production Site *[optional: and using the Buyer's Inputs.]*
- 4.2 The Producer may retain [insert unit of measurement] of Goods for household consumption per [season]/[delivery].

[Option 2: Non-exclusive output arrangement]

- 4.3 The Producer agrees to deliver to the Buyer [insert unit of measurement, range, or percentage] of the Goods produced [on the Production Site]/[using the Buyer's Inputs].
- 4.4 The Producer may sell Goods produced in excess of the amount stipulated in Article 4.3 to a third party. *[Optional: The Buyer retains the right of first refusal to purchase the excess Goods. If the Buyer does not notify, in writing, the Producer of its intention to purchase the excess Goods within [insert number of days] of the Producer giving notice to the Buyer of the availability of excess Goods for purchase, the Producer may sell the excess Goods to a third party.]*

Product quality

The contract defines the quality that the delivered goods should meet, which can be based on the physical characteristics of the goods and the method by which they should be produced. Product quality requirements include physical features (colour, size, and shape), contents (for example, seedless) and grade (for example, grade A milk). Production method requirements refer to the agreed practices and processes for producing the goods, which may be intended to achieve a certain product quality, for example using virus-resistant seeds or refraining from using chemicals, or to achieve other objectives, such as not using child labour, or complying with environmental standards.

PRODUCT QUALITY REQUIREMENTS

The product quality requirements may be set out in the contract with a general formula, with detailed specifications contained in a schedule, or incorporated by reference to standards set by an external source, such as Global Good Agricultural Practices (GlobalGAP). In practice, many contracts refer to “good quality,” “highest quality,” “acceptable quality,” or conformity to “international quality requirements,” but the vagueness in these terms can give undue discretion to the buyer to reject the goods and be a source of dispute and so should be avoided.

PRODUCT QUALITY

4.5 The Producer agrees to supply Goods which comply with the [quality standards as defined in Annex [W]]/[insert relevant quality assurance scheme].

[Annex [W]]: Product-based quality requirements [insert one or more as required by the Buyer]:

- (i) physical characteristics
- (ii) contents
- (iii) grade
- (iv) standard of fitness for a purpose
- (v) geographical denomination
- (vi) relevant national or international standards or grades
- (vii) other requirements]

Production methods

Production method requirements include instructions on the processes, practices, inputs, and technology to be used in the production of the goods, such as land preparation, harvesting, and post-production handling. The producer must follow these instructions and the buyer (or third parties) may provide specific inputs and technical assistance to help the producer during the production cycle. For example, the buyer may provide seeds or fertilizers to use and/or advise on irrigation techniques to be followed or a recommended planting and harvest schedule.

Production method requirements that support the shift to more sustainable production systems benefit both buyers and producers; for instance the production methods could require a reduction of the use of chemical fertilizers and pesticides, improvements in production methods, and greater reliance on on-farm fertility and pest management (de Schutter, 2011).

Production method requirements may be included in production standards, as is the case for organic production, fair trade or GlobalGAP. These standards are frequently accompanied by third party certification. Alternatively, the buyer may require the producer to apply the buyer's own process-based standards or refer to national regulations (such as environmental protection practices).

Production method requirements should be clear and explicit and, if possible, with reference to an attached document. They should also be accompanied by inspection, monitoring, and compliance verification rights for the buyer or an agreed third party.

CERTIFICATION REQUIREMENTS

The buyer may require the producer to have its production method certified by a third party. If this is the case, the below model provision can be used.

PRODUCTION METHODS

4.6 The Producer shall comply with:

- (i) [the production methods prescribed in Annex [X]]/[insert required production methods]; or
- (ii) [the standards prescribed in [Annex [X]]/[insert required fair trade, organic or other certification scheme]/[insert industry Code of Conduct]/[insert relevant social, labour, environmental or cultural standards]/[insert reference to the relevant national laws]; and/or
- (iii) [the post-production methods prescribed in Annex [X]]

INSPECTION OF THE PRODUCTION SITE

4.7 Subject to [insert period of time] advanced notice, the Buyer, its representative/s *[Optional: or the Independent Entity]* may visit the Production Site for the purpose of providing advice, supervising any production process and/or verifying the Producer's compliance with the prescribed production methods, provided that the visit shall be carried out during normal business hours and shall not unduly burden or inconvenience the Producer.

4.8 Inspection visits shall be carried out [insert frequency, e.g. weekly, monthly]/[in accordance with the inspection schedule at Annex [X]].

[Optional: Certification]

4.9 *The Producer shall, [at the sole expense of the Buyer]/[at the sole expense of the Producer]/[at the joint expense of the Parties whereby the Producer pays X% and the Buyer pays X%], obtain a certificate from [insert relevant certification body], to certify that the Goods [and/or] the methods used by the Producer to produce the Goods are in conformity with the standards prescribed in 4.5 and 4.6.*

5. Input provision

This section describes the inputs provided by the buyer or the producer, when and where they will be delivered, and how repayment by the producer will be calculated and made. Inputs may be physical (such as seeds and fertiliser) or intangible (such as technical assistance and training). The buyer may have better access to quality inputs at lower prices, and so the prospect of higher productivity and returns means that the buyer often takes on the obligation to provide certain inputs. There is a risk in this case that the producer is tied into a cost structure and set of inputs from the buyer that locks them into unsustainable debt levels and dependency. The inputs may turn out to be defective or be provided late, thereby endangering the production process and the producer's ability to meet its obligations.

The contract should clearly allocate responsibilities between the parties for providing and applying inputs, noting that the producer usually provides the land, physical facilities, water, energy and labour. The producer may also be required to purchase inputs specified by the buyer. When the producer uses the buyer's inputs, the producer may be required to receive delivery of the inputs, ensure proper storage of the inputs, and use inputs in accordance with the buyer's instructions, training or technical assistance, which may be free or factored into the price of inputs.

The producer may also be required to pay for inputs—often payment is deducted from the amount due to the producer after delivery of the goods. The relationship between the input cost and payment for the

production should be clearly set out in the contract. Some jurisdictions regulate input prices to prevent unfair pricing or violation of competition laws, and the contract cannot alter the regulated price.

The protection of intellectual property rights is governed by various national and international laws. The buyer may want to impose on the producer obligations or conditions to protect the buyer's intellectual property rights, such as patented inputs or other rights over seed or plant varieties. The producer should carefully consider, and ideally seek independent legal advice on, any intellectual property obligations. Such obligations can have implications for the producer's production practices, for instance the ability of the producer to save and reuse seed, and breach can have serious consequences for the producer.

Finally, in order to promote environmentally sustainable agricultural production, contract farming agreements should ideally encourage a reduction in the use of chemical fertilizers and pesticides, greater efficiency in their application, and increased use of biological inputs. Technical advice and training should also focus on promoting sustainable farming practices.

It should be noted that the model provision below is most appropriate for tangible inputs such as seeds and fertilizers; however, the term "inputs" also encompasses intangible forms of support to production provided by a buyer, such as services and financing. Such specialised inputs would likely involve specific obligations which could be developed by the parties with the support of legal advice and/or reference to the Legal Guide.

MODEL PROVISION

5 INPUTS

PRODUCER'S INPUTS

- 5.1 The Producer shall provide [insert Producer Inputs, including e.g. land, physical facilities, water, energy and labour].
- 5.2 *[Optional: The Producer shall purchase the following Inputs, as designated by the Buyer from time to time: [insert Inputs to be purchased by the Producer, including specific brand names and vendors etc.]]*
- 5.3 The Producer's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws]. The Producer shall use the Inputs in accordance with the instructions as provided by the Buyer in Annex [Y] of this Agreement.

BUYER'S INPUTS

- 5.4 The Buyer shall provide the [insert Buyer Inputs, including e.g. seeds, fertilizers, training].
- 5.5 The Buyer's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws];
- 5.6 The Producer shall use the Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement.

- 5.7 Upon receipt of the Buyer's Inputs, the Producer shall verify the Inputs and notify the Buyer in writing of any apparent defects.
- 5.8 The Producer shall be responsible for any loss or damage of the Buyer's Inputs from the time of delivery and acceptance until their inclusion in the production process.
- 5.9 The Buyer shall be responsible for any loss or damage to the Goods, the Production Site, the Producer's property and/or personnel caused by any Inputs that are not of reasonable quality, fit for their intended purpose, and/or free of defects, including latent defects [and compliant with any specific quality standards set out in Annex [Y] of this Agreement].
- 5.10 *[Optional: The Producer shall return any unused Inputs to the Buyer at the end of the production cycle, as agreed by the Parties.]*
- 5.11 *[Optional: The Buyer shall provide training or technical assistance necessary for the use of Inputs in accordance with the instructions.]*
- 5.12 *[Optional: insert provisions regarding the Buyer's intellectual property in respect of Inputs, if applicable].*

PAYMENT FOR INPUTS

[Option 1: Free of charge]

- 5.13 The Buyer shall provide and deliver the Inputs free of charge, including providing associated training or technical assistance needed for the application and use of those Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].

[Option 2: Payment]

- 5.14 The Producer shall pay for the Inputs provided by the Buyer according to the Input Price provided for in the pricing scheme in Annex [Y]. The Input Price in Annex [Y] shall be updated [insert a time period]/[upon agreement of the Parties]/[based on custom and trade usage]/[based on past practices between the Parties]/[based on appropriate market prices]. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].
- 5.15 The Input Price, delivery and cost of training or technical assistance shall be deducted from the price payable by the Buyer for the Goods on delivery.

[Option 3: Shared payment]

- 5.16 The total cost of all Inputs, including delivery, training, and technical assistance, shall be provided for in Annex [Y]. The Buyer and Producer shall share the cost of the Inputs, as follows: [insert details of share of costs]. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].
- 5.17 The Producer's share of the costs shall be deducted from the Price payable by the Buyer for the Goods on delivery.

6. Delivery and acceptance

The provisions relating to delivery or collection of the goods are fundamental to the contract and may also be the source of important legal effects such as the passage of title or transfer of risks. The risks of product loss or damage rest upon the party who retains title to the product. Often, title (and therefore risk) does not pass until the buyer has physically received and paid for the goods. By having contractual terms which pass title from producers to buyers earlier in the delivery process, the producer's risks can be reduced at a relatively low cost to the buyer, enhancing producer sustainability (Potts, 2007).

Taking delivery, whether at the buyer's premises, the production site, or another collection point, entails: taking possession, inspecting the goods, and accepting or rejecting the goods. The contract should contain provisions on these different aspects of delivery, clearly specifying the time and place of delivery and inspection, and any packaging requirements.

TIME OF DELIVERY

The time for delivery may be a provisional date, an ultimate date, a time, a series of dates, or a period. If it is not possible to set a definite date in advance due to uncertainty about weather and harvest times, the contract should provide a method for setting the future delivery date.

PLACE OF DELIVERY

The contract should indicate the place of delivery (e.g. farm gate, processing factory, a marketplace) and specify which party must transport, load, and unload the goods, and who pays for this. The contract may also stipulate transport specifications to prevent contamination or preserve the cold chain, as well as who provides and pays for packaging and storage conditions if the produce needs to be stored before delivery.

INSPECTION AND ACCEPTANCE

Acceptance of the goods is critical because the buyer may lose rights to exercise remedies for apparent defects if it does not make appropriate reservations following inspection on delivery. The producer should allow inspection upon delivery, and the buyer should inspect the goods promptly, especially for goods that deteriorate rapidly.

Quality and quantity are assessed during the inspection and acceptance process. It is important that the producer not be exposed to arbitrary decisions of the buyer in examining and grading the goods. It is recommended to allow the producer the right to be present or represented during inspection, and that an independent third party be involved in the inspection process, with the identity of this party having been agreed by the parties and defined in the agreement.

INSURANCE-RELATED OBLIGATIONS

Some contracts contain provisions requiring parties to maintain insurance for facilities, crops, or liability insurance for injuries or property damage to third parties. If insurance is required, it is important that the contract specifies who maintains the insurance, the type of insurance, the minimum features of the insurance, and any policy limits. In some circumstances, it may be preferable for the buyer to purchase insurance for the producer. Special care should be taken to verify that the insurance clause conforms to the requirements of the domestic insurance law.

6 DELIVERY AND ACCEPTANCE

DELIVERY

- 6.1 [The Producer shall deliver the Goods to the delivery point at the Buyer's facility at [insert location of delivery point]]/[The Buyer shall collect the Goods from the delivery point at [location of delivery point(s)]], according to the delivery schedule, and in accordance with the technical requirements for delivery, set out in in Annex [Z].
- 6.2 The costs of transportation of the Goods to the delivery point shall be paid by the [Buyer]/[Producer]. The Buyer shall bear all costs associated with the Goods after delivery to the delivery point.
- 6.3 The [Buyer]/[Producer] shall be responsible for loading the Goods. The [Buyer]/[Producer] shall be responsible for unloading the Goods.
- 6.4 The Party which is the owner of the delivery point shall maintain it in a reasonable state of cleanliness and hygiene.
- 6.5 The Goods shall be packaged in [insert commodity-specific packaging requirements] by the Producer before delivery. *[Optional: The packaging will be supplied to the Producer by the Buyer, and will remain the property of the Buyer. The value [specify value] of any bags or containers supplied by the Buyer that are not returned to the Buyer, or are returned in a damaged state, shall be deducted from the payment for the Goods. The Producer shall not use the containers for any purpose other than the delivery of the Goods to the Buyer].* The cost of packaging will be borne by [the Producer]/[the Buyer]/[both the Buyer and the Producer whereby the Buyer pays X% and the Producer pays X%]. For the purposes of weighing the Goods, the weight of the containers, [insert weight], shall be deducted.

