

**The Member's attention is drawn in particular to the provisions of conditions 5.2 and 8.1.**

**1. Definitions and interpretation**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

**Agreement:** the agreement between the Company and the Member entered into upon the Company's acceptance of an Application, incorporating the terms of the Application and these conditions (as amended from time to time).

**Application:** the Member's application to be a member of the Company's marketing group on the basis of these conditions, in the form of the Company's application form from time to time.

**Commencement Date:** the date of notification by the Company to the Member that the Member's Application has been accepted.

**Commission:** the commission payable by the Member to the Company under this Agreement, as set out in condition 6.

**Company:** Organic Arable Marketing Company Limited.

**End-receiver:** the end-receiver of Goods sold by the Company on the Member's behalf

**End-receiver Conditions:** any terms and conditions of purchase used by End-receivers.

**Goods:** any goods specified in a Harvest Report.

**Harvest Report:** the report to be provided by the Member to the Company in accordance with condition 5.3(c).

**Local Regulations:** laws and regulations applicable to the Goods in the Territory.

**Net Price:** in relation to any Goods, the price actually charged to the End-receiver less any discounts, rebates or returns.

**Member:** the person or company, details of whom are set out in an Application.

**"pooled Goods":** Goods which may be sold together with Goods of other members as part of a larger consignment of Goods.

**Seed Report:** the report to be provided by the Member to the Company under condition 5.3(a)

**Subscription Fee:** the annual fee payable by the Member to the Company, as set out in the Application or otherwise notified by the Company to the Member from time to time.

**Term:** the duration of the Agreement, as set out in condition 9.

**Territory:** the continent of Europe, including without limitation the United Kingdom and Ireland.

**Year:** the period of 12 months from the Commencement Date and each consecutive period of 12 months thereafter during the period of this Agreement.

1.2 References to conditions and schedules are to the conditions of and schedules to these conditions.

1.3 Headings are for convenience only and shall be ignored in interpreting these conditions.

**2. Appointment**

2.1 By sending in to the Company a completed Application and paying the Subscription Fee, the Member agrees to appoint the Company as its exclusive agent to promote and sell the Goods in the Territory under the Agreement. Such appointment shall take effect automatically upon written acceptance by the Company of the Member's Application being delivered to the Member by the Company.

2.2 Save as otherwise agreed in writing by the Company, the Member shall not, during the Term, appoint any other person, firm or company as its agent, distributor or franchisee for the sale of the Goods in the Territory.

2.3 The Member shall not, without the Company's consent and, subject to the following, make offers or quotations to or negotiate with or sell Goods to any person in the Territory, and shall refer all such possible transactions to the Company.

### 3. **Company's obligations**

The Company undertakes and agrees with the Member at all times during the Term:

- 3.1 to act at all times in its relations with the Company dutifully and in good faith;
- 3.2 to use its reasonable endeavours to promote and sell the Goods in the Territory with all due care and diligence and without prior reference to the Member to negotiate, conclude and enter into contracts for the sale of the Goods in the name of and on behalf of the Member;
- 3.3 to maintain appropriate offices, stores and display and administration facilities and systems as may be necessary for the effective performance of its duties under this Agreement.
- 3.4 to employ a sufficient number of suitably qualified dedicated personnel to ensure the proper fulfilment of the Company's obligations under this Agreement;
- 3.5 to keep the Member fully informed of its activities concerning the promotion and sale of the Goods;
- 3.6 to inform the Member as soon as reasonably practicable of any complaint or after-sales enquiry concerning the Goods (including the results of any sampling, testing or re-testing carried out by the Company or an End-receiver) received by the Company;
- 3.7 to issue invoices to End-receivers on behalf of and as agent for the Member in respect of Goods sold under this Agreement;
- 3.8 to issue invoices to the Member (in a form suitable for value added tax or other sales tax purposes) in respect of Commission payable under this Agreement in accordance with condition 6.1 and costs and expenses payable in accordance with conditions 4.4 and 7.3;
- 3.9 to allow the Member's authorised representatives upon the Member's reasonable written request and at any reasonable time (save that the Member shall not be entitled to exercise its rights under this condition on more than one occasion in any Year) to have access to the Company's premises (or to arrange for the Member's authorised representatives to have access to other relevant premises) for the purpose of inspecting the Company's books and records in as far as they relate to the Member.

