



AIC CONTRACT NOTE FOR FERTILISERS
Issued by a Member of the Agricultural Industries Confederation Limited

Date

Buyer's Ref: Seller's Ref:

The Seller:

.....

The Buyer

.....

have this day entered into a contract on the following terms and conditions:

1. Description of Goods: (Brand/Manufacturer/Origin; Analysis etc.)

.....
.....
.....

2. Packaging: (Bulk; 1000kg; 600kg; 500kg; 25kg etc.) Packaged Product Gross/Net Weight*

.....Pallets Chargeable/Included *

3. Quantity: tonnes/ litres*

4. Price: per tonne/litre* ex-store/ex-works/ex-ship/delivered to*

.....(location).

5. Period of Delivery:

6. Payment Terms:

7. Special Terms:

.....
.....
.....

THIS CONTRACT IS SUBJECT TO THE TERMS AND CONDITIONS ON THE FOLLOWING PAGES SO FAR AS THEY ARE CONSISTENT WITH THE TERMS SET OUT ABOVE. WHERE THERE IS A CONFLICT THE ABOVE TERMS WILL PREVAIL.

*Delete words which do not apply

8. **Delivery and Weights:** Delivery will be at the Seller's option within the contracted delivery period and may be made in one or more consignments unless otherwise expressly agreed. Payment shall be made against declared ex-store/ex-works/ex-quay weights or number of bags as appropriate, confirmation of which shall be made available by the Seller in the event of a dispute.
9. **Ownership and Risk:**
- a. Ownership shall pass when the goods are paid for by the Buyer.
 - b. Risk shall pass to the Buyer either:
 - i. on collection or delivery of the goods, or
 - ii. for goods sold ex-factory, warehouse or quay, on collection, or
 - iii. for goods not collected by the end of the period of delivery, on expiry of the period of delivery.
10. **Rent and Insurance:**
Rent and Insurance shall be for the account of the Seller until either:
- a. collection or delivery of the goods, or
 - b. if the goods are not collected or delivered by the end of the period of delivery, on expiry of the period of delivery, providing the seller has notified the buyer before the expiration of the period of delivery of the availability of the goods for collection / delivery.
- Thereafter rent and insurance shall be for the account of the Buyer.
11. **Claims:**
- a. Claims based on defects of quantity, quality or condition which shall be apparent upon reasonable inspection must be advised as soon as possible and confirmed by the Buyer by fax, e-mail or other electronic means or by letter sent by first class post, within two business days from the arrival of the goods at their ultimate destination in the United Kingdom or from when risk passes in accordance with clause 9(b). In the event of this contract being one of a series of contracts, all claims shall be passed on without delay after receipt and if so passed on shall be deemed to be proper claims from Buyer to Seller as required by the provision of this clause whether within the two business days period or not.
 - b. All claims other than those in (a) above must be notified so as to be received by the Seller within 90 consecutive days from the last day of the contract period with the same proviso as to series of contracts as in (a) above.
12. **Liability:** Whenever a product is ordered by the Buyer under a brand name and is delivered to them by the Seller in the manufacturer's original packaging then under no circumstances whatsoever does the Seller accept any greater liability for any injury, damage and/or loss that the product may cause to the Buyer than is accepted by the manufacturer of the said product themselves. Without prejudice to the generality of the above disclaimer of liability the Buyer should note that the manufacturer of the goods does not accept any liability for injury damage and/or loss arising from the use of goods manufactured by them if the use to which the goods are put is not one of those set out on their own label or in the technical instructions delivered with the said goods, nor will they do so if the Buyer has failed to observe the instructions for use supplied with the goods or any statutory requirements and/or the requirements of any relevant industry Codes of Practice.

Save for liability for death or personal injury caused by the negligence of the Seller and/or such servants or agents of the Seller for whom they are deemed in law to be responsible, or any liability for defective goods under any United Kingdom Statute or Regulations made thereunder which imposes specific conditions and/or warranties and provides that these cannot be excluded by the parties to the contract, the Seller shall not be under any liability to the Buyer nor to any third party claiming through them in respect of defects in goods delivered whether patent or latent, nor for any injury, damage and/or loss resulting directly or indirectly from such defects howsoever caused and except as provided above no warranty or condition whether express or implied by law statute or custom of trade as to the quality or fitness for any particular purpose or merchantability of such goods is given. The Buyer holds himself out as entering into this contract in the course of business.