INSPECTION OF THE GOODS

- 6.6 The Buyer shall weigh, sort, and inspect the Goods at its own cost, no more than [insert number of hours] after delivery at the delivery point *[Optional: or at another location for weighing and sorting]* and in accordance with [insert recognised method of inspection and classification applicable to the local context and in as much detail as possible].
- 6.7 Where the Buyer fails to inspect the Goods within [insert number of hours] of delivery, all risks and costs of spoilage of the Goods occurring after delivery shall be borne by the Buyer.
- 6.8 The Producer *[optional: or the Independent Entity]* may be present during the inspection of the Goods. The Buyer *[optional: or the Independent Entity]* shall issue a written document evidencing the specification of the Goods as inspected. Where the Producer objects to the specification of the Goods as determined by the Buyer, the Parties shall seek a resolution in accordance with Article 11 below (Dispute Resolution).
- 6.9 The costs associated with the inspection shall be covered by the Buyer.

ACCEPTANCE OF GOODS AFTER INSPECTION

6.10 The Parties' agreement on the quantity and quality of the received Goods constitutes acceptance of the Goods.

6.11 The Buyer shall provide the Producer with a written receipt specifying the time, date, quantity and quality of Goods. The written receipt shall be duly signed by the Producer *[optional: and Buyer]*.

[Optional: Insurance]

6.12 *[The Producer agrees to purchase, at the Producer's own cost]/[The Buyer agrees to purchase for the Producer, [at the Buyer's own cost]/[at the Producer's cost]], an insurance policy with the following coverage:*

- (i) *Crop insurance, if available, against disease, natural disasters such as floods, droughts or hail, and against loss of revenue as a result of a decline in commodity prices.*
- (ii) *Liability insurance, specifying the minimum limits of guarantee.*
- (iii) *Building, machinery and equipment insurance against natural disasters such as floods, droughts or hail, fire and theft.*
- (iv) *[Other insurance].*

7. Pricing mechanisms

Provisions on price are among the most important terms in the contract and often the most contentious. The choice of pricing mechanism is influenced by whether the crop is for the local or export market, the seasonal nature of production and the degree of competition in the marketing system (Eaton & Shepherd, 2001). The price should cover all production costs and offer a sufficient profit margin for the producer. Producers tend to feel excluded from discussions and decisions related to the price-setting mechanism (UNCTAD and World Bank, 2014). Therefore, a simple and transparent pricing formula is crucial to ensuring confidence and goodwill, but more importantly to ensure an equitable outcome for both parties. The contract must clearly state the price to be paid or how it will be calculated. Any formulas used to calculate price should be clear enough for the producer to understand and be able to estimate the expected payment. Producers should have access to market prices for internationally traded commodities to reduce the risks associated with the asymmetry of information between the parties (de Schutter, 2011).

There are three main ways that prices can be calculated:

1. Fixed prices – Prices are set at the beginning of each season and are usually related to grade specifications, quality characteristics, or private standards, such as Fairtrade. This provides both the buyer and the producer with a degree of certainty for budgeting and marketing purposes, and mitigates the impact of price fluctuations. It also means, however, that the buyer does not benefit from market price reductions, and the producer does not benefit from market price increases.

The recommended pricing mechanism is one with a fixed component calculated to meet production costs and to ensure a living wage, but which can be adjusted to incorporate an increase in market prices. This type of mechanism is recommended by former Special Rapporteur on the right to food, Olivier de Schutter (de Schutter, 2011), and examples of it can be found in the FAO's contract

farming database.² Another example is Fairtrade International's Fairtrade Minimum Prices and Premiums for all certified products, which is published on their website. When the market price is higher than the Fairtrade minimum price, they recommend that producers receive either the higher market price or the price negotiated in the contract.

2. Variable pricing mechanisms – Prices change depending on global and local market conditions, as well as different performance measurements. Price scales and other adjustments may be included as incentives or penalties for the producer. The price paid is based on a formula, which takes into account agreed processing and other costs as well as global, national, or local market prices. This pricing mechanism is often used for internationally traded commodities. Variable price mechanisms reduce the incentive for side-selling in case of market price increases, but increase volatility for both parties. It is harder for both parties to budget, and leaves them at the mercy of market fluctuations. When prices fall, it can affect producers' ability to cover costs, potentially requiring them to take on unsustainable levels of debt. Where the market price at the time of delivery is the price term, it is important to specify which market price is used.

3. Split pricing – An agreed base price is paid at the time of purchase or at the end of the harvesting season. The final price is then calculated—and the payment adjustment made—once the buyer has on-sold the commodity at the prevailing market price (Eaton & Shepherd, 2001).

Prices may also be set through government regulation and, if so, should be referenced in the contract. Consignment prices, which are calculated after the buyer has sold the goods, should be avoided. This form of pricing is rarely found in well-structured contract farming projects due to the unfair allocation of risk transferred to the producer, as payment is made dependent on the post-delivery actions of the buyer who may be unable to sell the goods (Eaton & Shepherd, 2001).

For further discussion on pricing mechanisms, please see the Legal Guide.

PREMIUMS AND DEDUCTIONS

Parties may want to retain the option to adjust the price in accordance with the actual quantity and quality of the product after production or at the time of delivery. Some agreements therefore include provisions for the buyer to pay a premium based on variations in quantity and quality, or deduct a penalty based on variations in quality. This is useful because it provides incentives and penalties for the producer depending on their performance.

TIME AND METHOD OF PAYMENT

The contract should specify the time, method and currency of payment for goods and inputs. Payment terms vary widely depending on the contract type and the parties' private arrangements.

² For instance this Grenadian farm produce contract, which stipulates: "To pay the Producer the current market price for the produce or the minimum guaranteed prices, whichever is the greater" (<http://goo.gl/2tiMXZ>)

7 PRICING MECHANISM

[Option 1a: Fixed price based on reference price]

- 7.1 The Buyer agrees to pay the Producer [insert \$X/kilo] of Goods delivered, based on the [insert reference price, for example, Fairtrade Minimum Prices and Premiums].

[Option 1b: Fixed price based on grading schedule]

- 7.2 The Buyer agrees to pay the Producer for Goods delivered according to the following grading schedule:

GRADE	PRICE
A	X
B	Y
C	Z

- 7.3 The Buyer agrees to pay the Producer the current market price per [insert market index] for the Goods, or the fixed price as agreed in the preceding article, whichever is the greater.

[Option 2: Market price]

- 7.4 The Buyer agrees to pay the Producer the market price [insert market index] at the time of delivery.

[Optional: Premiums and deductions]

- 7.5 *[The Buyer shall pay a premium of [insert currency amount or formula] for every [insert unit] of Goods delivered above the agreed quantity up to [insert quantity limit].*
- 7.6 *The Buyer shall pay a premium of [insert currency amount or formula] for every [insert unit] of Goods delivered above the agreed quality up to [insert quality limit].*
- 7.7 *The Buyer shall deduct [insert currency amount or formula] from the final amount for every [insert unit] of Goods delivered below the agreed quality.*
- 7.8 *The Buyer shall comply with [insert standards or certification requirements] to evaluate changes in quantity and quality of Goods produced.]*

TIME AND METHOD OF PAYMENT

- 7.9 The Buyer shall make the payment within [insert period of time] from acceptance of the Goods. Payment shall be made [via bank transfer to the Producer's nominated account]/[in cash]/[in specify currency]. Upon receipt of the full purchase amount, the Producer shall provide the Buyer with a written receipt of payment(s) made specifying the amount, time and delivery date of accepted Goods.

8. Force majeure

Force majeure is a legal excuse for non-performance and refers to supervening events that are unpredictable, inevitable, and beyond parties' reasonable control, and that objectively prevent one or both from performing their obligations under the agreement. Force majeure events include natural, political, and social events as well as major changes in government policy regarding agriculture. Force majeure has become the most commonly used term for these types of events in agricultural production contracts, and may form part of the general principles of the governing law; however, parties may also agree to a specific provision on force majeure rather than rely upon these general principles. This force majeure provision sets out the process to be followed in case of a force majeure event and includes an optional clause allowing the parties to suspend the obligations which are prevented from being performed by the force majeure event, where it is feasible to do so in all the circumstances.

MODEL PROVISION

8 FORCE MAJEURE

- 8.1 For the purposes of this Agreement, Force Majeure Event means any event that arises after the contract has been signed, is unpredictable, inevitable, beyond the Parties' reasonable control, and that objectively prevents one or both of them from performing their obligations, including, but not limited to, wars, insurrections, civil disturbances, interruption of transportation or communication services, major change to agricultural law or policy in the country of production, blockades, embargoes, strikes and other labour conflicts, riots, epidemics, earthquakes, storms, droughts, fires, floods, or other exceptionally adverse weather conditions, explosions, lightning, or acts of terrorism.
- 8.2 As soon as reasonably practicable after the start of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement, and any relevant evidence of the Force Majeure Event.
- 8.3 The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 8.4 Provided it has complied with Articles 8.2 and 8.3 above, if a Party is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 8.5 Where it is feasible in all the circumstances, those obligations may be suspended by the agreement of the Parties during the continuance of such Force Majeure Event, and no damages or penalties for delay in performance shall be due.
- 8.6 If an obligation is suspended by reason of Force Majeure for more than [insert number of days] from the Affected Party giving notice of the Force Majeure Event, or if suspension is not feasible in all the circumstances, the other Party may terminate the contract and all outstanding payments relating to the Inputs supplied for the production shall [fall due]/[be forgiven], and the Parties shall enter into good faith negotiations to enter into a new Agreement for the supply of the Goods.

9. Remedies

In the case of breach of contract (or unexcused non-performance), the contract should specify remedies. A remedy is a legal measure provided by the contract or by law to protect the interest of an aggrieved party against the consequences of another party's non-performance. Contractual remedies should be designed to encourage communication and cooperation between the parties, so that the remedies applied in case of a breach are mutually agreed rather than unilaterally imposed by one party. For breaches which are not considered 'fundamental,' the breaching party should be given the opportunity to try and cure the breach, failing which the non-breaching party should be permitted to take their own corrective action in response to the breach.

Where both remedies fail to cure the breach, or the breach is so serious that it deprives one party of the benefits it expected to gain under the contract (i.e. it is 'fundamental'), the non-breaching party may terminate the agreement. This cascading approach is designed to leave termination as the last and most drastic option reserved for serious breaches that cannot otherwise be resolved. Regardless of the choice of remedy exercised, the non-breaching party will still be entitled to seek damages from the court to compensate them for losses caused by the breach.

MODEL PROVISION

9 REMEDIES

- 9.1 The Parties shall cooperate in the application of the remedies provided for in this Article, and shall apply those remedies in a manner that is commensurate to the breach in question, with a view to preserving, as much as possible, the Parties' ongoing relationship and achieving the purpose of this Agreement as outlined in Article 2 above.
- 9.2 Unless a Force Majeure Event takes place, a party failing to comply with any obligation in this Agreement (the Breaching Party) is in breach of this Agreement.

MITIGATION AND RIGHT TO CURE BREACH

- 9.3 Where a party (the Aggrieved Party) becomes aware that the Breaching Party is or will be in breach of its obligations, it shall immediately notify the Breaching Party, and shall take all reasonable measures to minimize and mitigate the effects of the breach whenever possible, and any reasonable expenses or difference in value incurred by the Aggrieved Party should be compensated by the Breaching Party.
- 9.4 Where the Breaching Party has been notified or otherwise becomes aware that it is or will be in breach of its obligations, it shall immediately take all reasonable measures at its own cost to prevent or cure the breach within [insert number of days], including by:
- (i) replacing any non-conforming Goods with Goods which conform with the requirements of this Agreement;
 - (ii) replacing any non-conforming Inputs with Inputs which conform with the requirements of this Agreement;
 - (iii) modifying or correcting any non-conforming Production Method or other process required by this Agreement, including in accordance with any specific instructions issued by the Aggrieved Party or any relevant certification body; and/or
 - (iv) completing any partial delivery, or taking delivery as the case may be, within the time frame agreed between the Parties.

RIGHT TO TAKE CORRECTIVE ACTION

- 9.5 Where the Breaching Party does not or cannot cure the breach in accordance with Article 9.4 above, the Aggrieved Party may take corrective action in accordance with the articles below.