### 4. **Sale of Goods**

4.1 Upon receiving a bid for Goods, the Company shall:

- (a) (in respect of Goods which the Member has indicated in supplying a Harvest Report should be treated as "pooled Goods") be entitled to accept or reject such bid without prior reference to the Member and to aggregate such "pooled Goods" together with "pooled Goods" provided by other Members in order to fulfil contracts with End-receivers (it being agreed and understood that, where the Company incurs costs for haulage, conditioning or otherwise in respect of any consignment of "pooled Goods" then each member (including the Member) who has provided "pooled Goods" in relation to such consignment shall share such costs in proportion to the proportion of the consignment which that member's "pooled Goods" comprise); or
- (b) (in respect of Goods which the Member has indicated in supplying a Harvest Report should not be treated as "pooled Goods") before acceptance or rejection of such bid notify the

Member of the price bid, and it shall be for the Member to decide whether the bid should be accepted or rejected. Goods indicated to be treated otherwise than as “pooled Goods” shall be treated as an individual consignment, separate from any other Goods or goods of other members. The Member agrees however that, where the Member has accepted a price bid in respect of part of a consignment of Goods supplied by the Member, the Company shall not be required to revert to the Member in respect of any price bid received for the remainder of such consignment of Goods (or any part thereof) which is equal to more than the accepted price bid.

- 4.2 Where the Company accepts a bid for Goods in accordance with condition 4.1, the Company shall enter into the appropriate contract for sale of the Goods on the Member’s behalf with the relevant End-receiver. All sales of the Goods by the Company on behalf of the Member shall be on the basis of the following terms and conditions, in order of priority:
- (a) any End-receiver Conditions;
  - (b) the Company’s standard terms and conditions for the sale of the Goods in the Territory as varied from time to time (a copy of the current version of which is attached as Schedule 1)
  - (c) the terms of the following contracts (as applicable, and in each case being the latest version of such contracts available as at the time of delivery of the Goods):
    - (i) AIC 1 (for purchases of grain and pulses from a farmer or grower)
    - (ii) AIC 2 (for purchases of grain and pulses from a trade supplier).
- 4.3 The Company shall not become the owner of any Goods nor of any other goods delivered from the Member to the Company.
- 4.4 The Company shall at the Member’s cost arrange haulage of Goods from the Member’s premises or storage facility (as appropriate) to the End-receiver’s premises as identified in the relevant contract. The Member shall be responsible for any weighbridge charges incurred in respect of the Goods. Delivery shall where possible be made in loads of 29 tonnes. Where any load supplied by a Member is less than 29 tonnes, the Company reserves the right to pass on to the Member any additional haulage costs incurred in transporting such part-load.
- 4.5 The Company shall collect and hold as trustee all monies due to the Member in respect of such sales or otherwise, and shall transfer the same to the Member less the Commission, costs and expenses described in conditions 4.4, 6.2 and 7.3 pursuant to condition 6.4.

## 5. Member’s undertakings

The Member undertakes and agrees with the Company during the Term:

- 5.1 to act at all times in its relations with the Company dutifully and in good faith;
- 5.2 subject to the following, and provided the Company performs its obligations under this Agreement, to indemnify the Company against any liabilities which the Company may incur as a result of acting with reasonable care and skill within the scope of its authority under this Agreement as agent for the Member;
- 5.3 to supply to the Company:
  - (a) no later than 30<sup>th</sup> April in each year, a report (a “**Seed Report**”) setting out the types of crop which the Member intends to grow in the period up to the upcoming harvest, the acreage of such crops sown and the anticipated tonnage to be made available for sale in such twelve-month period, broken down by month; and
  - (b) no later than 30<sup>th</sup> June in each Year, a report setting out the types and tonnages of crop which the Member intends should be treated as “pooled Goods”; and