The Seller when supplying goods under a brand name (whether such goods are manufactured by the Seller or by a third party) warrants only that such goods will be of satisfactory quality under their original description and will be fit for any particular purpose for which they have at any time been held out to be fit under that brand name. It is neither a condition nor a warranty of this contract that goods sold under the said brand name will at all times consist of the same ingredients and/or the same proportion of ingredients. The Seller accepts no liability whatsoever for any injury, damage and/or loss of whatever description and whether direct or consequential which such change may cause to the Buyer.

Without prejudice to the generality of the disclaimer of liability above the Seller at their sole discretion undertakes to replace allegedly defective goods or to refund to the Buyer up to the invoice price of such goods where the Seller is satisfied that they are responsible. Under no circumstances whatsoever shall the Seller's liability under this clause exceed the invoice price of any allegedly defective goods. Save as already elsewhere provided and for such replacement and/or refund the Seller shall not under any circumstances whatsoever be liable to the Buyer for any loss and/or damage whether direct or consequential.

- 13. Advice:** Unless otherwise agreed between the parties, advice by the Seller to the Buyer shall not form part of the contract. The Seller accepts no responsibility for any advice given to the Buyer by their employees, servants or agents and accepts no liability for any injury, loss and/or damage resulting directly and/or indirectly from any such advice. Without prejudice to the above if goods the subject of this contract are manufactured by a Third Party and are delivered with the manufacturer's recommendations for the use of the goods in question and the advice so given differs from other advice received by the Buyer from whatsoever source the Buyer must either follow the manufacturer's instructions or, if in any doubt, apply to the manufacturer for further advice. Failure to do so may lose for the Buyer any protection from warranties given by the manufacturer to all recipients of the said goods and the Seller accepts no liability whatsoever for any injury, damage and/or loss suffered by the Buyer who has failed to follow the manufacturer's recommendations or any statutory requirements and/or the requirements of any relevant industry Codes of Practice.
- 14. Consignment:** Each delivery or consignment shall stand as a separate contract. When more than one consignment is made, each consignment is to be considered as a separate contract and will itself be subject to the same provisions.
- 15. Demurrage:** In the case of unreasonable delay in the arrival, loading or discharge of vehicles collecting or delivering the goods howsoever caused (including delays resulting from the non-provision of essential documentation) the Seller or the Buyer, whoever is responsible, shall be liable for the additional haulage costs that result from that delay
- 16. Statutory Charges:** The price of the goods is subject to alteration by reason of the imposition of or alteration by the European Community or by the United Kingdom Government in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon goods of this description, whether at the time of or if the change is retrospective at any time after the date of this contract provided that the change is applicable to the date of delivery.
- 17. Prohibition:** In the case of prohibition of export, blockade or hostilities or in case of any executive or legislative act done by or on behalf of the government of the country of origin, or of the territory where the port or ports of shipment is/are situate, or of any country from which the contractual goods are normally shipped, restricting export, whether partially or otherwise, any such restriction shall be deemed by both parties to apply to this contract and to the extent of such total or partial restriction to prevent fulfilment whether by shipment or by any other means whatsoever and to that extent this contract or any unfulfilled portion thereof shall be cancelled. The Seller shall advise the Buyer without delay with the reasons therefore and, if required, the Seller must produce proof to justify the cancellation.
- 18. Substitution:** The Seller reserves the right subject to the agreement of the Buyer, which shall not be unreasonably withheld, to deliver to the quantity required under this Contract and at the same price as the product originally ordered (unless otherwise specifically agreed) product other than the product requested by the Buyer provided the replacement product conforms to a specification such that it will in the opinion of the Seller be a suitable and adequate replacement of equivalent or better specification than the product originally ordered.
- 19. Force Majeure:** Neither the Buyer nor the Seller shall be responsible for delay in delivery of goods or any part thereof occasioned by any Act of God, action by any government, strike (including dock and/or shipping strikes within the United Kingdom), lock-out, combination of workmen, breakdown of machinery, power failure or fire, provided that the party invoking this clause despatches written notice to the other party within 5 business days of the occurrence, or not later than 5 business days after the beginning of the contract period, whichever is the later. In the case of resales such information shall be passed on without delay. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than 30 consecutive days from the end of the contract period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancelling the contract or any unfulfilled part thereof or mutually agreeing to one further extension period (the second extension) of not more than 30 days. If at the conclusion of the second extension period delivery is still prevented, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non-fulfilment under this clause provided that the party invoking this clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.
- 20. Default:** In the event of default of fulfilment of contract by either party, the other at his discretion shall, after giving notice by fax, letter or e-mail, have the right to sell or purchase, as the case may be, against the defaulter and the defaulter shall make good the loss, if any, on such purchase or sale on demand. If any party liable to pay be dissatisfied with the price of such sale or purchase or if the above right is not exercised and damages cannot be mutually agreed, any damages payable by the party in default shall be settled by arbitration. In the event of default by either party entitling the other party to damages, such damages shall be based upon the actual or estimated value of the goods on the date of default, to be mutually agreed or settled by arbitration, but