CORRECTIVE ACTION – NON-CONFORMING GOODS OR INPUTS

- 9.6 If the Breaching Party does not or cannot cure the breach, and the breach does not arise from the Aggrieved Party's failure to comply with its obligations in this Agreement, the Parties may by agreement adjust the purchase price to reflect the fair value of the Goods or Inputs supplied.
- 9.7 If the Parties cannot agree on an adjusted price for the non-conforming Goods or Inputs, the Aggrieved Party may reject them and withhold payment.
- 9.8 Where the non-conforming Goods or Inputs are hazardous, dangerous, or unsafe, the Aggrieved Party may require the Breaching Party to safely dispose of those Goods or Inputs at the expense of the Breaching Party.

CORRECTIVE ACTION – FAILURE TO SUPPLY GOODS OR INPUTS

- 9.9 Where the Breaching Party fails to supply the Aggrieved Party with the agreed Goods or Inputs, the Aggrieved Party may obtain replacement goods or inputs of a similar description and quality in the cheapest market available, and may claim from the Breaching Party the difference between the price under this Agreement and the price that the Aggrieved Party paid for the replacement Goods or Inputs.

CORRECTIVE ACTION – FAILURE TO TAKE DELIVERY

- 9.10 Where the Buyer fails to take delivery of conforming Goods within [specify period of time] from the delivery time in Annex [Z], the Producer may sell the Goods to a third party and may claim from the Buyer the difference between the price under this Agreement and the price that the Producer received for the Goods.

TERMINATION UPON FAILURE TO CURE OR CORRECT

- 9.11 Where the Breaching Party has committed a breach of this Agreement that is not a Fundamental Breach, and an attempt to cure by the Breaching Party, or corrective action by the Aggrieved Party, has failed to cure, prevent or correct the breach, the Aggrieved Party may, with 14 days notice in writing to the Breaching Party, terminate this Agreement.

TERMINATION UPON FUNDAMENTAL BREACH

- 9.12 Where the Breaching Party commits a Fundamental Breach of this Agreement, the Aggrieved Party may terminate the Agreement with 14 days notice in writing to the Breaching Party. The following events are deemed to be a Fundamental Breach:
- (i) The Buyer failing to take delivery of conforming Goods, or significantly delaying in taking delivery, on at least [insert number] occasions and by at least [insert period of time] on each occasion;
 - (ii) The Buyer failing to pay for conforming Goods for more than [insert number of days] past the payment date;

- (iii) *[Optional – use if there is an exclusive output arrangement: The Producer entering into any marketing arrangement with any other buyer for the Goods produced [on the Production Site] or [using the Buyer’s Inputs]].*
- (iv) The Producer failing to deliver conforming Goods in accordance with the delivery Schedule in Annex [Z], or significantly delaying in making delivery on at least [X] occasions and by at least [specify period of time] on each occasion;

DAMAGES

9.13 Without limiting any other rights or remedies available under this Agreement, the Aggrieved Party may claim damages for any costs, losses, or expenses which are attributable to the Breaching Party’s breach of this Agreement in accordance with the applicable laws.

10. Duration, renewal and termination

Parties need to know at the outset the duration of the contract because agricultural activities are by their nature continuous or periodic for one or more of the parties. This is closely related to the need for certainty about how the contractual relationship may be terminated before its expiration date or renewed when it comes to an end. One of the conditions of Fairtrade International, for example, is that buyers offer long-term contracts at fixed prices, to provide a level of certainty and security to producers.

There should be an express provision for the duration of the contract which takes into account production cycles and financial obligations. The optimal duration depends in part on the crop. Contracts for short-term crops such as vegetables and field crops are usually concluded on an annual or seasonal basis, whereas crops such as tea, coffee, sugar cane, and cocoa may require contracts of a longer duration. Longer-term contracts can also help to cement a long-term relationship through trust and confidence, especially when the producer is required to make long-term investments.

There should be an express provision on whether and how the contract may be renewed. There are three common forms: renewal by express agreement; tacit or automatic renewal; and, exceptionally, renewal at the option of one party. The parties may also wish to include a provision allowing the buyer to transfer its obligations under the agreement to an affiliated company or another third party. This can afford flexibility, for instance if the buyer gets into financial difficulties and cannot perform its obligations like supplying inputs. The buyer does not need the consent of the producer to transfer its rights—most importantly the right to be supplied with the produce—to another party.

The contract should also express the notice period for termination and the grounds for termination. The most important grounds for termination are: (a) termination following breach, (b) termination by mutual consent, and (c) termination by one of the parties at their convenience. In the case of (c), the notice period required should reflect the length of the contract; longer contracts require longer notice periods. These grounds are in addition to the expiration of the contract upon completion of the contractual term or completion of contractual obligations.

10 DURATION, RENEWAL AND TERMINATION

DURATION

10.1 This contract is valid for a period of [insert number] [days/months/years/production seasons] from [start date] to [end date].

TERMINATION

10.2 This Agreement may be terminated:

- (i) following a breach of the Agreement in accordance with article 8;
- (ii) by mutual agreement of the Parties;
- (iii) by either Party by giving [insert number of months] written notice to the other Party.

RENEWAL

[Option 1: Automatic renewal]

10.3 In case neither Party expresses the intention to terminate, the contract is automatically extended for the following [year]/[production season].

[Option 2: Renewal by agreement]

10.4 Upon expiration of this Agreement in accordance with Article 10.1, the Parties may agree in writing to its renewal.

PERIODIC REVIEW

10.5 The Parties shall meet on a [insert frequency, depending on the nature of the commodity and length of contract] basis to review the implementation of this Agreement. Where a Party's ability to fulfil its obligations under this Agreement has fundamentally altered due to a significant change of circumstances, that Party may request a renegotiation of one or more of the terms of this Agreement, and the other Party shall consider that request in good faith.

[Optional – Assignment]

10.6 *[The Buyer may assign all or part of its obligations under this Agreement to an affiliate or a third party, subject to prior notification to the Producer, and provided that the affiliate or third party acknowledges and agrees to assume all of the obligations of the Buyer under this Agreement and has the capacity to perform those obligations.]*

11. Dispute resolution

In drafting the contract, parties should consider the method for dealing with disputes that they are not able to solve directly and would thus require third party intervention. While it is preferable to settle disputes amicably, this may not always be possible, so an explicit provision on dispute resolution is important. Non-judicial procedures generally offer more appropriate solutions than bringing claims before a court in the context of agricultural production contracts. Non-judicial procedures, especially locally available options, can help address cost and timeliness issues in pursuing claims. The producer may have financial and logistical difficulties raising claims against a buyer, whereas for the buyer the cost effectiveness of pursuing relatively small losses in disputes with smallholders may be preclusive.

Due to impartiality concerns related to the use of arbitration, some jurisdictions prevent or limit its use in agricultural production contracts. Producers should carefully consider agreeing to submit to arbitration in an agreement. For further guidance on this matter, see the Legal Guide.

MODEL PROVISION

11 DISPUTE RESOLUTION

11.1 The Parties to this Agreement shall provide notice to each other in the event of any disputes arising out of this Agreement and shall seek to amicably resolve within [insert time period], through negotiation and cooperation, any such dispute concerning the application or interpretation of the Agreement.

11.2 If the Parties to this Agreement are unable or unwilling to resolve the dispute amicably, the Parties shall seek local and independent mediation of the issues within [insert time period] and under the rules of the [insert mediation institution or association.]

11.3 Where the dispute has not been resolved in accordance with the preceding paragraphs, any Party may submit the dispute to the [courts of the [insert State]]/[insert name of arbitration centre] for resolution. [The rules of the [insert name of arbitration centre] shall determine the manner in which the dispute is resolved].

11.4 This Agreement and any dispute arising out of it is governed by the laws of [insert State].

12. Signature

The parties should ensure the contract is signed in the presence of a witness. It is preferable that the producer signs the contract themselves, but where the producer is represented, for instance by a producer organisation or other facilitator, the words ‘for and on behalf of’ should be used, and the signor should state their position that establishes their authority to sign on the producer’s behalf. Similarly, where the buyer is a corporate entity, the words ‘for and on behalf of’ should be used, and the signor should state their position to show their authority to bind the company. In the case of the producer, more than one person can sign, for instance a married couple who are both working to produce the goods required.

12 SIGNATURE

Signed [by]/[for and on behalf of] the
Producer: [insert name]
*[Insert if signing on behalf of the producer -
Position:]*

Signature:

Date:

Signed [by]/[for and on behalf of] the
Producer: [insert name]
*[Insert if signing on behalf of the producer -
Position:]*

Signature:

Date:

Done at: [insert location] in the presence of:

Name:

Signature:

Address:

Occupation:

Date:

13. Annexes to support the implementation of the contract

Any additional information required to support the implementation of the clauses included in the contract should be inserted here as annexes. Examples of such annexes to be developed could include:

Annex W: Product-based quality requirements

Annex X: Production-based quality requirements (including inspection schedule)

Annex Y: Inputs (quality standards, instructions for use, delivery schedule, pricing)

Annex Z: Delivery (technical requirements for delivery, schedule of delivery)

Annexes

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Annex 2. Model contract: Tomatoes (adaptable Word version available at bit.ly/templatetomatoes)	40
Annex 3. Model contract: Coffee (adaptable Word version available at bit.ly/templatecoffee)	51



Annex 1. Model contract: Generic

1 THE PARTIES

- 1.1 This contract is made at [insert place] on [insert date] between [insert name and address of Buyer, organisation or business registration number, if available], the “Buyer,” and [insert name/s and address of Producer or producer organisation, identity or organisation number, if available], the “Producer.”
- 1.2 The Producer warrants that:
- (iv) no less than 10 days before the signature of this Agreement, the Producer received a [copy of this Agreement]/[a written offer incorporating the terms of this Agreement].
 - (v) The Producer has read this Agreement or had this Agreement read to him/her by an independent third party and had a reasonable opportunity to understand this Agreement before signature.
 - (vi) The Producer has had the opportunity to seek the advice of [an independent legal advisor]/[a producer organisation] on this Agreement before signature.

2 THE PURPOSE

- 2.1 The Buyer agrees to buy [insert commodity] produced by the Producer, and the Producer agrees to produce and sell to the Buyer [insert commodity], “the Goods”, in accordance with the articles set out below.
- 2.2 *[Optional: The Parties affirm their intention to faithfully execute their respective obligations under this Agreement in accordance with the principles of good faith, reasonableness, efficacy, loyalty and fair dealing, and will at all times endeavour to preserve the spirit and intent of this Agreement by behaving consistently and cooperatively, and providing necessary information in a timely and transparent manner.]*

3 PRODUCTION SITE

- 3.1 This Agreement relates to Goods produced on [insert size of land area in hectares], located at [insert GPS co-ordinates/nearest town or village/other applicable way to specify], *[optional: and held under title [insert title deed/land registration number/ certificate/ other proof of title or use right].*

4 THE PRODUCT

PRODUCT QUANTITY

[Option 1: Exclusive output arrangement]

- 4.1 The Producer agrees to deliver exclusively to the Buyer all the Goods produced [on the Production Site]/[using the Buyer's Inputs]. The Producer shall not enter into any other marketing arrangements with any other buyer for the Goods produced [on the Production Site]/[using the Buyer's Inputs], for the duration of this Agreement, unless expressly authorised by the Buyer in writing. The Producer shall not deliver Goods to the Buyer which were not produced on the Production Site *[optional: and using the Buyer's Inputs.]*
- 4.2 The Producer may retain [insert unit of measurement] of Goods for household consumption per [season]/[delivery].

[Option 2: Non-exclusive output arrangement]

- 4.3 The Producer agrees to deliver to the Buyer [insert unit of measurement, range, or percentage] of the Goods produced [on the Production Site]/[using the Buyer's Inputs].
- 4.4 The Producer may sell Goods produced in excess of the amount stipulated in Article 4.3 to a third party. *[Optional: The Buyer retains the right of first refusal to purchase the excess Goods. If the Buyer does not notify, in writing, the Producer of its intention to purchase the excess Goods within [insert number of days] of the Producer giving notice to the Buyer of the availability of excess Goods for purchase, the Producer may sell the excess Goods to a third party.]*

PRODUCT QUALITY

- 4.5 The Producer agrees to supply Goods which comply with the [quality standards as defined in Annex [W]]/[insert relevant quality assurance scheme].