- (c) upon request by the Company at any time following harvest, and in any case (whether requested or not) no later than 15<sup>th</sup> September in each year, a report (a “**Harvest Report**”) setting out the types and tonnages of crop available for sale by the Company under the Agreement (the “**Goods**”);
- 5.4 (subject to the Company having properly notified the Member of such contracts) within the movement periods specified in such contracts, and subject to its rights thereunder, to perform any contracts for the sale of the Goods made on its behalf by the Company acting as agent for the Member under this Agreement;
- 5.5 where appropriate, to inform the Company within a reasonable time if any contract concluded on its behalf by the Company will not be performed by it, and of the reason for such non-performance;
- 5.6 to give the Company notice if at any time prior to the provision to the Company of the Harvest Report it expects that the volume of Goods to be set out in the Harvest Report will be significantly lower than the volume anticipated in the Seed Report.
- 6. Commission and payments**
- 6.1 The Member shall (subject to the Company performing its obligations under this Agreement) pay to the Company in accordance with condition 6.2 a commission (the “**Commission**”) equal to three per cent (3%) of the Net Price of all Goods for which the Company concludes a sale contract on behalf of and as agent for the Member pursuant this Agreement and during the Term.
- 6.2 Commission shall become due to the Company on the earlier of:
- (a) payment being received by the Company from the End-receiver for the relevant Goods; and
  - (b) the date of payment by the Company to the Member under condition 6.4
- and the Company shall be entitled to withhold the full amount of the Commission from payments to be made by the Company to the Member in respect of Goods in accordance with condition 6.4.
- 6.3 For the purposes of establishing the amount of Commission due to the Company the Company shall, on the 21<sup>st</sup> day of the month following the month of movement (or, where such date does not fall on a business day in London, on the next available such business day) of the relevant Goods, send to the Member a statement:
- (a) showing the aggregate Net Price of such Goods sold by the Company on behalf of the Member during the month of movement to which such statement relates;
  - (b) its costs and expenses incurred in respect of such Goods as referred to in conditions 4.4 and 7.3;and
  - (c) any levy due from the Member,
- and shall attach to the statement copies of all relevant invoices, receipts and other supporting documentation in the Company’s possession and control.
- 6.4 For the purpose of payment between the Member and Company the Company shall, with the statement sent pursuant to condition 6.3, remit to the Member in pounds Sterling a sum equal to the aggregate Net Price less the full amount of the Commission and any costs and expenses as referred to in conditions 4.4 and 7.3 and any levy payment payable by the Member as specified in the statement, and issue a receipted invoice to the Member (in a form suitable for VAT purposes) for the Commission, costs and expenses due to the Company .
- 6.5 All sums payable under this Agreement are exclusive of any value added tax or other applicable sales tax, which shall be added to the sum in question. A VAT invoice shall be provided against any payment.

6.6 If any dispute arises as to the amount of Commission payable by the Member to the Company, the same shall be referred to the Company's auditors for settlement and their certificate shall be final and binding on both parties.

## 7. Member warranties

7.1 The Member warrants and represents to the Company that the Goods:

- (a) will comply with the Local Regulations concerning composition, packaging and labelling, being those in force in the Territory at the date of delivery of the Goods;
- (b) will be certified organic and (unless otherwise agreed in writing by the Company) be produced under a nationally-recognised farm assurance scheme (and the Member shall notify the Company immediately it becomes aware of any change in the Member's farm assurance status (including any change of farm assurance scheme)); and
- (c) will comply with any specification supplied by the End-receiver and in particular will be free from ergot, diatomaceous earth/silica dust (and any derivative thereof), mould, insects (dead or alive), animal droppings, green/burnt/heated crops.

7.2 The Member acknowledges and agrees that, in the event that the Member has made available Goods which do not comply with condition 7.1 ("non-assured Goods") for supply to an End-receiver who has contracted for the supply of assured Goods, such End-receiver shall have various remedies available to it, including the right to reject the entire consignment of Goods supplied (regardless of whether the non-assured Goods form the whole of such consignment or only part), or to re-negotiate the price of such Goods. In such case, the Company shall:

- (a) (in the case of a rejection of the Goods) at the Member's expense return the Goods to the Member as soon as reasonably practicable; or
- (b) (in the case of a re-negotiation of the price of the Goods, save where the Goods are "pooled Goods") use reasonable endeavours (but without itself incurring demurrage or other charges or expense) to contact the Member to discuss any proposed amended price but the Member agrees that, in the event that the Company is not able for whatever reason to contact the Member, then the Company shall be entitled to use its own discretion in the re-negotiation of such price; or
- (c) (where the Goods are "pooled goods") be entitled to use its own discretion in the re-negotiation of such price.

7.3 The Member further acknowledges and agrees that, where the Member supplies Goods which do not comply with the specification given by the Company and/or any End-receiver, the Company shall be entitled at its discretion and at the Member's expense to carry out conditioning works (including without limitation drying, cleaning and/or cooling processes) as required to ensure that the Goods conform with the specification.

## 8. Product liability

8.1 Subject to fulfilment by the Company of its obligations under this Agreement, the Member shall indemnify the Company against any liability incurred by the Company in respect of damage to property, death or personal injury arising from any fault or defect in the Goods and any reasonable costs, claims, demands and expenses arising out of or in connection with that liability (a "**Relevant Claim**"), except to the extent that the liability arises as a result of the negligent or fraudulent action or omission of the Company.

