

## OPENFIELD AGRICULTURE WHOLESALE TERMS FOR THE PURCHASE OF GRAINS, PULSES AND OILSEEDS FOR SEASON 2018/19

### 1. GENERAL TERMS

#### 1.1. CONTRACT TERMS

These terms and conditions apply to all wholesale, delivered and ex farm / ex store purchases made by Openfield Agriculture (hereafter Openfield) of Grain, Pulses and Oilseeds for the 2018/19 Season. The following relevant terms, conditions and rules are also to apply, of which, the contracting parties admit that they have full knowledge and notice. Such terms and conditions and rules shall be taken as having been written into such form in the appropriate places.

- End Receivers terms: applicable at time of delivery.
- AIC Contract No.2/16                      - for purchases of Grain and Pulses.
- FOSFA 26A                                      - for purchases of Rapeseed.
- FOSFA 9A                                        - for purchases of Linseed.

All current at time of purchase, with all subsequent amendments, and updates applicable.

In the event of contradictions the terms of the End Receiver are to prevail over these Openfield "Wholesale Terms for the Purchase of Grains, Pulses and Oilseeds", which in turn prevail over any other contract terms.

Openfield specifically exclude the following terms contained or subsequent changes:

Within AIC contract 2/16:-

- Clause 18b (Delivery & weights – Sales on a delivered basis)
- Clause 23 (Notices)
- Clause 24 (Demurrage)

Within the FOSFA 26A contract:-

- Clause 6 (Delivery & Weights) paragraph (b i, ii, iii)
- Clause 7 (Demurrage)
- Clause 11 (Sampling & Analysis)
- Clause 12 (Notices)

Applicable Law. Irrespective of the domicile or place of the head office or of any other office of the seller, English law will apply to all transactions. Any dispute referred for resolution by arbitration will be subject to The Arbitration Act 1996 and the applicable rules of the arbitral institute to whom the dispute has been submitted for determination.

#### 1.2. ORIGIN

Goods are warranted to have been grown in the UK unless specifically agreed otherwise at the time of transaction.

### 1.3. QUALITY

#### Specifications

Goods are purchased on the following specifications (unless stated to the contrary at the time of transaction): OSR and Linseed sampling as per ISO24333 or comparable procedure and analysis as per FOSFA contractual analytical methods, or comparative procedure.

#### Wheat

15% Moisture maximum (ISO 712 standard)  
72 kg/hl minimum specific weight  
6% Sprouted grains max by number  
2% Admixture maximum by weight

#### Barley

15% Moisture maximum (ISO 712 standard)  
63 kg/hl minimum specific weight  
6% Sprouted grains max by number  
2% Admixture maximum by weight

#### Beans

14% Moisture maximum  
2% Admixture maximum by weight

#### Peas

14% Moisture maximum  
2% Admixture maximum by weight

Malting Barley Subject to current MAGB Terms and AIC 2/16.

Oilseed Rape Basis 9% moisture, minimum 6%, maximum 10%,  
Basis 2% admixture, maximum 4% - by weight  
Basis 40% Oil Content.

#### Linseed

9% Maximum Moisture  
2% Maximum admixture – by weight

Moisture/Other:

All feed grains are purchased on a basis of maximum moisture content - normally but not exclusively 15.0% (ISO 712 standard).

Unless otherwise agreed at time of transaction all goods are to be generic to the current crop year.

a) Openfield is normally able to accept, at its absolute discretion, deliveries outside the contract specifications with an agreed allowance however the ruling of Openfield is final. Openfield reserves the right to change contracted maximum moisture and other specifications if industry/EU/UK regulations change between the date of contract and delivery of the goods.

b) Openfield reserves the right to reject any consignment of grain, pulses or oilseed with any admixture of ergot. Openfield also reserves the right at its absolute discretion to reject or claim allowances on any loads that are found to be of an unacceptably high temperature. In any event goods are not to exceed 25<sup>0</sup> C during July/August or 20<sup>0</sup> C during September to June.

c) The variety or varieties of grain / pulses must be quoted on the Combinable Crops Passport. Where a specific variety and/or varieties have been agreed this becomes a condition of the contract and part of the description of the goods. All consignments of wheat or barley of a specific variety or varietal group may be subject to a post-delivery electrophoresis test. Openfield reserves the right to make retrospective claims and/or damages including, but not limited to, analysis costs, should the variety prove to be non-contractual or not as described.

d) Openfield reserves the right to reject any consignment if found to contain any insects / animals (dead or alive) or rodent / animal droppings.

e) For consignments of Oilseed Rape being delivered to a store, port facility or ship, Openfield reserves the right to claim retrospective allowances where the goods are found to be non-contractual with regard to Free Fatty Acid (FFA), Erucic Acid and/or Glucosinolates, due to the nature and timescale of accurate post-delivery testing. Buyers will inform sellers of this allowance within 90 consecutive days from last day of contract delivery period. Admixture claims will be notified within 30 consecutive days of intake after the intake sample has been analysed fully as per FOSFA requirements.