[Annex [W]]: Product-based quality requirements [insert one or more as required by the Buyer]:

- (i) physical characteristics
- (ii) contents
- (iii) grade
- (iv) standard of fitness for a purpose
- (v) geographical denomination
- (vi) relevant national or international standards or grades
- (vii) other requirements]

PRODUCTION METHODS

- 4.6 The Producer shall comply with:
- (i) [the production methods prescribed in Annex [X]]/[insert required production methods]; or

- (ii) [the standards prescribed in [Annex [X]]/[insert required fair trade, organic or other certification scheme]/[insert industry Code of Conduct]/[insert relevant social, labour, environmental or cultural standards]/[insert reference to the relevant national laws]; and/or
- (iii) [the post-production methods prescribed in Annex [X]]

INSPECTION OF THE PRODUCTION SITE

- 4.7 Subject to [insert period of time] advanced notice, the Buyer, its representative/s *[Optional: or the Independent Entity]* may visit the Production Site for the purpose of providing advice, supervising any production process and/or verifying the Producer's compliance with the prescribed production methods, provided that the visit shall be carried out during normal business hours and shall not unduly burden or inconvenience the Producer.
- 4.8 Inspection visits shall be carried out [insert frequency, e.g. weekly, monthly]/[in accordance with the inspection schedule at Annex [X]].

[Optional: Certification]

- 4.9 *The Producer shall, [at the sole expense of the Buyer]/[at the sole expense of the Producer]/[at the joint expense of the Parties whereby the Producer pays X% and the Buyer pays X%], obtain a certificate from [insert relevant certification body], to certify that the Goods [and/or] the methods used by the Producer to produce the Goods are in conformity with the standards prescribed in 4.5 and 4.6.*

5 INPUTS

PRODUCER'S INPUTS

- 5.1 The Producer shall provide [insert Producer Inputs, including e.g. land, physical facilities, water, energy and labour].
- 5.2 *[Optional: The Producer shall purchase the following Inputs, as designated by the Buyer from time to time: [insert Inputs to be purchased by the Producer, including specific brand names and vendors etc.]]*
- 5.3 The Producer's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws]. The Producer shall use the Inputs in accordance with the instructions as provided by the Buyer in Annex [Y] of this Agreement.

BUYER'S INPUTS

- 5.4 The Buyer shall provide the [insert Buyer Inputs, including e.g. seeds, fertilizers, training].
- 5.5 The Buyer's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws];
- 5.6 The Producer shall use the Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement.
- 5.7 Upon receipt of the Buyer's Inputs, the Producer shall verify the Inputs and notify the Buyer in writing of any apparent defects.
- 5.8 The Producer shall be responsible for any loss or damage of the Buyer's Inputs from the time of delivery and acceptance until their inclusion in the production process.

- 5.9 The Buyer shall be responsible for any loss or damage to the Goods, the Production Site, the Producer's property and/or personnel caused by any Inputs that are not of reasonable quality, fit for their intended purpose, and/or free of defects, including latent defects [and compliant with any specific quality standards set out in Annex [Y] of this Agreement].
- 5.10 *[Optional: The Producer shall return any unused Inputs to the Buyer at the end of the production cycle, as agreed by the Parties.]*
- 5.11 *[Optional: The Buyer shall provide training or technical assistance necessary for the use of Inputs in accordance with the instructions.]*
- 5.12 *[Optional: insert provisions regarding the Buyer's intellectual property in respect of Inputs, if applicable].*

PAYMENT FOR INPUTS

[Option 1: Free of charge]

- 5.13 The Buyer shall provide and deliver the Inputs free of charge, including providing associated training or technical assistance needed for the application and use of those Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].

[Option 2: Payment]

- 5.14 The Producer shall pay for the Inputs provided by the Buyer according to the Input Price provided for in the pricing scheme in Annex [Y]. The Input Price in Annex [Y] shall be updated [insert a time period]/[upon agreement of the Parties]/[based on custom and trade usage]/[based on past practices between the Parties]/[based on appropriate market prices]. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].
- 5.15 The Input Price, delivery and cost of training or technical assistance shall be deducted from the price payable by the Buyer for the Goods on delivery.

[Option 3: Shared payment]

- 5.16 The total cost of all Inputs, including delivery, training, and technical assistance, shall be provided for in Annex [Y]. The Buyer and Producer shall share the cost of the Inputs, as follows: [insert details of share of costs]. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].
- 5.17 The Producer's share of the costs shall be deducted from the Price payable by the Buyer for the Goods on delivery.

6 DELIVERY AND ACCEPTANCE

DELIVERY

- 6.1 [The Producer shall deliver the Goods to the delivery point at the Buyer's facility at [insert location of delivery point]]/[The Buyer shall collect the Goods from the delivery point at [location of delivery point(s)]], according to the delivery schedule, and in accordance with the technical requirements for delivery, set out in Annex [Z].
- 6.2 The costs of transportation of the Goods to the delivery point shall be paid by the [Buyer]/[Producer]. The Buyer shall bear all costs associated with the Goods after delivery to the delivery point.

- 6.3 The [Buyer]/[Producer] shall be responsible for loading the Goods. The [Buyer]/[Producer] shall be responsible for unloading the Goods.
- 6.4 The Party which is the owner of the delivery point shall maintain it in a reasonable state of cleanliness and hygiene.
- 6.5 The Goods shall be packaged in [insert commodity-specific packaging requirements] by the Producer before delivery. *[Optional: The packaging will be supplied to the Producer by the Buyer, and will remain the property of the Buyer. The value [insert value] of any bags or containers supplied by the Buyer that are not returned to the Buyer, or are returned in a damaged state, shall be deducted from the payment for the Goods. The Producer shall not use the containers for any purpose other than the delivery of the Goods to the Buyer].* The cost of packaging will be borne by [the Producer]/[the Buyer]/[both the Buyer and the Producer whereby the Buyer pays X% and the Producer pays X%]. For the purposes of weighing the Goods, the weight of the containers, [insert weight], shall be deducted.

INSPECTION OF THE GOODS

- 6.6 The Buyer shall weigh, sort, and inspect the Goods at its own cost, no more than [insert number of hours] after delivery at the delivery point *[Optional: or at another location for weighing and sorting]* and in accordance with [insert recognised method of inspection and classification applicable to the local context and in as much detail as possible].
- 6.7 Where the Buyer fails to inspect the Goods within [insert number of hours] of delivery, all risks and costs of spoilage of the Goods occurring after delivery shall be borne by the Buyer.
- 6.8 The Producer *[optional: or the Independent Entity]* may be present during the inspection of the Goods. The Buyer *[optional: or the Independent Entity]* shall issue a written document evidencing the specification of the Goods as inspected. Where the Producer objects to the specification of the Goods as determined by the Buyer, the Parties shall seek a resolution in accordance with Article 11 below (Dispute Resolution).
- 6.9 The costs associated with the inspection shall be covered by the Buyer.

ACCEPTANCE OF GOODS AFTER INSPECTION

- 6.10 The Parties' agreement on the quantity and quality of the received Goods constitutes acceptance of the Goods.
- 6.11 The Buyer shall provide the Producer with a written receipt specifying the time, date, quantity and quality of Goods. The written receipt shall be duly signed by the Producer *[optional: and Buyer]*.

[Optional: Insurance]

- 6.12 *[The Producer agrees to purchase, at the Producer's own cost]/[The Buyer agrees to purchase for the Producer, [at the Buyer's own cost]/[at the Producer's cost]], an insurance policy with the following coverage:*
- (i) *Crop insurance, if available, against disease, natural disasters such as floods, droughts or hail, and against loss of revenue as a result of a decline in commodity prices.*
 - (ii) *Liability insurance, specifying the minimum limits of guarantee.*
 - (iii) *Building, machinery and equipment insurance against natural disasters such as floods, droughts or hail, fire and theft.*
 - (iv) *[Other insurance].*

7 PRICING MECHANISM

[Option 1a: Fixed price based on reference price]

- 7.1 The Buyer agrees to pay the Producer [insert \$X/kilo] of Goods delivered, based on the [insert reference price, for example, Fairtrade Minimum Prices and Premiums].

[Option 1b: Fixed price based on grading schedule]

- 7.2 The Buyer agrees to pay the Producer for Goods delivered according to the following grading schedule:

GRADE	PRICE
A	X
B	Y
C	Z

- 7.3 The Buyer agrees to pay the Producer the current market price per [insert market index] for the Goods, or the fixed price as agreed in the preceding article, whichever is the greater.

[Option 2: Market price]

- 7.4 The Buyer agrees to pay the Producer the market price [insert market index] at the time of delivery.

[Optional: Premiums and deductions]

- 7.5 *[The Buyer shall pay a premium of [insert currency amount or formula] for every [insert unit] of Goods delivered above the agreed quantity up to [insert quantity limit].*
- 7.6 *The Buyer shall pay a premium of [insert currency amount or formula] for every [insert unit] of Goods delivered above the agreed quality up to [insert quality limit].*
- 7.7 *The Buyer shall deduct [insert currency amount or formula] from the final amount for every [insert unit] of Goods delivered below the agreed quality.*
- 7.8 *The Buyer shall comply with [insert standards or certification requirements] to evaluate changes in quantity and quality of Goods produced.]*

TIME AND METHOD OF PAYMENT

- 7.9 The Buyer shall make the payment within [insert period of time] from acceptance of the Goods. Payment shall be made [via bank transfer to the Producer's nominated account]/[in cash]/[in specify currency]. Upon receipt of the full purchase amount, the Producer shall provide the Buyer with a written receipt of payment(s) made specifying the amount, time and delivery date of accepted Goods.

8 FORCE MAJEURE

- 8.1 For the purposes of this Agreement, Force Majeure Event means any event that arises after the contract has been signed, is unpredictable, inevitable, beyond the Parties' reasonable control and that objectively prevents one or both of them from performing their obligations, including, but not

limited to, wars, insurrections, civil disturbances, interruption of transportation or communication services, major change to agricultural law or policy in the country of production, blockades, embargoes, strikes and other labour conflicts, riots, epidemics, earthquakes, storms, droughts, fires, floods, or other exceptionally adverse weather conditions, explosions, lightning, or acts of terrorism.

- 8.2 As soon as reasonably practicable after the start of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement, and any relevant evidence of the Force Majeure Event.
- 8.3 The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 8.4 Provided it has complied with Articles 8.2 and 8.3 above, if a Party is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 8.5 Where it is feasible in all the circumstances, those obligations may be suspended by the agreement of the Parties during the continuance of such Force Majeure Event, and no damages or penalties for delay in performance shall be due.
- 8.6 If an obligation is suspended by reason of Force Majeure for more than [insert number of days] from the Affected Party giving notice of the Force Majeure Event, or if suspension is not feasible in all the circumstances, the other Party may terminate the contract and all outstanding payments relating to the Inputs supplied for the production shall [fall due]/[be forgiven], and the Parties shall enter into good faith negotiations to enter into a new Agreement for the supply of the Goods.

9 REMEDIES

- 9.1 The Parties shall cooperate in the application of the remedies provided for in this Article, and shall apply those remedies in a manner that is commensurate to the breach in question, with a view to preserving, as much as possible, the Parties' ongoing relationship and achieving the purpose of this Agreement as outlined in Article 2 above.
- 9.2 Unless a Force Majeure Event takes place, a party failing to comply with any obligation in this Agreement (the Breaching Party) is in breach of this Agreement.

MITIGATION AND RIGHT TO CURE BREACH

- 9.3 Where a party (the Aggrieved Party) becomes aware that the Breaching Party is or will be in breach of its obligations, it shall immediately notify the Breaching Party, and shall take all reasonable measures to minimize and mitigate the effects of the breach whenever possible. Any reasonable expenses or difference in value incurred by the Aggrieved Party should be compensated by the Breaching Party.
- 9.4 Where the Breaching Party has been notified or otherwise becomes aware that it is or will be in breach of its obligations, it shall immediately take all reasonable measures at its own cost to prevent or cure the breach within [insert number of days], including by:
 - (i) replacing any non-conforming Goods with Goods which conform with the requirements of this Agreement;

- (ii) replacing any non-conforming Inputs with Inputs which conform with the requirements of this Agreement;
- (iii) modifying or correcting any non-conforming Production Method or other process required by this Agreement, including in accordance with any specific instructions issued by the Aggrieved Party or any relevant certification body; and/or
- (iv) completing any partial delivery, or taking delivery as the case may be, within the time frame agreed between the Parties.

RIGHT TO TAKE CORRECTIVE ACTION

9.5 Where the Breaching Party does not or cannot cure the breach in accordance with Article 9.4 above, the Aggrieved Party may take corrective action in accordance with the articles below.

CORRECTIVE ACTION: NON-CONFORMING GOODS OR INPUTS

- 9.6 If the Breaching Party does not or cannot cure the breach, and the breach does not arise from the Aggrieved Party's failure to comply with its obligations in this Agreement, the Parties may, by agreement, adjust the purchase price to reflect the fair value of the Goods or Inputs supplied.
- 9.7 If the Parties cannot agree on an adjusted price for the non-conforming Goods or Inputs, the Aggrieved Party may reject them and withhold payment.
- 9.8 Where the non-conforming Goods or Inputs are hazardous, dangerous or unsafe, the Aggrieved Party may require the Breaching Party to safely dispose of those Goods or Inputs at the expense of the Breaching Party.

