

# EAST OF SCOTLAND FARMERS LIMITED CONDITIONS OF CONTRACT

*Amended in January 2017 and in force until further notice*

## 1. DEFINITIONS

In these Conditions of Contract, the following expressions shall have the following meanings:

- 1.1. "EOSF" means East of Scotland Farmers Limited of Coupar Angus, Perthshire PH13 9AW;
- 1.2. "Contract" means a contract between EOSF and the Customer for the supply of Goods and/or Services, incorporating any Order and these Conditions;
- 1.3. "Customer" means the person, firm, company or unincorporated body who purchases the Goods and/or Services from EOSF;
- 1.4. "Goods" means the agrochemicals or any part thereof which are supplied under any Contract by EOSF;
- 1.5. "Order" means an order by the Customer to purchase the Goods and/or Services from EOSF as set out in the Quotation or a standing instruction from the Customer to EOSF to provide Goods and/or Services as confirmed in writing by EOSF from time to time;
- 1.6. "Price" means the price set out in Condition 4.1;
- 1.7. "Quotation" means a quotation given by EOSF which shall be valid for a period of 30 days from its date, providing that EOSF has not previously withdrawn it;
- 1.8. "Services" means the services agreed to be carried out by EOSF in connection with the supply of the Goods or otherwise.

## 2. GENERAL

- 2.1. All Goods and/or Services are supplied to the Customer on the terms herein contained which apply in preference to and supersede any previous conditions applicable to previous dealings between EOSF and the Customer and/or any advice which may have been previously given to the Customer by EOSF or any of its staff or agents.
- 2.2. Any Order shall be deemed to be an offer by the Customer to purchase Goods and/or the supply of Services pursuant to these Conditions.
- 2.3. A Contract shall be formed only on acceptance by EOSF of an Order. An Order shall be deemed to be accepted by EOSF when it confirms its acceptance of the Order to the Customer or when EOSF delivers the Goods and/or carries out the Services. The parties acknowledge that a Contract shall be formed at this time.
- 2.4. These Conditions shall be the entire contract terms subject to which all Contracts are made by EOSF. Any terms and conditions which may have been referred to by the Customer or contained in any Offer or otherwise brought to the notice of EOSF are hereby excluded (unless otherwise agreed in writing by EOSF at its sole discretion).

## 3. VARIATION

- 3.1. Neither the Customer nor EOSF shall be bound by any variation, waiver of or addition to these Conditions of Contract except as agreed by both parties in writing.

## 4. PRICE AND PAYMENT TERMS

- 4.1. The Price for the Goods and/or Services shall be the price quoted by EOSF in the Quotation or, in the absence of a Quotation having been requested by the Customer or other agreed Price, the Price determined by EOSF. Any Price is quoted net of VAT at the prevailing rate on the

date of the invoice when rendered and such VAT shall be paid by the Customer in addition to the Price.

- 4.2. Notwithstanding Condition 4.1, EOSF reserves the right by giving written notice to the Customer at any time before delivery, to increase the Price of the Goods and/or Services to reflect any increase in the cost to EOSF which is due to any factor beyond the control of EOSF (including but not limited to any alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give EOSF adequate information or instructions.
- 4.3. Payment of an invoice rendered is due in full in pounds sterling by the last day of the month following the date shown on the invoice.
- 4.4. Time for payment shall be of the essence.
- 4.5. Interest will be charged on any amounts which are paid late at the rate of two per cent per month from the due date of payment until the date of settlement of the outstanding amount in full.

## 5. DELIVERY

- 5.1. EOSF shall use all reasonable endeavours to secure delivery and, where applicable, application of the agrochemicals on the dates stipulated in the Contract, or otherwise as near as possible to optimum timings.
- 5.2. The Customer acknowledges that the Goods and/or Services may be affected by events beyond the reasonable control of EOSF (including but not limited to weather conditions making it unsafe to perform the Services or Goods not being delivered within timescales indicated by third party suppliers). In such circumstances, EOSF shall notify the Customer as soon as reasonably practicable and shall not be liable for any losses or claims arising out of such events.
- 5.3. Notwithstanding the generality of Condition 5.2, EOSF shall have no liability for any damages or loss suffered by the Customer where that loss was a result of the failure of EOSF to deliver Goods or, where applicable, perform the Services in accordance with the Contract whether as a consequence of late delivery, non-delivery, damage, short delivery or otherwise.