All Oilseed Rape deliveries made in the UK must comply with the current EU regulation with regard to the maximum permitted level of BAP (Benz(a)pyrene). If loads are found to exceed these levels then buyers reserve the right to make retrospective claims up to a maximum of 90 days following delivery of goods.

#### 1.4. DELIVERY

a) Every effort will be made by Openfield to provide Sellers with two clear business days' notice when passing delivery instructions for grains, pulses or oilseeds. This is not however a condition of the contract and does not entitle Sellers to declare Openfield in default of contract should less than two clear business days' notice be given.

b) For purchases destined for human consumption, goods on the 'AIC Haulage Contaminant Sensitive list of Materials causing allergic reactions' are in all cases to be automatically incorporated to the AIC haulage exclusion list.

c) Deliveries will not be accepted on tractor drawn trailers or sucker blower vehicles unless previously agreed at the time of transaction. If not agreed formally at time of transaction, the seller shall ensure that all goods are carried on vehicles which are fully certified and comply with TASCC Code of Practise for Road Haulage of Combinable Crops and Animal Feeds or equivalent recognised scheme.

d) For deliveries to Openfield stores and port facilities, the allocation number and fixing number must be quoted on presentation of delivery documents. Failure to provide such information may result in delay while contract clarification is obtained.

e) Weekend / Bank Holiday deliveries – Many destinations require weekend and Bank Holiday deliveries in their purchasing terms. If contracts are purchased for such destinations or for a delivery range which cover these destinations, suppliers will be contractually obliged to deliver, if requested to do so over Bank Holidays and weekends. Any objection to weekend or Bank holiday deliveries must be agreed at time of trade and will be confirmed contractually by Openfield.

f) When contractual fixings have been missed, Openfield reserves the right to cancel or default the missed quantity, or to call for delivery of the missed quantity in the month following the contract period. If replacement fixings are also missed, we reserve the right to default basis market price on the next working day following the final replacement fixing. Expiration of the delivery period will not entitle cancellation by the Seller of the quantity not delivered.

### 1.5. Harvest 'as available' term

It is the seller's responsibility to advise Openfield when the total quantity of the goods, and full details as per contract terms (not limited to variety and tonnage), are available for collection. Upon declaration Openfield will endeavour to arrange collection / delivery as promptly as possible, at buyer's call, during the remainder of the contract period, provided notice of availability is given at least 10 clear working days prior to the end of the contract period. If notice of availability is not given within 10 days of the end of the contract period, Openfield reserves the right to claim an extension to the contract period of 15 days in which to collect/deliver the goods.

### 1.6. CLAIMS & REJECTIONS

a) Openfield reserves the absolute right to reject any consignment outside the contractual specification, but will endeavour to accept such consignments with a price allowance to be agreed.

b) Any deliveries made on a non-business day or prior to 08:30 or after 17:00 on a business day, which are subject to an allowance, will be tipped without prior authorisation from the Seller. Any allowance will be notified to the Seller as promptly as possible thereafter but ultimately subject to end receiver's terms.

Any request for a retest or independent analysis must be received in writing within five business days from the date of delivery unless determined by the end receiver's terms.

Openfield reserves the right to recover a charge of £100 plus VAT per analysis per sample from any supplier requesting an independent analysis. This charge will be reimbursed to the supplier in the event that the analysis proves the load to be within the contractual specification.

### 1.7. WEIGHBRIDGE CHARGES

A fixed weighbridge charge of £8.25 per load (plus VAT) will be deducted irrespective of load size.

### 1.8. ASSURANCE

Sellers who supply Openfield will guarantee that, on the date of delivery, that they are certified to a recognised merchant certification scheme (e.g. TASCC). All goods purchased by Openfield shall be assured under Red Tractor Farm Assurance Crops or other equivalent recognised farm assurance scheme (e.g. SQC). Non-assured grain will be accepted only if it is specifically agreed at the time of transaction.

### 1.9. SUSTAINABILITY

Sellers shall, prior to delivery, provide certification, based on auditable records, that the contracted goods to be delivered comply with the sustainable requirements of the EU Directives and UK legislation at the date of delivery in accordance with an EU approved voluntary scheme. All growers / storekeepers, must complete and sign section 8 (Renewable Energy Directive) on the Combined Crops Passport and complete all other sections as per end receiver's current terms not limited to full postcode, post-harvest treatment, DON risk assessment and GM status.

Any Seller delivering goods on a sustainable contract must be ISCC registered (equivalent schemes may be acceptable but in all cases the certification held by the seller must be acceptable to the end receiver at the time of delivery) and must send to Openfield a copy of the ISCC certificate (or equivalent) and expiry date. The Merchant seller must also aid Openfield in providing full traceability of goods, in a timely manner, as and when requested to do so (in any case no later than 30 days after delivery date of each load as per ISCC or equivalent scheme or as per requirements stipulated by end receivers at time of delivery whichever is the shortest time period).

Any request by end receivers for NUTS2 regions, Green House Gas values or similar, to be added to passports or in the form of written submissions, from crops ex store or ex farm, must be adhered to.