CORRECTIVE ACTION: FAILURE TO SUPPLY GOODS OR INPUTS

- 9.9 Where the Breaching Party fails to supply the Aggrieved Party with the agreed Goods or Inputs, the Aggrieved Party may obtain replacement Goods or Inputs of a similar description and quality in the cheapest market available, and may claim from the Breaching Party the difference between the price under this Agreement and the price that the Aggrieved Party paid for the replacement Goods or Inputs.

CORRECTIVE ACTION: FAILURE TO TAKE DELIVERY

- 9.10 Where the Buyer fails to take delivery of conforming Goods within [insert period of time] from the delivery time in Annex [Z], the Producer may sell the Goods to a third party and may claim from the Buyer the difference between the price under this Agreement and the price that the Producer received for the Goods.

TERMINATION UPON FAILURE TO CURE OR CORRECT

- 9.11 Where the Breaching Party has committed a breach of this Agreement that is not a Fundamental Breach, and an attempt to cure by the Breaching Party, or corrective action by the Aggrieved Party, has failed to cure, prevent, or correct the breach, the Aggrieved Party may, with 14 days notice in writing to the Breaching Party, terminate this Agreement.

TERMINATION UPON FUNDAMENTAL BREACH

- 9.12 Where the Breaching Party commits a Fundamental Breach of this Agreement, the Aggrieved Party may terminate the Agreement with 14 days notice in writing to the Breaching Party. The following events are deemed to be a Fundamental Breach:

- (i) The Buyer failing to take delivery of conforming Goods, or significantly delaying in taking delivery, on at least [insert number] occasions and by at least [insert period of time] on each occasion;
- (ii) The Buyer failing to pay for conforming Goods for more than [insert number of days] past the payment date;
- (iii) *[Optional – use if there is an exclusive output arrangement: The Producer entering into any marketing arrangement with any other buyer for the Goods produced [on the Production Site] or [using the Buyer’s Inputs]].*
- (iv) The Producer failing to deliver conforming Goods in accordance with the delivery Schedule in Annex [Z], or significantly delaying in making delivery on at least [insert number] occasions and by at least [insert period of time] on each occasion.

DAMAGES

9.13 Without limiting any other rights or remedies available under this Agreement, the Aggrieved Party may claim damages for any costs, losses or expenses which are attributable to the Breaching Party’s breach of this Agreement in accordance with the applicable laws.

10 DURATION, RENEWAL AND TERMINATION

DURATION

10.1 This contract is valid [for a period of [insert number of days/months/years/production seasons]/[from the date of signature to [insert end date]].

TERMINATION

10.2 This Agreement may be terminated:

- (i) following a breach of the Agreement in accordance with Article 9.11 or 9.12;
- (ii) by mutual agreement of the Parties;
- (iii) by either Party by giving [insert number of months] written notice to the other Party.

RENEWAL

[Option 1: Automatic renewal]

10.3 In case neither Party expresses the intention to terminate, the contract is automatically extended for the following [year]/[production season].

[Option 2: Renewal by agreement]

10.4 Upon expiration of this Agreement in accordance with Article 10.1, the Parties may agree in writing to its renewal.

PERIODIC REVIEW

10.5 The Parties shall meet on a [insert frequency, depending on the nature of the commodity and length of contract] basis to review the implementation of this Agreement. Where a Party’s ability to fulfil its obligations under this Agreement has fundamentally altered due to a significant change of circumstances, that Party may request a renegotiation of one or more of the terms of this Agreement, and the other Party shall consider that request in good faith.

[Optional – Assignment]

10.6 *[The Buyer may assign all or part of its obligations under this Agreement to an affiliate or a third party, subject to prior notification to the Producer, and provided that the affiliate or third party acknowledges and agrees to assume all of the obligations of the Buyer under this Agreement and has the capacity to perform those obligations.]*

11 DISPUTE RESOLUTION

11.1 The Parties to this Agreement shall provide notice to each other in the event of any disputes arising out of this Agreement and shall seek to amicably resolve within [insert time period], through negotiation and cooperation, any such dispute concerning the application or interpretation of the Agreement.

11.2 If the Parties to this Agreement are unable or unwilling to resolve the dispute amicably, the Parties shall seek local and independent mediation of the issues within [insert time period] and under the rules of the [insert mediation institution or association.]

11.3 Where the dispute has not been resolved in accordance with the preceding paragraphs, any Party may submit the dispute to the [courts of the [insert State]]/[insert name of arbitration centre] for resolution. [The rules of the [insert name of arbitration centre] shall determine the manner in which the dispute is resolved].

11.4 This Agreement and any dispute arising out of it is governed by the laws of [insert State].

12 SIGNATURE

Signed [by]/[for and on behalf of] the
Producer: [insert name]

*[Insert if signing on behalf of the producer -
Position:]*

Signature:

Date:

Signed [by]/[for and on behalf of] the
Producer: [insert name]

*[Insert if signing on behalf of the producer -
Position:]*

Signature:

Date:

Done at: [insert location] in the presence of:

Name:

Signature:

Address:

Occupation:

Date:

ANNEXES TO SUPPORT THE IMPLEMENTATION OF THE CONTRACT

Any additional information required to support the implementation of the clauses included in the contract should be inserted here as annexes. Examples of such annexes to be developed could include:

Annex W: Product-based quality requirements

Annex X: Production-based quality requirements (including inspection schedule)

Annex Y: Inputs (quality standards, instructions for use, delivery schedule, pricing)

Annex Z: Delivery (technical requirements for delivery, schedule of delivery)



Annex 2. Model contract: Tomatoes

1 THE PARTIES

- 1.1 This contract is made at [insert place] on [insert date] between [insert name and address of Buyer, organisation or business registration number, if available], the “Buyer,” and [insert name/s and address of Producer or producer organisation, identity or organisation number, if available], the “Producer.”
- 1.2 The Producer warrants that:
- (iv) no less than 10 days before the signature of this Agreement, the Producer received a [copy of this Agreement]/[a written offer incorporating the terms of this Agreement].
 - (v) The Producer has read this Agreement or had this Agreement read to him/her by an independent third party and had a reasonable opportunity to understand this Agreement before signature.
 - (vi) The Producer has had the opportunity to seek the advice of [an independent legal advisor]/[a producer organisation] on this Agreement before signature.

2 THE PURPOSE

- 2.1 The Buyer agrees to buy tomatoes of variety [insert specific variety name(s)] (“the Goods”) produced by the Producer, and the Producer agrees to produce and sell to the Buyer tomatoes of variety [insert specific variety name(s)], in accordance with the provisions set out below.
- 2.2 *[Optional: The Parties affirm their intention to faithfully execute their respective obligations under this Agreement in accordance with the principles of good faith, reasonableness, efficacy, loyalty and fair dealing, and will at all times endeavour to preserve the spirit and intent of this Agreement by behaving consistently and cooperatively, and providing necessary information in a timely and transparent manner.]*

3 PRODUCTION SITE

- 3.1 This Agreement relates to Goods produced on [insert size of land area in hectares], located at [insert GPS co-ordinates/nearest town or village/other applicable way to specify], *[optional: and held under title [insert title deed/land registration number/ certificate/ other proof of title or use right].*

4 THE PRODUCT

PRODUCT QUANTITY

[Option 1: Exclusive output arrangement]

- 4.1 The Producer agrees to deliver exclusively to the Buyer all the Goods produced [on the Production Site]/[using the Buyer's Inputs]. The Producer shall not enter into any other marketing arrangements with any other buyer for the Goods produced [on the Production Site]/[using the Buyer's Inputs], for the duration of this Agreement, unless expressly authorised by the Buyer in writing. The Producer shall not deliver Goods to the Buyer which were not produced on the Production Site *[optional: and using the Buyer's Inputs.]*
- 4.2 The Producer may retain [insert unit of measurement] of Goods for household consumption per [season]/[delivery].

[Option 2: Non-exclusive output arrangement]

- 4.3 The Producer agrees to deliver to the Buyer [insert unit of measurement, range, or percentage] of the Goods produced [on the Production Site]/[using the Buyer's Inputs].
- 4.4 The Producer may sell Goods produced in excess of the amount stipulated in Article 4.3 to a third party. *[Optional: The Buyer retains the right of first refusal to purchase the excess Goods. If the Buyer does not notify, in writing, the Producer of its intention to purchase the excess Goods within [insert number of days] of the Producer giving notice to the Buyer of the availability of excess Goods for purchase, the Producer may sell the excess Goods to a third party.]*

PRODUCT QUALITY

- 4.5 The Producer agrees to supply Goods which comply with the [quality standards as defined in Annex [W]]/[insert relevant quality assurance scheme]/[insert national, regional or international standard].

[Annex [W]]: Product-based quality requirements [insert required physical characteristics, for example, ripe, free of frostbite, unburnt-heads, and not smashed, rusty, pestilent, or half-coloured].

PRODUCTION METHODS

- 4.6 The Producer shall comply with:
- (i) [the production methods prescribed in Annex [X]]/[insert required production methods]; or
 - (ii) [the standards prescribed in [Annex [X]]/[insert required fair trade, organic or other certification scheme]/[insert industry Code of Conduct]/[insert relevant social, labour, environmental or cultural standards]/[insert reference to the relevant national laws]; and/or
 - (iii) [the post-production methods prescribed in Annex [X]]

INSPECTION OF THE PRODUCTION SITE

- 4.7 Subject to [insert period of time] advanced notice, the Buyer, its representative/s *[Optional: or the Independent Entity]* may visit the Production Site for the purpose of providing advice, supervising any production process and/or verifying the Producer's compliance with the prescribed production methods, provided that the visit shall be carried out during normal business hours and shall not unduly burden or inconvenience the Producer.
- 4.8 Inspection visits shall be carried out [insert frequency, e.g. weekly, monthly]/[in accordance with the inspection schedule at Annex [X]].

[Optional: Certification]

- 4.9 The Producer shall, *[at the sole expense of the Buyer]/[at the sole expense of the Producer]/[at the joint expense of the Parties whereby the Producer pays X% and the Buyer pays X%]*, obtain a certificate from *[insert relevant certification body]*, to certify that the Goods *[and/or]* the methods used by the Producer to produce the Goods are in conformity with the standards prescribed in 4.5 and 4.6.

CLASSIFICATION

- 4.10 The Goods, according to their quality as determined by [quality standards as defined in Annex [W]]/[relevant quality assurance scheme]/[national, regional or international standard], shall be classified in three types: Special, Standard and Usable [insert other quality types, as needed].

Tomato classification³

TYPE	TOLERANCE OF SERIOUS INJURIES OR DEFECTS (%)
Special	[insert]
Standard	[insert]
Usable	[insert]

5 INPUTS

PRODUCER'S INPUTS

- 5.1 The Producer shall provide [insert Producer Inputs, including e.g. land, physical facilities, water, energy and labour].
- 5.2 *[Optional: The Producer shall purchase the following Inputs, as designated by the Buyer from time to time: [insert Inputs to be purchased by the Producer, including specific brand names and vendors etc.]]*
- 5.3 The Producer's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws]. The Producer shall use the Inputs in accordance with the instructions as provided by the Buyer in Annex [Y] of this Agreement.

³ FAO Sample Contract for tomatoes for industrial use (Brazil) (available at www.fao.org/fileadmin/user_upload/contract_farming/samples/35_Sample_contract_2_of_tomato_for_industrial_use_in_Brazil.pdf).

BUYER'S INPUTS

- 5.4 The Buyer shall provide the [insert Buyer Inputs, including e.g. seeds, fertilizers, training].
- 5.5 The Buyer's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws];
- 5.6 The Producer shall use the Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement.
- 5.7 Upon receipt of the Buyer's Inputs, the Producer shall verify the Inputs and notify the Buyer in writing of any apparent defects.
- 5.8 The Producer shall be responsible for any loss or damage of the Buyer's Inputs from the time of delivery and acceptance until their inclusion in the production process.
- 5.9 The Buyer shall be responsible for any loss or damage to the Goods, the Production Site, the Producer's property and/or personnel caused by any Inputs that are not of reasonable quality, fit for their intended purpose, and/or free of defects, including latent defects [and compliant with any specific quality standards set out in Annex [Y] of this Agreement].
- 5.10 *[Optional: The Producer shall return any unused Inputs to the Buyer at the end of the production cycle, as agreed by the Parties.]*
- 5.11 *[Optional: The Buyer shall provide training or technical assistance necessary for the use of Inputs in accordance with the instructions.]*
- 5.12 *[Optional: insert provisions regarding the Buyer's intellectual property in respect of Inputs, if applicable].*

PAYMENT FOR INPUTS

[Option 1: Free of charge]

- 5.13 The Buyer shall provide and deliver the Inputs free of charge, including providing associated training or technical assistance needed for the application and use of those Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].

[Option 2: Payment]

- 5.14 The Producer shall pay for the Inputs provided by the Buyer according to the Input Price provided for in the pricing scheme in Annex [Y]. The Input Price in Annex [Y] shall be updated [insert a time period]/[upon agreement of the Parties]/[based on custom and trade usage]/[based on past practices between the Parties]/[based on appropriate market prices]. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].
- 5.15 The Input Price, delivery and cost of training or technical assistance shall be deducted from the price payable by the Buyer for the Goods on delivery.

