

 COFCO INTERNATIONAL UK LTD

Producer / First Buyer Terms of Purchase

of Cereals, Pulses and Oilseeds

**COFCO INTERNATIONAL operates a Corporate Social Responsibility Policy which sets out their Corporate Values. These values and principles guide the Company’s operations and business worldwide and help us to fulfil our purpose and achieve our vision. They reflect who**

Where the term: ‘COFCO, COFCO International UK; COFCO International UK Ltd; COFCO INTL, We’, ‘Buyer’, ‘Buyers’, is used herein, it shall on every occasion refer to COFCO International UK LTD

 **1. Terms and Conditions of Purchase**

For the purchase of grains and pulses the terms and conditions of the AIC No.1 Grain/Pulses Contract applicable on the date of transaction shall apply insofar as they are not inconsistent with Buyer’s Terms. Oilseed Rape and Linseed will respectively be purchased under the FOSFA 26A contract terms (April 2021) and FOSFA 9A contract terms (April 2021 edition).

**2. The variances to the terms of these contracts relate to the following clauses:**

* **Clause 5 Quantity of AIC No. 1/21 Contract states: -**

“The Seller shall have the option of delivering 5% or 15 tonnes (whichever is the lesser quantity) more or less than the contractual quantity at the contract price”. This is replaced by and shall be contractually binding, “*The Buyer shall have the option to accept delivery of 5% or 15 tonnes (whichever is the lesser quantity) more or less than the contractual quantity at the contract price”*.

* **Clause 22(b) Claims of AIC no.1/21 Contract** is excluded in totality. This is replaced by and shall be contractually binding, “*All claims will be advised by the Buyer as soon as is practicable after delivery”*. This will apply to Malting Barley as well as to other cereals and Pulses.
* **Clause 2 (Tolerance) of FOSFA 26A Contract and FOSFA 9A Contract** states:-

“Sellers have the option of delivering 2% more or less or 5 tonnes more or less of the mean contract quantity, whichever is the greater”. This is replaced by, and shall be contractual, “*Buyers have the option of accepting* 2% *more or less or 5 tonnes more or less of the mean contract quantity, whichever is the greater”.*

**3. Dispute resolution**

AIC and FOSFA Contract Terms both incorporate a written agreement to arbitrate to determine any disputes arising from the use of their contracts. While Buyer will always try to settle problems mutually, if this does not succeed, Buyer may then claim arbitration under the Arbitration Rules of AIC or FOSFA .

Notwithstanding AIC or FOSFA terms, Buyer applies and relies on the terms of the ultimate end receiver of the contractual goods at the time of delivery.

Other issues relating to the purchase of Cereals, Pulses and Oilseeds are addressed below:

**4. Contract Confirmation**

Each transaction will be confirmed in writing on a computer-generated form (the Contract Confirmation. When the Seller receives the confirmation, it is their responsibility to check that all the details are correct. If the Seller finds any details with which they do not agree, they **must** contact the Buyer within five business days of the date of the confirmation. Failure to advise any alleged errors within that period will render the Seller liable to the applicability of the confirmed terms as stated. The Buyer will additionally send to Sellers a quarterly statement showing all outstanding contracts held on the Seller’s account. These too should be checked by the Seller, and any queries must be notified within three business days from the date of Buyer’s issuance of the statement. The Buyer reserves the absolute right to amend a contract if an error is discovered by them subsequent to the confirmation being issued.

**5. Communication**

If the Seller wishes to contact the Buyer in respect of a particular contract they must quote the relevant Buyer’s contract reference number in order that the Buyer may answer any enquiry promptly. Such enquiries are to be referred to Buyer’s head office at Ipswich and not to their regional offices.

**6. Farm Assurance**

Unless otherwise stated by the Seller at the time of transaction all goods will be deemed to be Farm Assured. The Buyer requires to be informed by the Seller of the details of the relevant assurance scheme if the Seller has not previously made this known. The Seller shall inform the Buyer if their Farm Assurance status changes.