8.2 The Company shall, immediately it becomes aware of a matter which may result in a Relevant Claim (whether against the Company or only against the Member):

- (a) give notice to the Member of the details of the matter;

- (b) afford access to the Member and permit copies to be taken of any materials, records or documents as the Member may require to take action under condition 8.2(c);
  - (c) allow the Member the exclusive conduct of any proceedings and take whatever action as the Member shall direct to defend or resist the matter, including the use of professional advisers nominated by the Member; and
  - (d) not admit liability or settle the matter without the prior written consent of the Member.
- 8.3 The Company undertakes to maintain appropriate, up-to-date and accurate records to enable (subject to the End-receiver's handling of the Goods) the immediate recall of any of the Goods from the retail or wholesale markets. These records shall include records of deliveries to End-receivers (including details of batch numbers, delivery date, name and address of End-receiver, and telephone number and fax number (and e-mail address if available)).
- 8.4 The Company shall, at the Member's cost, give such assistance as the Member may reasonably require for the purpose of recalling as a matter of urgency any quantities of the Goods or any of them from the retail or wholesale market.

**9. Term and termination**

- 9.1 This Agreement shall come into effect on the Commencement Date and, subject to conditions 9.2 and 9.3, shall continue in force until terminated by either party giving no less than 12 months' prior written notice.
- 9.2 The Member agrees that, should he at any time now or in the future be or become a shareholder in the Company, the Agreement shall continue in force subject to condition 9.3 for so long as the Member is a shareholder and shall terminate automatically upon his ceasing to be a shareholder.
- 9.3 Either party may give notice in writing to the other (the "defaulting party") terminating this Agreement with immediate effect if:
- (a) the defaulting party commits any serious breach of any of the terms of this Agreement and that breach (if capable of remedy) is not remedied within fifteen (15) working days of notice being given requiring it to be remedied; or
  - (b) an order is made or a resolution is passed for the winding up of the Company (and, where the Member is a company, the provisions of this condition shall apply also in respect of the Member), or an order is made for the appointment of an administrator to manage the affairs, business and property of the Company, or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the Company or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver or manager or administrative receiver is appointed in respect of all or any of the Company's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order, or the Company takes or suffers any similar or analogous action in consequence of debt, or an arrangement or composition is made by the Company with its creditors or an application to a court for protection from its creditors is made by the Company; or
  - (c) (where the Member is a natural person) the Member suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or the Member is the subject of a bankruptcy petition or order, or the Member suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business, or the

Member dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;  
or

- (d) the defaulting party ceases, or threatens to cease, to carry on business; or
- (e) the Member ceases to produce or distribute generally the Goods.

#### **10. Effects of termination**

- 10.1 Termination of this Agreement, however caused, shall be without prejudice to any rights or liabilities accrued at the date of termination.
- 10.2 On termination of this Agreement for any reason the Company shall cease to promote, market, advertise or sell the Goods;
- 10.3 For the avoidance of doubt, the provisions of condition 6 shall, notwithstanding termination, continue in force in relation to all sales of the Goods where the sale has been concluded before the date of termination.
- 10.4 Termination shall not affect the operation of conditions 5.2 and 8.1 which shall remain in full force and effect.
- 10.5 Subject as herein provided and to any rights or obligations accrued prior to termination, neither party shall have any further obligation to the other under this Agreement.

#### **11. Force majeure**

- 11.1 The obligations of each party under this Agreement shall be suspended during the period and to the extent that that party is prevented or hindered from complying with them by any cause beyond its reasonable control, including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs, labour disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials, goods or raw materials in connection with the performance of this Agreement.
- 11.2 In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension to the other party as soon as reasonably possible, stating the date and extent of the suspension and its cause, and the omission to give such notice shall forfeit the rights of that party to claim suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than six months, either party may terminate this Agreement by giving the other party 30 days' notice.

#### **12. Entire agreement**

The Agreement and the documents expressly referred to in these conditions constitute the entire understanding between the parties with respect to the subject matter of this Agreement and supersedes all prior agreements, negotiations and discussions between the parties relating to it.

#### **13. Amendments**

Save as expressly provided in these conditions, no amendment or variation of the Agreement shall be effective unless in writing and signed by a duly authorised representative of each of the parties to it.

**14. Waiver**

The failure of a party to exercise or enforce any right under the Agreement shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

**15. Severability**

If any part of these conditions becomes invalid, illegal or unenforceable, the parties shall in such an event negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the invalid, illegal or unenforceable provision which as nearly as possible gives effect to their intentions as expressed in these conditions. Failure to agree on such a provision within six months of commencement of those negotiations shall result in automatic termination of the Agreement. The obligations of the parties under any invalid, illegal or unenforceable provision of the Agreement shall be suspended during such a negotiation.

**16. Rights of third parties**

No term of the Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 or otherwise by a third party.

**17. Notices**

Any notice required to be given pursuant to the Agreement shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to the registered address (in the case of the Company) or place of business as set out in the Application (in the case of the Member) of the relevant party, or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).

**18. Governing law and jurisdiction**

The Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the jurisdiction of the English Courts.



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Schedule 1 Company's standard terms and conditions of sale