## 1.10. INDIVIDUAL END RECEIVERS REQUIREMENTS

Suppliers are reminded of the contractual requirement to meet individual end receiver's buying terms and conditions as well as legislative requirements with regard to food and feed safety. Scientific and technology advances in farming techniques and crop inputs ultimately need to adhere to end receiver's contractual customer buying terms be that on religious, ethical or safety grounds. (This includes but is not limited to, different type of bio stimulants including any containing blood based amino acids or similar, Bio solids / Sewage Sludge or similar, GMO, allergens, Kosher / Halal requirements, vegetarian / vegan status, opium poppies, glyphosate).

## 1.11. PRODUCT LIABILITY INSURANCE

Sellers are advised to have adequate product liability insurance to cover any costs for which they may be legally liable.

## 1.12. CONTRACT CONFIRMATIONS / INVOICES

All transactions are deemed to have been made with Openfield's head office at Honey Pot Lane, Colsterworth, NG33 5LY. Invoices and any correspondence should be sent only to this address and not to any other Openfield location.

Openfield will return any invoice that does not include the following information:

Delivery date; Delivery reference; Delivery destination; Weighbridge ticket number; net quantity, Openfield's Contract Number & Fixing Number, relevant ISCC or equivalent requested information.

## 2.0. SPECIFIC PORT TERMS

In addition to the General Terms above, the following Special Terms apply to deliveries to port facilities. In the event of any inconsistency with the above terms, then these special specific terms apply.

## 2.1. CONTRACT TERMS

All transactions are made basis **'Buyer's call'** and all goods must be delivered on the fixing date passed to the seller. Missed fixings are not guaranteed to be replaced and may be deemed a breach of contract. (refer to General Terms point 1.4(f))

A delivery reference will NOT be issued prior to the contract period.

The delivery/intake reference will be the contract number on the Openfield purchase confirmation

## 2.2. DELIVERY

2.2.1 For delivered contracts purchased to a UK port or for contracts purchased to a destination range for which Openfield have issued delivery instructions, Openfield will advise the likely destination point and delivery reference in advance of the contract month but they reserve the right to call the goods to any destination point(s) within the local contractual range area and will specify the destination point(s) and full intake reference number(s) when giving fixings.

2.2.2 Extensions – AIC contract 2/16, clause 25 'Extension of Delivery Period', is deleted and replaced by:

**“Buyers have the option to claim an extension into the next month provided they give at least 3 business days’ notice prior to the end of the original contract period. The Seller is to grant an extension of delivery up to and including the 15<sup>th</sup> of the following month at an increase to the contract price of £0.50 per tonne. Should the Seller fail to deliver the contractual goods within the extension period any settlement for default shall be based on the original contract price”.**

This extension clause shall apply unless the Seller had specifically excluded it at the time of transaction.

2.2.3 Delivery instructions will be issued either by fax or email.

2.2.4 All drivers of delivery vehicles must comply with local site Health and Safety regulations.

2.2.5 In addition to Clause 20 of the AIC 2/16 Contract (“Force Majeure”), Openfield will accept no liability whatsoever for claims arising from delays to transport caused by, but not limited to, breakdowns, strikes or late or non-arrival of vessels.

2.2.6 All consignments against any purchase made by Openfield must be accompanied by a completed and signed Combinable Crop Passport (including section 8). For assured crops, a current Farm Assurance sticker must be supplied, and NUTS 2 and / or sustainability data criteria required for grain, if traded as sustainable

2.2.7 Openfield reserve the right to reject any consignment of goods where the variety of the goods is not stated on the Combinable Crops passport, or where the crop variety is found to differ from that stated on the passport. (refer to General Terms point 1.3(c))

## 2.3. QUALITY

The “Specific Port Terms” expressly incorporate Clause 1.3 (“Quality”) of the “General Terms”.

2.3.1 **Milling Wheat** specifications will be confirmed at the time of transaction.

2.3.2 At the absolute discretion of Openfield, consignments tested and found to be outside the contractual specifications may be accepted subject to a contract claim or price allowance.

Where this is not appropriate or a claim or allowance cannot be mutually agreed the goods will be rejected. All deliveries must comply with the current EU maximum permissible limit for fusarium mycotoxins, including but not limited to DON, ZON, Aflatoxins and OTA as laid down in the EU regulation 856/2005 and any subsequent amendments. Deliveries are also to comply with all EU / UK regulations current at time of delivery relating to maximum contaminant levels in food and feedstuffs. All goods have to comply with limits permissible for the purpose they were bought for, be it food or feed.

- 2.3.3 Samples of all consignments accepted with an allowance taken, or that have been rejected, will be retained. Where Openfield is the end receiver, any request by the seller for a retest or independent analysis must be received in writing within five business days from the date of delivery otherwise as end receiver's terms. Requests made outside that period will not be considered and costs for independent analysis as per clause 1.6 stand.

### 3.0 APPENDIX

Definition: for the purpose of these terms and conditions, the term "wholesale" is defined as the sale of bulk Goods on a trade to trade business and that which is not direct ex farm contracted business where the counterpart seller is a farmer.

All contracts with producers on an ex farm basis fall under the Openfield Agriculture Grain / Pulses / Oilseeds Ex Farm Purchase Terms 2018/19.