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**Model contract: Tomatoes**

1. **THE PARTIES**
   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.”
   2. The Producer warrants that:
2. 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].
3. 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.
4. The Producer has had the opportunity to seek the advice of [an independent legal advisor]/[a producer organisation] on this Agreement before signature.
5. **THE** **PURPOSE**
   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. *[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.]*
6. **PRODUCTIONPRODUCTION SITE**
   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].*
7. **THETHE PRODUCT**

**Product quantity**

[*Option 1: Exclusive output arrangement*]

* 1. The Producer agrees to supply 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.]*
  2. The Producer may retain [insert unit of measurement] of Goods for household consumption per [season]/[delivery].

[*Option 2: Non-exclusive output arrangement*]

* 1. 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].
  2. 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**

* 1. 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**

* 1. The Producer shall comply with:

1. [the production methods prescribed in Annex [X]]/[insert required production methods]; or
2. [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
3. [the post-production methods prescribed in Annex [X]]

**Inspection of the Production Site**

* 1. 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.
  2. Inspection visits shall be carried out [insert frequency, e.g. weekly, monthly]/[in accordance with the inspection schedule at Annex [X]].

*[Optional: Certification]*

* 1. *[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

* 1. 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 Classification[[1]](#footnote-2)

|  |  |
| --- | --- |
| Type | Tolerance of Serious Injuries or Defects (%) |
| Special | [insert] |
| Standard | [insert] |
| Usable | [insert] |

1. **INPUTS**

**Producer’s inputs**

* 1. The Producer shall provide [insert Producer Inputs, including e.g. land, physical facilities, water, energy and labour].
  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.]]*
  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**

* 1. The Buyer shall provide the [insert Buyer Inputs, including e.g. seeds, fertilizers, training].

* 1. 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];
  2. The Producer shall use the Inputs in accordance with the instructions as provided in Annex [Y] of this Agreement.
  3. Upon receipt of the Buyer’s Inputs, the Producer shall verify the Inputs and notify the Buyer in writing of any apparent defects.
  4. 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. 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].
  6. *[Optional: The Producer shall return any unused Inputs to the Buyer at the end of the production cycle, as agreed by the Parties.]*
  7. *[Optional: The Buyer shall provide training or technical assistance necessary for the use of Inputs in accordance with the instructions.]*
  8. *[Optional: insert provisions regarding the Buyer’s intellectual property in respect of Inputs, if applicable].*

**Payment for inputs**

[*Option 1: Free of charge*]

* 1. 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*]

* 1. 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].
  2. 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*]

* 1. 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].
  2. The Producer’s share of the costs shall be deducted from the Price payable by the Buyer for the Goods on delivery.

1. **DELIVERY AND ACCEPTANCE**

**Delivery**

* 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 in Annex [Z].
  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.
  3. The [Buyer]/[Producer] shall be responsible for loading the Goods. The [Buyer]/[Producer] shall be responsible for unloading the Goods.
  4. The Party which is the owner of the delivery point shall maintain it in a reasonable state of cleanliness and hygiene.
  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**

* 1. 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].*
  2. 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.
  3. 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.
  4. 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).
  5. The costs associated with the inspection shall be covered by the Buyer.

**Acceptance of Goods after inspection**

* 1. The Parties’ agreement on the quantity and quality of the received Goods constitutes acceptance of the Goods.
  2. 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]*

* 1. *[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:*

1. *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.*
2. *Liability insurance, specifying the minimum limits of guarantee.*
3. *Building, machinery and equipment insurance against natural disasters such as floods, droughts or hail, fire and theft.*
4. *[Other insurance].*
5. **PRICING MECHANISM** 
   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] |

* 1. 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 per cent soft and mushy; or (3) completely broken through the wall so the seed cavity is visible.

**Time and method of payment**

* 1. 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.

1. **FORCE MAJEURE** 
   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.
   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.
   3. The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
   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.
   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.
   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.
2. **REMEDIES** 
   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.
   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**

* 1. 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.
  2. 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;

1. replacing any non-conforming Goods with Goods which conform with the requirements of this Agreement;
2. replacing any non-conforming Inputs with Inputs which conform with the requirements of this Agreement;
3. 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
4. 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**

* 1. 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**

* 1. 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.
  2. 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.
  3. 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**

* 1. 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**

* 1. 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**

* 1. 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**

* 1. 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:

1. 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;
2. The Buyer failing to pay for conforming Goods for more than [insert number of days] past the payment date;
3. [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]].
4. 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**

* 1. 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.

1. **DURATION, RENEWAL AND TERMINATION**

**Duration**

* 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**

* 1. This Agreement may be terminated:

1. following a breach of the Agreement in accordance with Article 9.11 or 9.12;
2. by mutual agreement of the Parties;
3. by either Party by giving [insert number of months] written notice to the other Party.

**Renewal**

*[Option 1: Automatic renewal]*

* 1. 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]*

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

**Periodic review**

* 1. 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]*

* 1. *[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.]*

1. **DISPUTE RESOLUTION**

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

|  |  |  |
| --- | --- | --- |
| 1. **SIGNATURE** | | |
| Signed [by]/[for and on behalf of]  the Producer: [insert name]  *[Insert if signing on behalf of the producer - Position:]* | Signed [by]/[for and on behalf of]  the Buyer: [insert name]  *[Insert if signing on behalf of the producer - Position:]* | |
| Signature:  Date: | | 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)

1. FAO Sample Contract for tomatoes for industrial use (Brazil) (available at <http://www.fao.org/fileadmin/user_upload/contract_farming/samples/35_Sample_contract_2_of_tomato_for_industrial_use_in_Brazil.pdf>). [↑](#footnote-ref-2)