nothing contained or implied under this contract shall entitle the Buyer/Seller to recover any damages in respect of loss of profit upon any sub-contracts made by themselves or others. In the event of default, damages if any shall be computed upon the mean contract quantity. The date of default shall be the first business day following the expiry of the contract period. When an extension of collection/delivery has been claimed under the Force Majeure clause or agreed otherwise, the date of default shall be the first business day following the expiry of the extension period.

21. Arbitration: Any dispute (other than a claim for an unpaid debt and as provided under (c) below) arising out of this contract shall be referred to arbitration as follows:

- a. Unless otherwise agreed, the dispute shall be referred to arbitration in accordance with the arbitration rules of the Agricultural Industries Confederation Limited, (obtainable from the registered office of the Confederation and or <https://www.agindustries.org.uk/legal/arbitration>), and all parties shall by making this contract be deemed to have knowledge of such rules and to have elected to be bound thereby. In the event of any dispute in a string of which this contract forms part, the parties to this contract must provide such information as may be required by the arbitrators.
- b. Where a dispute as to quality arises regarding goods which are the subject of two or more contracts identical in terms except as to date and price, then any arbitration may with the consent of all parties concerned be held as between the first Seller and the last Buyer in the series of transactions as if they were the only contracting parties and any award then made shall, subject to the rights of appeal as provided in the relevant rules, be binding on all intermediate parties in the series of transactions and may be enforced by any such intermediate party against his intermediate contracting party as if a separate award had been made under each separate contract. All such intermediate contracts shall be made available to the arbitrators.
- c. If a dispute involves legal or technical problems of great complexity which are beyond the knowledge and competence of Arbitrators to resolve or if a dispute of necessity involves a third party who is not subject to arbitration, either party before the time for commencing arbitration proceedings has lapsed can, in writing, request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts. Should such consent be unreasonably withheld or no answer received within 28 days the party making the request shall be at liberty to commence court proceedings leaving it to the other party if the other party so wishes to apply for a stay of proceedings invoking the arbitration clause. The Court will then decide whether the arbitration or the court proceedings should continue. Time for commencing arbitration proceedings shall not run (or if started not continue to run) from the date of such request until the Court has given a final ruling (this including any appeals) as to the proper venue for the dispute to be heard, providing Court proceedings are commenced within 28 days of the receipt of any refusal or 56 days from the date of the request if no answer to it is received.

22. Time Limits for Claiming Arbitration: Arbitration shall be claimed within the following time limits: i) in relation to any aspect of the consignment quantity, quality or condition of the goods that is discoverable by the exercise of reasonable diligence upon delivery of the goods, arbitration shall be claimed within 28 days after the date of the arrival of the goods at their ultimate destination in the United Kingdom or from when risk passes in accordance with clause 9(b) and ii) in relation to all other claims including without limitation, claims for quantity, quality or condition not discoverable by the exercise of reasonable diligence upon delivery of the goods, arbitration shall be claimed within 90 consecutive days after the last day of the contract period. Where the contract giving rise to the arbitration is one of a series of contracts a reasonable extension of time to commence arbitration proceedings will be allowed to those in the 'string'. In the case of disagreement as to what constitutes 'a reasonable extension' this will be referred to the arbitrators as a preliminary issue. Subject to paragraph 21(c): i) the making of an award shall be a condition precedent to any Court action excepting that which is expressly referred to in Clause 44(3) of the Arbitration Act 1986 (or any amendment thereof) by either party for any person claiming under either of them and ii) in the event that arbitration is not claimed within the time limits prescribed above, all courses of action relating to the claim, whether by way of arbitration or in any Courts of Law, are deemed waived and shall be barred absolutely unless the Arbitration Tribunal shall in its absolute discretion determine otherwise.