## 6. CUSTOMER UNDERTAKINGS

- 6.1. If the Services which EOSF has been contracted for by the Customer cannot be performed due to a failure by the Customer to properly inform EOSF of:
  - 6.1.1. the exact locations on which the agrochemicals are to be applied;
  - 6.1.2. any locations which the Customer considers wind-blown spray could damage or in any way affect adjoining crop or property; or
  - 6.1.3. any reason (including but not limited to adverse weather conditions or the condition of crop or areas in which the Goods and/or Services are to be applied) in which it would be unsafe or otherwise unreasonable for EOSF to perform the Services;

then the Customer undertakes to pay all costs incurred by EOSF in relation to the Services.

- 6.2. Notwithstanding the generality of Condition 6.1, the Customer undertakes:

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6.2.1. to take all reasonable steps to ensure that any equipment provided to it by EOSF in respect of the Services (including but not limited to the sprayer) is not left idling during periods of good weather where the use of such equipment would otherwise be permitted; and

6.2.2. to ensure that no person, animal or livestock is at any time permitted or has access to any location or area where any chemicals have recently been used or applied.

6.3. EOSF shall have no liability for any damages or loss suffered by a Customer where that loss was a result of the failure of the Customer to comply with Condition 6.2.

#### **7. DEFECTS IN AGROCHEMICALS**

The Goods are supplied to the Customer in the manufacturer's original packaging and without any control by EOSF. All Goods used by EOSF are believed by them to have been found suitable for the purpose for which they are recommended and used. Whilst every care is taken by EOSF to secure the desired result, EOSF does not accept any liability for any defect in any Goods or their packaging or any loss, damage or injury arising from any such defect.

#### **8. LIMITATION OF LIABILITY**

8.1. In the event that any Goods or Services are not supplied by EOSF in accordance with the terms of the Contract, EOSF's sole liability will be to either, at its sole discretion, (i) replace the defective Goods or re-render the Services free of additional charge to the Customer, or (ii) refund all payments made to EOSF by the Customer in respect of defective Goods and Services.

8.2. Save as provided in Condition 8.1, EOSF shall not be liable for any claim for direct or indirect, consequential or incidental injury, loss or damage made by the Customer against EOSF in respect of the supply of Goods and/or Services.

8.3. Without limiting the foregoing, EOSF limits its liability (however arising) in respect of or in connection with the Goods and/or Services and otherwise in connection with the Contract, to the total value of the Contract.

8.4. Any advice given by EOSF is given in good faith, but without liability.

#### **9. FORCE MAJEURE**

EOSF reserves the right to defer the date of delivery or to cancel the Contract or to reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), power failure or breakdown in machinery or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

#### **10. TERMINATION**

10.1. EOSF shall be entitled to terminate the Contract with immediate effect if:

10.1.1. the Customer is in material breach of the Contract;

10.1.2. the Customer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes sequestrated or bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or

10.1.3. an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Customer (including the Goods); or

10.1.4. any other proceedings are commenced relating to the insolvency or possible insolvency of the Customer;

10.1.5. the Customer ceases, or threatens to cease, to trade or carry on business; or

10.1.6. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

10.2. If EOSF terminates a Contract under this Condition 10 then, without limiting any other right or remedy available to EOSF, the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10.3. Any Customer whose Order is in the form of a standing instruction to provide Goods and/or Services for each crop season may terminate such standing instruction by giving written notice of termination on or before 31 December of the year before the first crop season for which the standing instruction is not to apply.

#### **11. WAIVER**

Any waiver by EOSF of any breach of or any default under any provision of the Contract shall in no way affect any other terms of the Contract.

#### **12. SET OFF**

EOSF reserves the right to set off against any amount due from it to the Customer any debt which might be due from the Customer to EOSF.

#### **13. LAW AND JURISDICTION**

13.1. The construction, validity and performance of these Conditions, any Contract and of all matters pertaining thereto shall be governed in all respects by the law of Scotland.

13.2. The parties submit to the exclusive jurisdiction of the Scottish courts.

#### **14. NOTICES**

Any notices given under this Contract shall be in writing and sent by post to the registered office or the last known address of the person whom it is addressed and shall be deemed to have been received forty eight hours after the date of posting thereof.