[Option 3: Shared payment]

- 5.16 The total cost of all Inputs, including delivery, training, and technical assistance, shall be provided for in Annex [Y]. The Buyer and Producer shall share the cost of the Inputs, as follows: [insert details of share of costs]. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].

5.17 The Producer's share of the costs shall be deducted from the Price payable by the Buyer for the Goods on delivery.

6 DELIVERY AND ACCEPTANCE

DELIVERY

- 6.1 The Buyer shall collect the Goods from the delivery point at [location of delivery point(s)], according to the delivery schedule, and in accordance with the technical requirements for delivery, set out in Annex [Z].
- 6.2 The costs of transportation of the Goods to the delivery point shall be paid by the [Buyer]/[Producer]. The Buyer shall bear all costs associated with the Goods after delivery to the delivery point.
- 6.3 The [Buyer]/[Producer] shall be responsible for loading the Goods. The [Buyer]/[Producer] shall be responsible for unloading the Goods.
- 6.4 The Party which is the owner of the delivery point shall maintain it in a reasonable state of cleanliness and hygiene.
- 6.5 The Goods shall be prepared for collection by the Producer and packaged in plastic containers provided by the Buyer. The value [insert value] of any containers supplied by the Buyer that are not returned by the Producer, or are returned in a damaged state, shall be deducted from the payment for the Goods. The Producer shall not use the containers for any purpose other than the delivery of the Goods to the Buyer. For the purposes of weighing the Goods, the weight of the containers, [insert weight], shall be deducted.

INSPECTION OF THE GOODS

- 6.6 The Buyer shall weigh, sort, and inspect the Goods at its own cost, no more than [insert number of hours] after delivery at the delivery point *[Optional: or at another location for weighing and sorting]*.
- 6.7 Where the Buyer fails to inspect the Goods within [insert number of hours] of delivery, all risks and costs of spoilage of the Goods occurring after delivery shall be borne by the Buyer.
- 6.8 The Buyer and the Producer agree to allow a maximum [insert] kg/[insert] per cent of defects. The Buyer shall inform the Producer when the rejection rate is beyond [insert] kg/[insert] per cent of the specified quantity and quality of Goods. Goods with defects above the maximum allowable may be rejected by the Buyer and the associated costs shall be borne by the Producer.
- 6.9 The Producer *[optional: or the Independent Entity]* may be present during the inspection of the Goods. The Buyer *[optional: or the Independent Entity]* shall issue a written document evidencing the specification of the Goods as inspected. Where the Producer objects to the specification of the Goods as determined by the Buyer, the Parties shall seek a resolution in accordance with Article 11 below (Dispute Resolution).
- 6.10 The costs associated with the inspection shall be covered by the Buyer.

ACCEPTANCE OF GOODS AFTER INSPECTION

6.10 The Parties' agreement on the quantity and quality of the received Goods constitutes acceptance of the Goods.

6.11 The Buyer shall provide the Producer with a written receipt specifying the time, date, quantity and quality of Goods. The written receipt shall be duly signed by the Producer *[optional: and Buyer]*.

[Optional: Insurance]

6.12 *[The Producer agrees to purchase, at the Producer's own cost]/[The Buyer agrees to purchase for the Producer, [at the Buyer's own cost]/[at the Producer's cost]], an insurance policy with the following coverage:*

- (i) *Crop insurance, if available, against disease, natural disasters such as floods, droughts or hail, and against loss of revenue as a result of a decline in commodity prices.*
- (ii) *Liability insurance, specifying the minimum limits of guarantee.*
- (iii) *Building, machinery and equipment insurance against natural disasters such as floods, droughts or hail, fire and theft.*
- (iv) *[Other insurance].*

7 PRICING MECHANISM

7.1 The Buyer agrees to pay the Producer the current market price [insert market index] for the Goods or the fixed price, as set out in the table below, whichever is the greater.

TYPE	PRICE PER KG
Special	[insert]
Standard	[insert]
Usable	[insert]

7.2 The price will be adjusted based on the following quality measures.

BRIX VALUE	PREMIUM
Brix value up to [X]	[X]%
Brix value between [X and Y]	[X]%
Brix value over [Y]	[X]%

DAMAGE MEASURE	DISCOUNT
Material other than tomatoes*	[X] %
Limited use**	[X] %
Green	[X] %
Mould	[X] %
Worms	[X] %
Disease (specify)	[X] %

* Material other than tomatoes includes detached stems, vines, rocks, or debris.

** A limited use tomato is: (1) whole, but has a soft water condition under the skin; (2) more than 50 percent soft and mushy; or (3) completely broken through the wall so the seed cavity is visible.

TIME AND METHOD OF PAYMENT

7.3 The Buyer shall make the payment within [insert period of time] from acceptance of the Goods. Payment shall be made [via bank transfer to the Producer's nominated account]/[in cash]/[in specify currency]. Upon receipt of the full purchase amount, the Producer shall provide the Buyer with a written receipt of payment(s) made specifying the amount, time and delivery date of accepted Goods.

8 FORCE MAJEURE

- 8.1 For the purposes of this Agreement, Force Majeure Event means any event that arises after the contract has been signed, is unpredictable, inevitable, beyond the Parties' reasonable control and that objectively prevents one or both of them from performing their obligations, including, but not limited to, wars, insurrections, civil disturbances, interruption of transportation or communication services, major change to agricultural law or policy in the country of production, blockades, embargoes, strikes and other labour conflicts, riots, epidemics, earthquakes, storms, droughts, fires, floods, or other exceptionally adverse weather conditions, explosions, lightning, or acts of terrorism.
- 8.2 As soon as reasonably practicable after the start of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement, and any relevant evidence of the Force Majeure Event.
- 8.3 The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 8.4 Provided it has complied with Articles 8.2 and 8.3 above, if a Party is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 8.5 Where it is feasible in all the circumstances, those obligations may be suspended by the agreement of the Parties during the continuance of such Force Majeure Event, and no damages or penalties for delay in performance shall be due.

- 8.6 If an obligation is suspended by reason of Force Majeure for more than [insert number of days] from the Affected Party giving notice of the Force Majeure Event, or if suspension is not feasible in all the circumstances, the other Party may terminate the contract and all outstanding payments relating to the Inputs supplied for the production shall [fall due]/[be forgiven], and the Parties shall enter into good faith negotiations to enter into a new Agreement for the supply of the Goods.

9 REMEDIES

- 9.1 The Parties shall cooperate in the application of the remedies provided for in this Article, and shall apply those remedies in a manner that is commensurate to the breach in question, with a view to preserving, as much as possible, the Parties' ongoing relationship and achieving the purpose of this Agreement as outlined in Article 2 above.
- 9.2 Unless a Force Majeure Event takes place, a party failing to comply with any obligation in this Agreement (the Breaching Party) is in breach of this Agreement.

MITIGATION AND RIGHT TO CURE BREACH

- 9.3 Where a party (the Aggrieved Party) becomes aware that the Breaching Party is or will be in breach of its obligations, it shall immediately notify the Breaching Party, and shall take all reasonable measures to minimize and mitigate the effects of the breach whenever possible. Any reasonable expenses or difference in value incurred by the Aggrieved Party should be compensated by the Breaching Party.
- 9.4 Where the Breaching Party has been notified or otherwise becomes aware that it is or will be in breach of its obligations, it shall immediately take all reasonable measures at its own cost to prevent or cure the breach within [insert number of days], including by:
- (i) replacing any non-conforming Goods with Goods which conform with the requirements of this Agreement;
 - (ii) replacing any non-conforming Inputs with Inputs which conform with the requirements of this Agreement;
 - (iii) modifying or correcting any non-conforming Production Method or other process required by this Agreement, including in accordance with any specific instructions issued by the Aggrieved Party or any relevant certification body; and/or
 - (iv) completing any partial delivery, or taking delivery as the case may be, within the time frame agreed between the Parties.

RIGHT TO TAKE CORRECTIVE ACTION

- 9.5 Where the Breaching Party does not or cannot cure the breach in accordance with Article 9.4 above, the Aggrieved Party may take corrective action in accordance with the articles below.

CORRECTIVE ACTION: NON-CONFORMING GOODS OR INPUTS

- 9.6 If the Breaching Party does not or cannot cure the breach, and the breach does not arise from the Aggrieved Party's failure to comply with its obligations in this Agreement, the Parties may, by agreement, adjust the purchase price to reflect the fair value of the Goods or Inputs supplied.
- 9.7 If the Parties cannot agree on an adjusted price for the non-conforming Goods or Inputs, the Aggrieved Party may reject them and withhold payment.

- 9.8 Where the non-conforming Goods or Inputs are hazardous, dangerous or unsafe, the Aggrieved Party may require the Breaching Party to safely dispose of those Goods or Inputs at the expense of the Breaching Party.

CORRECTIVE ACTION: FAILURE TO SUPPLY GOODS OR INPUTS

- 9.9 Where the Breaching Party fails to supply the Aggrieved Party with the agreed Goods or Inputs, the Aggrieved Party may obtain replacement Goods or Inputs of a similar description and quality in the cheapest market available, and may claim from the Breaching Party the difference between the price under this Agreement and the price that the Aggrieved Party paid for the replacement Goods or Inputs.

CORRECTIVE ACTION: FAILURE TO TAKE DELIVERY

- 9.10 Where the Buyer fails to take delivery of conforming Goods within [insert period of time] from the delivery time in Annex [Z], the Producer may sell the Goods to a third party and may claim from the Buyer the difference between the price under this Agreement and the price that the Producer received for the Goods.

TERMINATION UPON FAILURE TO CURE OR CORRECT

- 9.11 Where the Breaching Party has committed a breach of this Agreement that is not a Fundamental Breach, and an attempt to cure by the Breaching Party, or corrective action by the Aggrieved Party, has failed to cure, prevent, or correct the breach, the Aggrieved Party may, with 14 days notice in writing to the Breaching Party, terminate this Agreement.

TERMINATION UPON FUNDAMENTAL BREACH

- 9.12 Where the Breaching Party commits a Fundamental Breach of this Agreement, the Aggrieved Party may terminate the Agreement with 14 days notice in writing to the Breaching Party. The following events are deemed to be a Fundamental Breach:
- (i) The Buyer failing to take delivery of conforming Goods, or significantly delaying in taking delivery, on at least [insert number] occasions and by at least [insert period of time] on each occasion;
 - (ii) The Buyer failing to pay for conforming Goods for more than [insert number of days] past the payment date;
 - (iii) *[Optional – use if there is an exclusive output arrangement: The Producer entering into any marketing arrangement with any other buyer for the Goods produced [on the Production Site] or [using the Buyer's Inputs]].*
 - (iv) The Producer failing to deliver conforming Goods in accordance with the delivery Schedule in Annex [Z], or significantly delaying in making delivery on at least [insert number] occasions and by at least [insert period of time] on each occasion.

DAMAGES

- 9.13 Without limiting any other rights or remedies available under this Agreement, the Aggrieved Party may claim damages for any costs, losses or expenses which are attributable to the Breaching Party's breach of this Agreement in accordance with the applicable laws.

10 DURATION, RENEWAL AND TERMINATION

DURATION

10.1 This contract is valid [for a period of [insert number of days/months/years/production seasons]/[from the date of signature to [insert end date]].

TERMINATION

10.2 This Agreement may be terminated:

- (i) following a breach of the Agreement in accordance with Article 9.11 or 9.12;
- (ii) by mutual agreement of the Parties;
- (iii) by either Party by giving [insert number of months] written notice to the other Party.

RENEWAL

[Option 1: Automatic renewal]

10.3 In case neither Party expresses the intention to terminate, the contract is automatically extended for the following [year]/[production season].

[Option 2: Renewal by agreement]

10.4 Upon expiration of this Agreement in accordance with Article 10.1, the Parties may agree in writing to its renewal.

PERIODIC REVIEW

10.5 The Parties shall meet on a [insert frequency, depending on the nature of the commodity and length of contract] basis to review the implementation of this Agreement. Where a Party's ability to fulfil its obligations under this Agreement has fundamentally altered due to a significant change of circumstances, that Party may request a renegotiation of one or more of the terms of this Agreement, and the other Party shall consider that request in good faith.

[Optional – Assignment]

10.6 *[The Buyer may assign all or part of its obligations under this Agreement to an affiliate or a third party, subject to prior notification to the Producer, and provided that the affiliate or third party acknowledges and agrees to assume all of the obligations of the Buyer under this Agreement and has the capacity to perform those obligations.]*

11 DISPUTE RESOLUTION

11.1 The Parties to this Agreement shall provide notice to each other in the event of any disputes arising out of this Agreement and shall seek to amicably resolve within [insert time period], through negotiation and cooperation, any such dispute concerning the application or interpretation of the Agreement.