23. Non-Payment: The Seller reserves the right to withhold deliveries under this Contract until all and any outstanding payments under this or any other Contract with him by the Buyer have been received and reserves a lien upon - and the right to sell or otherwise dispose of - all goods the subject of this Contract whether appropriated to it or not in respect of any such payments.

24. Insolvency:

- a. If either party to the contract
 - i. has a Receiver or Administrative Receiver appointed of any of its property or business undertaking; or

- ii. announces that it has ceased or will or intends to cease to trade (except where such announcement is due to a forthcoming retirement whilst honouring all existing Contracts); or
 - iii. suspends payment of its debts or fails to pay, is unable to pay or admits or states its inability to pay, its debts as they fall due; or
 - iv. disposes or threatens to dispose of all or a material part of its assets whether by one or a series of transactions (other than for the sole purpose of and followed by reconstruction or amalgamation made known to and approved by the other party); or
 - v. convenes, calls or holds a meeting of its creditors or makes any arrangement, voluntary arrangement of composition with its creditors: or
- b. If:
- i. the directors of one party make or state an intention to make or give notice of a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986: or
 - ii. a petition is presented for winding-up or administration of one party: or
 - iii. a resolution (other than for the sole purpose of and followed by reconstruction or amalgamation of one party of which notice has been given to the other party who has approved it) is passed for the voluntary winding up of one party: or
 - iv. one party is dissolved: or
 - v. a statutory Demand in bankruptcy is served on one party: or
 - vi. an Interim Order under Part VIII of the Insolvency Act 1986 is applied for or made in respect of one party: or
 - vii. a Bankruptcy Petition is presented against one party: or
 - viii. a party suffers the levy or enforcement of any execution, distress, sequestration, detention or other process on any of its property or premises: or
 - ix. a party being a partnership any of the above events occurs with respect to the partnership or to any partner therein:

Then notwithstanding any previous arrangement with the other party for deferred payments the full or full remaining price for any goods delivered by the innocent party shall become immediately due and payable to the innocent party.

Either party shall have the right upon giving written notice to the other party without prejudice to any other rights and remedies available to either party forthwith to cancel and/or suspend or to refuse to make or accept any further deliveries by closing out and settling the Contract as detailed below.

Where either party relies upon any of the circumstances/ events listed above ("an act of insolvency") that party shall forthwith serve a notice of such act of insolvency in accordance with the Notices clause of this Contract to the other party. Where proof is available that such notice was served within two business days of the occurrence of the act of Insolvency, the Contract shall be closed out and settled at the market price ruling on the first business day following the occurrence of the act of Insolvency. In all other circumstances the innocent party, upon learning of the act of Insolvency shall have the option of closing out and settling the Contract at either the market price ruling on the first business day following it becoming aware of the act of Insolvency or at the market price ruling on the first business day following the occurrence of the act of Insolvency.

- 25. Business Days/Non-Business Days:** A business day is the period between 0900 hours and 1600 hours inclusive on any day other than a non-business day. Saturdays, Sundays and officially recognised national holidays applicable throughout the United Kingdom and any day which the Agricultural Industries Confederation Limited may declare as non-business days for specific purposes shall be deemed non-business days for the purpose of passing of notices and claims.
- 26. Contracts (Rights of Third Parties) Act 1999:** Pursuant to S.1(1)(a) of the Contracts (Rights of Third Parties) Act 1999, the parties intend that no term of the contract may be enforced by a third party.
- 27. Domicile:** This contract shall be deemed to have been made in England, and the construction, validity and performance thereof shall be governed in all respects by English Law.