11.2 If the Parties to this Agreement are unable or unwilling to resolve the dispute amicably, the Parties shall seek local and independent mediation of the issues within [insert time period] and under the rules of the [insert mediation institution or association.]

11.3 Where the dispute has not been resolved in accordance with the preceding paragraphs, any Party may submit the dispute to the [courts of the [insert State]]/[insert name of arbitration centre] for resolution. [The rules of the [insert name of arbitration centre] shall determine the manner in which the dispute is resolved].

11.4 This Agreement and any dispute arising out of it is governed by the laws of [insert State].

12 SIGNATURE

Signed [by]/[for and on behalf of] the
Producer: [insert name]
*[Insert if signing on behalf of the producer -
Position:]*

Signature:

Date:

Signed [by]/[for and on behalf of] the
Producer: [insert name]
*[Insert if signing on behalf of the producer -
Position:]*

Signature:

Date:

Done at: [insert location] in the presence of:

Name:

Signature:

Address:

Occupation:

Date:

ANNEXES TO SUPPORT THE IMPLEMENTATION OF THE CONTRACT

Any additional information required to support the implementation of the clauses included in the contract should be inserted here as annexes. Examples of such annexes to be developed could include:

Annex W: Product-based quality requirements

Annex X: Production-based quality requirements (including inspection schedule)

Annex Y: Inputs (quality standards, instructions for use, delivery schedule, pricing)

Annex Z: Delivery (technical requirements for delivery, schedule of delivery)



Annex 3. Model contract: Coffee⁴

1 THE PARTIES

- 1.1 This contract is made at [insert place] on [insert date] between [insert name and address of Buyer, organisation or business registration number, if available], the “Buyer,” and [insert name/s and address of Producer or producer organisation, identity or organisation number, if available], the “Producer.”
- 1.2 The Producer warrants that:
 - (i) no less than 10 days before the signature of this Agreement, the Producer received a [copy of this Agreement]/[a written offer incorporating the terms of this Agreement].
 - (ii) The Producer has read this Agreement or had this Agreement read to him/her by an independent third party and had a reasonable opportunity to understand this Agreement before signature.
 - (iii) The Producer has had the opportunity to seek the advice of [an independent legal advisor]/[a producer organisation] on this Agreement before signature.

⁴ Coffee is one of the most important globally traded commodities and plays a crucial role in the livelihoods of around 25 million small coffee producers. The two dominant coffee varieties are Arabica and Robusta. This contract template focuses on the agricultural production contracts between small coffee producers and their direct buyers. It does not focus on the international sale of coffee. A range of model contracts exists for the international sale of coffee in both physical and futures markets. The most widely used coffee contracts for physical markets are the Green Coffee Association (GCA) contract aimed at the U.S. market and the European Contract for Coffee (ECC) of the European Coffee Federation aimed at the European market (IISD, 2004). But, small coffee producers rarely sell direct to these buyers. They more commonly sell to cooperatives or domestic traders, especially for the specialty coffee market. There are exceptions, particularly in the fair trade and organic movements, where coffee roasters contract directly with producers. For example, a cooperative of independent roasters from the U.S. uses the GCA terms and conditions in their contracts with producers, which are made publicly available (see www.fairtradeproof.org). IISD and the International Trade Center (ITC) also published guides to developing coffee contracts for the sale of coffee (IISD, 2004; ITC, 2012).

2 THE PURPOSE

- 2.1 The Buyer agrees to buy tomatoes of variety [insert specific variety name(s)] (“the Goods”) produced by the Producer, and the Producer agrees to produce and sell to the Buyer tomatoes of variety [insert specific variety name(s)], in accordance with the provisions set out below.
- 2.2 *[Optional: The Parties affirm their intention to faithfully execute their respective obligations under this Agreement in accordance with the principles of good faith, reasonableness, efficacy, loyalty and fair dealing, and will at all times endeavour to preserve the spirit and intent of this Agreement by behaving consistently and cooperatively, and providing necessary information in a timely and transparent manner.]*

3 PRODUCTION SITE

- 3.1 This Agreement relates to Goods produced on [insert size of land area in hectares], located at [insert GPS co-ordinates/nearest town or village/other applicable way to specify], *[optional: and held under title [insert title deed/land registration number/ certificate/ other proof of title or use right].*

4 THE PRODUCT

PRODUCT QUANTITY

[Option 1: Exclusive output arrangement]

- 4.1 The Producer agrees to deliver exclusively to the Buyer all the Goods produced [on the Production Site]/[using the Buyer’s Inputs]. The Producer shall not enter into any other marketing arrangements with any other buyer for the Goods produced [on the Production Site]/[using the Buyer’s Inputs], for the duration of this Agreement, unless expressly authorised by the Buyer in writing. The Producer shall not deliver Goods to the Buyer which were not produced on the Production Site *[optional: and using the Buyer’s Inputs.]*

[Option 2: Non-exclusive output arrangement]

- 4.2 The Producer agrees to deliver to the Buyer [insert kilograms, number of bags or cartons] of the Goods produced [on the Production Site]/[using the Buyer’s Inputs].
- 4.3 The Producer may sell Goods produced in excess of the amount stipulated in Article 4.2 to a third party. *[Optional: The Buyer retains the right of first refusal to purchase the excess Goods. If the Buyer does not notify, in writing, the Producer of its intention to purchase the excess Goods within [insert number of days] of the Producer giving notice to the Buyer of the availability of excess Goods for purchase, the Producer may sell the excess Goods to a third party.]*

PRODUCT QUALITY

- 4.4 The Producer agrees to supply Goods which comply with the [quality standards as defined in Annex [W]]/[insert relevant quality assurance scheme].

Annex W: Product-based quality requirements

[Insert required physical characteristics, for example:

- (i) grade, to be determined by:
 - a. screen size;
 - b. number of defects, e.g., black bean, broken bean, sour, or insect damaged;
 - c. crop year [insert]
 - d. altitude grown;

- (ii) moisture levels not lower than 8 per cent or higher than 12.5 per cent. Exceptions to the 12.5 per cent maximum moisture content shall be permitted for specialty coffees that traditionally have high moisture content;
- (iii) washed/wet process OR natural/dry process;
- (iv) flavour characteristics, for example, clean cup, medium or heavy body, good acidity, etc.;
- (v) geographical characteristics, for example, country of origin.

PRODUCTION METHODS

4.5 The Producer shall comply with:

- (i) [the production methods prescribed in Annex [X]]/[insert required production methods]; or
- (ii) [the standards prescribed in [Annex [X]]/[insert required fair trade, organic or other certification scheme]/[insert industry Code of Conduct]/[insert relevant social, labour, environmental or cultural standards]/[insert reference to the relevant national laws]; and/or
- (iii) [the post-production methods prescribed in Annex [X]]

INSPECTION

- 4.6 Subject to [insert period of time] advanced notice, the Buyer, its representative/s [Optional: or the Independent Entity] may visit the Production Site for the purpose of providing advice, supervising any production process and/or verifying the Producer's compliance with the prescribed production methods, provided that the visit shall be carried out during normal business hours and shall not unduly burden or inconvenience the Producer.
- 4.7 Inspection visits shall be carried out [insert frequency, e.g. weekly, monthly]/[in accordance with the inspection schedule at Annex [X]].
- 4.8 The Producer shall, [at the sole expense of the Buyer]/[at the sole expense of the Producer]/[at the joint expense of the Parties whereby the Producer pays X% and the Buyer pays X%], obtain a certificate from [insert relevant certification body], to certify that the Goods [and/or] the methods used by the Producer to produce the Goods are in conformity with the standards prescribed in 4.4 and 4.5.

[Optional: Certification]

- 4.9 *[The Producer shall, [at the sole expense of the Buyer]/[at the sole expense of the Producer]/[at the joint expense of the Parties whereby the Producer pays insert% and the Buyer pays insert%], obtain a certificate from [insert relevant certification body or quality assurance scheme, such as organic, fair trade or International Coffee Organisation (ICO) Certificate of Origin], to certify that the Goods are in conformity with the standards prescribed in [Annex [X]]/[insert industry Code of Conduct].]*

5 INPUTS

PRODUCER'S INPUTS

- 5.1 The Producer shall provide [insert Producer Inputs, including e.g. land, physical facilities, water, energy and labour].
- 5.2 *[Optional: The Producer shall purchase the following Inputs, as designated by the Buyer from time to time: [insert Inputs to be purchased by the Producer, including specific brand names and vendors etc.]]*

- 5.3 The Producer's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws]. The Producer shall use the Inputs in accordance with the instructions as provided by the Buyer in Annex [Y] of this Agreement.

BUYER'S INPUTS

- 5.4 The Buyer shall provide the [insert Buyer Inputs, including e.g. seeds, fertilizers, training].
- 5.5 The Buyer's Inputs shall be [of a reasonable quality, fit for their intended purpose, and free of defects]/[compliant with any specific quality standards set out in Annex [Y] of this Agreement]/[compliant with the quality standards set out in the applicable national laws];
- 5.6 The Producer shall use the Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement.
- 5.7 Upon receipt of the Buyer's Inputs, the Producer shall verify the Inputs and notify the Buyer in writing of any apparent defects.
- 5.8 The Producer shall be responsible for any loss or damage of the Buyer's Inputs from the time of delivery and acceptance until their inclusion in the production process.
- 5.9 The Buyer shall be responsible for any loss or damage to the Goods, the Production Site, the Producer's property and/or personnel caused by any Inputs that are not of reasonable quality, fit for their intended purpose, and/or free of defects, including latent defects [and compliant with any specific quality standards set out in Annex [Y] of this Agreement].
- 5.10 *[Optional: The Producer shall return any unused Inputs to the Buyer at the end of the production cycle, as agreed by the Parties.]*
- 5.11 *[Optional: The Buyer shall provide training or technical assistance necessary for the use of Inputs in accordance with the instructions.]*
- 5.12 *[Optional: insert provisions regarding the Buyer's intellectual property in respect of Inputs, if applicable].*

PAYMENT FOR INPUTS

[Option 1: Free of charge]

- 5.13 The Buyer shall provide and deliver the Inputs free of charge, including providing associated training or technical assistance needed for the application and use of those Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].

[Option 2: Payment]

- 5.14 The Producer shall pay for the Inputs provided by the Buyer according to the Input Price provided for in the pricing scheme in Annex [Y]. The Input Price in Annex [Y] shall be updated [insert a time period]/[upon agreement of the Parties]/[based on custom and trade usage]/[based on past practices between the Parties]/[based on appropriate market prices]. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].
- 5.15 The Input Price, delivery and cost of training or technical assistance shall be deducted from the price payable by the Buyer for the Goods on delivery.

[Option 3: Shared payment]

- 5.16 The total cost of all Inputs, including delivery, training, and technical assistance, shall be provided for in Annex [Y]. The Buyer and Producer shall share the cost of the Inputs, as follows: [insert details of share of costs]. The Buyer shall deliver the Inputs at the time and place specified in Annex [Y].
- 5.17 The Producer's share of the costs shall be deducted from the Price payable by the Buyer for the Goods on delivery.

6 DELIVERY AND ACCEPTANCE

DELIVERY

- 6.1 The Buyer shall collect the Goods from the delivery point at [location of delivery point(s)], according to the delivery schedule, and in accordance with the technical requirements for delivery, set out in Annex [Z].
- 6.2 The costs of transportation of the Goods to the delivery point shall be paid by the [Buyer]/[Producer]. The Buyer shall bear all costs associated with the Goods after delivery to the delivery point.
- 6.3 The [Buyer]/[Producer] shall be responsible for loading the Goods. The [Buyer]/[Producer] shall be responsible for unloading the Goods.
- 6.4 The Party which is the owner of the delivery point shall maintain it in a reasonable state of cleanliness and hygiene.
- 6.5 The Goods shall be prepared for collection by the Producer and packaged in [insert type of packaging, for example: natural fibre bags, plastic container, cardboard carton] [provided by the Buyer]. The value [insert value] of any bags or containers supplied by the Buyer that are not returned to the Buyer, or are returned in a damaged state, shall be deducted from the payment for the Goods. The Producer shall not use the containers for any purpose other than the delivery of the Goods to the Buyer. For the purposes of weighing the Goods, the weight of the containers, [insert weight], shall be deducted.

INSPECTION⁵

- 6.6 The Buyer shall weigh, sort, and inspect the Goods at its own cost, no more than [insert number of hours] after delivery at the delivery point [*Optional: or at another location for weighing and sorting*] and in accordance with [insert recognised method of inspection and classification applicable to the local context and in as much detail as possible; for example: [The Buyer and the Producer agree to allow no more than 86 defects per 300g sample of Arabica (New York green coffee classification/ Brazilian method, or equivalent).]/[The Buyer and the Producer agree to allow no more than 150 defects per 300g sample of Robusta (Vietnam, Indonesia, or equivalent).] The Buyer and the Producer agree to a moisture content above 8 per cent and not more than [12.5]/[13] per cent, measured using the ISO 6673 method.]
- 6.7 Where the Buyer fails to inspect the Goods within [insert number of hours] of delivery, all risks and costs of spoilage of the Goods occurring after delivery shall be borne by the Buyer.

⁵ This provision is based on the International Coffee Council (ICC) Resolution 420.

6.8 The Producer *[optional: or the Independent Entity]* may be present during the inspection of the Goods. The Buyer *[optional: or the Independent Entity]* shall issue a written document evidencing the specification of the Goods as inspected. Where the Producer objects to the specification of the Goods as determined by the Buyer, the Parties shall seek a resolution in accordance with Article 11 below (Dispute Resolution).

6.9 The costs associated with the inspection shall be covered by the Buyer.

ACCEPTANCE OF GOODS AFTER INSPECTION

6.10 The Parties' agreement on the quantity and quality of the received Goods constitutes acceptance of the Goods.

6.11 The Buyer shall provide the Producer with a written receipt specifying the time, date, quantity and quality of Goods. The written receipt shall be duly signed by the Producer *[optional: and Buyer]*.

[Optional: Insurance]

6.12 *[The Producer agrees to purchase, at the Producer's own cost]/[The Buyer agrees to purchase for the Producer, [at the Buyer's own cost]/[at the Producer's cost]], an insurance policy with the following coverage:*

- (i) *Crop insurance, if available, against disease, natural disasters such as floods, droughts or hail, and against loss of revenue as a result of a decline in commodity prices.*
- (ii) *Liability insurance, specifying the minimum limits of guarantee.*
- (iii) *Building, machinery and equipment insurance against natural disasters such as floods, droughts or hail, fire and theft.*
- (iv) *[Other insurance].*

7 PRICING MECHANISM

7.1 The Buyer agrees to pay the Producer [\$X/kilo bags/containers] of Goods delivered which conform with the quality requirements outlined in Annex [X], based on the [insert price reference, for exam-ple, ICO Indicator Prices], or the current market price based on the [insert market index], whichever is the greater.

[Optional: Price premiums]

7.2 *[The price will be adjusted based on the following differentials:*

QUALITY SPECIFICATION	PREMIUM (INSERT CURRENCY)
Fair Trade Premium	[x]
Organic Differential	[x]
ICO “S” Certificate of Origin Premium	[x]
Sustainable Production Practices Premium (see for example, Starbuck’s point system for preferred suppliers [Starbucks, 2001])	[x]
Environmental	
– Soil management	[x]
– Water management	[x]
– Conservation of natural resources	[x]
– Integrated pest management	[x]
– Efficient energy use	[x]
– Recycling and treatment of residual	[x]
– Waste management	[x]
Social	
– Wages and benefits	
– Gender equity and minority rights	
– Health and safety	
– Living conditions	

TIME AND METHOD OF PAYMENT

7.3 The Buyer shall make the payment within [insert period of time] from acceptance of the Goods. Payment shall be made [via bank transfer to the Producer’s nominated account]/[in cash]/[in specify currency]. Upon receipt of the full purchase amount, the Producer shall provide the Buyer with a written receipt of payment(s) made specifying the amount, time and delivery date of accepted Goods.

Optional: Pre-financing⁶

7.4 Where the Producer requests within a reasonable time, the Buyer shall advance up to [insert per cent] of the fixed price of the contract to finance the Producer’s costs of production. [Insert per cent] interest will be charged to the Producer and deducted from the final payment.]

⁶ Pre-financing is crucial for small producers who may not be able to finance production costs. Fairtrade recommends the buyer to pre-finance up to 60 per cent of the contract value if the producer requests pre-finance. The pre-finance must be paid at least 8 weeks prior to shipment. (Article 4.2, FLO, 2011).

8 FORCE MAJEURE

- 8.1 For the purposes of this Agreement, Force Majeure Event means any event that arises after the contract has been signed, is unpredictable, inevitable, beyond the Parties' reasonable control and that objectively prevents one or both of them from performing their obligations, including, but not limited to, wars, insurrections, civil disturbances, interruption of transportation or communication services, major change to agricultural law or policy in the country of production, blockades, embargoes, strikes and other labour conflicts, riots, epidemics, earthquakes, storms, droughts, fires, floods, or other exceptionally adverse weather conditions, explosions, lightning, or acts of terrorism.
- 8.2 As soon as reasonably practicable after the start of the Force Majeure Event, the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement, and any relevant evidence of the Force Majeure Event.
- 8.3 The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 8.4 Provided it has complied with Articles 8.2 and 8.3 above, if a Party is prevented, hindered, or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (the Affected Party), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations.
- 8.5 Where it is feasible in all the circumstances, those obligations may be suspended by the agreement of the Parties during the continuance of such Force Majeure Event, and no damages or penalties for delay in performance shall be due.
- 8.6 If an obligation is suspended by reason of Force Majeure for more than [insert number of days] from the Affected Party giving notice of the Force Majeure Event, or if suspension is not feasible in all the circumstances, the other Party may terminate the contract and all outstanding payments relating to the Inputs supplied for the production shall [fall due]/[be forgiven], and the Parties shall enter into good faith negotiations to enter into a new Agreement for the supply of the Goods.

9 REMEDIES

- 9.1 The Parties shall cooperate in the application of the remedies provided for in this Article, and shall apply those remedies in a manner that is commensurate to the breach in question, with a view to preserving, as much as possible, the Parties' ongoing relationship and achieving the purpose of this Agreement as outlined in Article 2 above.
- 9.2 Unless a Force Majeure Event takes place, a party failing to comply with any obligation in this Agreement (the Breaching Party) is in breach of this Agreement.

MITIGATION AND RIGHT TO CURE BREACH

- 9.3 Where a party (the Aggrieved Party) becomes aware that the Breaching Party is or will be in breach of its obligations, it shall immediately notify the Breaching Party, and shall take all reasonable measures to minimize and mitigate the effects of the breach whenever possible. Any reasonable expenses or difference in value incurred by the Aggrieved Party should be compensated by the Breaching Party.

- 9.4 Where the Breaching Party has been notified or otherwise becomes aware that it is or will be in breach of its obligations, it shall immediately take all reasonable measures at its own cost to prevent or cure the breach within [insert number of days], including by:
- (i) replacing any non-conforming Goods with Goods which conform with the requirements of this Agreement;
 - (ii) replacing any non-conforming Inputs with Inputs which conform with the requirements of this Agreement;
 - (iii) modifying or correcting any non-conforming Production Method or other process required by this Agreement, including in accordance with any specific instructions issued by the Aggrieved Party or any relevant certification body; and/or
 - (iv) completing any partial delivery, or taking delivery as the case may be, within the time frame agreed between the Parties.

RIGHT TO TAKE CORRECTIVE ACTION

- 9.5 Where the Breaching Party does not or cannot cure the breach in accordance with Article 9.4 above, the Aggrieved Party may take corrective action in accordance with the articles below.

CORRECTIVE ACTION: NON-CONFORMING GOODS OR INPUTS

- 9.6 If the Breaching Party does not or cannot cure the breach, and the breach does not arise from the Aggrieved Party's failure to comply with its obligations in this Agreement, the Parties may, by agreement, adjust the purchase price to reflect the fair value of the Goods or Inputs supplied.
- 9.7 If the Parties cannot agree on an adjusted price for the non-conforming Goods or Inputs, the Aggrieved Party may reject them and withhold payment.
- 9.8 Where the non-conforming Goods or Inputs are hazardous, dangerous or unsafe, the Aggrieved Party may require the Breaching Party to safely dispose of those Goods or Inputs at the expense of the Breaching Party.

CORRECTIVE ACTION: FAILURE TO SUPPLY GOODS OR INPUTS

- 9.9 Where the Breaching Party fails to supply the Aggrieved Party with the agreed Goods or Inputs, the Aggrieved Party may obtain replacement Goods or Inputs of a similar description and quality in the cheapest market available, and may claim from the Breaching Party the difference between the price under this Agreement and the price that the Aggrieved Party paid for the replacement Goods or Inputs.

CORRECTIVE ACTION: FAILURE TO TAKE DELIVERY

- 9.10 Where the Buyer fails to take delivery of conforming Goods within [insert period of time] from the delivery time in Annex [Z], the Producer may sell the Goods to a third party and may claim from the Buyer the difference between the price under this Agreement and the price that the Producer received for the Goods.

TERMINATION UPON FAILURE TO CURE OR CORRECT

- 9.11 Where the Breaching Party has committed a breach of this Agreement that is not a Fundamental Breach, and an attempt to cure by the Breaching Party, or corrective action by the Aggrieved Party, has failed to cure, prevent, or correct the breach, the Aggrieved Party may, with 14 days notice in writing to the Breaching Party, terminate this Agreement.

TERMINATION UPON FUNDAMENTAL BREACH

9.12 Where the Breaching Party commits a Fundamental Breach of this Agreement, the Aggrieved Party may terminate the Agreement with 14 days notice in writing to the Breaching Party. The following events are deemed to be a Fundamental Breach:

- (i) The Buyer failing to take delivery of conforming Goods, or significantly delaying in taking delivery, on at least [insert number] occasions and by at least [insert period of time] on each occasion;
- (ii) The Buyer failing to pay for conforming Goods for more than [insert number of days] past the payment date;
- (iii) *[Optional – use if there is an exclusive output arrangement: The Producer entering into any marketing arrangement with any other buyer for the Goods produced [on the Production Site] or [using the Buyer's Inputs]].*
- (iv) The Producer failing to deliver conforming Goods in accordance with the delivery Schedule in Annex [Z], or significantly delaying in making delivery on at least [insert number] occasions and by at least [insert period of time] on each occasion.

DAMAGES

9.13 Without limiting any other rights or remedies available under this Agreement, the Aggrieved Party may claim damages for any costs, losses or expenses which are attributable to the Breaching Party's breach of this Agreement in accordance with the applicable laws.

10 DURATION, RENEWAL AND TERMINATION

DURATION

10.1 This contract is valid [for a period of [insert number of days/months/years/production seasons]/[from the date of signature to [insert end date]].

TERMINATION

10.2 This Agreement may be terminated:

- (i) following a breach of the Agreement in accordance with Article 9.11 or 9.12;
- (ii) by mutual agreement of the Parties;
- (iii) by either Party by giving [insert number of months] written notice to the other Party.

RENEWAL

[Option 1: Automatic renewal]

10.3 In case neither Party expresses the intention to terminate, the contract is automatically extended for the following [year]/[production season].

[Option 2: Renewal by agreement]

10.4 Upon expiration of this Agreement in accordance with Article 10.1, the Parties may agree in writing to its renewal.

PERIODIC REVIEW

10.5 The Parties shall meet on a [insert frequency, depending on the nature of the commodity and length of contract] basis to review the implementation of this Agreement. Where a Party's ability to fulfil its obligations under this Agreement has fundamentally altered due to a significant change of circumstances, that Party may request a renegotiation of one or more of the terms of this Agreement, and the other Party shall consider that request in good faith.

[Optional – Assignment]

10.6 *[The Buyer may assign all or part of its obligations under this Agreement to an affiliate or a third party, subject to prior notification to the Producer, and provided that the affiliate or third party acknowledges and agrees to assume all of the obligations of the Buyer under this Agreement and has the capacity to perform those obligations.]*

11 DISPUTE RESOLUTION

11.1 The Parties to this Agreement shall provide notice to each other in the event of any disputes arising out of this Agreement and shall seek to amicably resolve within [insert time period], through negotiation and cooperation, any such dispute concerning the application or interpretation of the Agreement.

11.2 If the Parties to this Agreement are unable or unwilling to resolve the dispute amicably, the Parties shall seek local and independent mediation of the issues within [insert time period] and under the rules of the [insert mediation institution or association.]

11.3 Where the dispute has not been resolved in accordance with the preceding paragraphs, any Party may submit the dispute to the [courts of the [insert State]]/[insert name of arbitration centre] for resolution. [The rules of the [insert name of arbitration centre] shall determine the manner in which the dispute is resolved].

11.4 This Agreement and any dispute arising out of it is governed by the laws of [insert State].

12 SIGNATURE

Signed [by]/[for and on behalf of] the
Producer: [insert name]
*[Insert if signing on behalf of the producer -
Position:]*

Signature:

Date:

Signed [by]/[for and on behalf of] the
Producer: [insert name]
*[Insert if signing on behalf of the producer -
Position:]*

Signature:

Date:

Done at: [insert location] in the presence of:

Name:

Signature:

Address:

Occupation:

Date:

ANNEXES TO SUPPORT THE IMPLEMENTATION OF THE CONTRACT

Any additional information required to support the implementation of the clauses included in the contract should be inserted here as annexes. Examples of such annexes to be developed could include:

Annex W: Product-based quality requirements

Annex X: Production-based quality requirements (including inspection schedule)

Annex Y: Inputs (quality standards, instructions for use, delivery schedule, pricing)

Annex Z: Delivery (technical requirements for delivery, schedule of delivery)

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