**7. Farm Sampling/Collections**

The Buyer recognises the relevant Farm Assurance guidelines which state that all growers should take representative samples as their goods are put into store and such samples shall be co-mingled to be representative of the bulk. Such samples will be considered by the Buyer to be fully representative of the bulk from which they are drawn. Results obtained by Buyer’s analyses will be considered only as a guide to quality and will not be taken as contractually definitive or binding. The contractual quality and condition will be determined only at the point of unloading of the contractual goods at their ultimate destination.

**8. Dusts**

Post-harvest applications of Diatomaceous Earth (silica dust) and its derivatives are not acceptable and no goods so treated will be accepted as part of any consignment. Such rejections will not affect Sellers’ liability to supply the contractual goods in respect of quality and/or quantity.

**9. Prohibited Substances in Horse Feed**

Buyers subscribe to the Universal Feed Assurance Scheme’s Compound Feeds Code of Practice 2009, including Appendix 9 thereto (together, “the Code”), which addresses the control of Naturally Occurring Prohibited Substances (“NOPS”) in equine feeds. All goods supplied to Buyers for use in the manufacture of equine feeds shall comply with the above Code in all respects and Sellers warrant that all goods to be supplied to Buyers for such use do so comply. Without prejudice to any other remedy that Buyers shall have, should Buyers notify Suppliers of the presence of NOPS in any goods supplied, Suppliers shall use their best endeavours to cooperate with Buyers to identify the source(s) of the NOPS and thereafter to ensure that further supply from that source or bulk of materials is prevented.

**10. Passport**

A standard form Combinable Crops Passport applicable on the date of transaction must be used with every delivery consignment, this must show the applicable assurance scheme registration number. Sellers are expected to conform to the requirements of the Passport including Clause 8, Renewable Energy Directive. Non-standard passport forms will not be accepted.

**11. Benzo-Alpha Pyrene (BAP)**

In the event that after discharge of the goods at their ultimate delivery point, such goods are ascertained to contain an inclusion of Benzo-Alpha Pyrene (BAP) higher than 2ppb, the Buyer reserves the right to claim from their contractual counter party a compensatory price allowance representing damages caused to the end receiver by the inclusion of BAP.

**12. Radiation/Irradiation**

Sellers hereby warrant that wheat sold by them has not been subjected to irradiation or a level of radioactivity in excess of that permitted by a regulatory body having the force of law in the United Kingdom or European Union.

**13. Food Safety Act**

In accepting Buyer’s Terms and Conditions of Trade, Sellers acknowledge and recognise their obligations relating to the provisions of the Food Safety Act 1990 and confirm that each delivery will conform to such obligations, including amendments which are applicable at the time of the transaction of sale and purchase.

**14. Sustainability**

The Seller is assumed by the Buyer to be fully aware of and comply with the requirements of the EU Renewable Energy Directive 2009/28/EC, including completing and signing section 8 of the Combinable Crops Passport for all and every consignment (see above). Grains destined for the Bio-fuels industry and all Oilseeds must meet these requirements. The Seller must be able to supply, on first request, a copy of their certification and full traceability of the goods, including NUTS2 data.

**15. Mycotoxins**

The Seller is assumed by the Buyer to be aware of their responsibilities under all current UK and EU legislation relating to mycotoxins and shall take all reasonable steps to ensure grain does not exceed the statutory maximum levels in force at the time of delivery.

Sellers are required to declare the DON (deoxynivalenol) and ZON (Zearalenone) levels in their goods for deliveries destined for Human Consumption. If the Buyer is required to facilitate such analyses, there will be a charge to the Seller of £30 + VAT per test. The Buyer will make these test results available to the Seller, but it should be noted that such results are only a guide to the level of DON or ZON in the samples tested. The Seller must ensure that test samples are representative of the farm bulk in store. Depending on the nature of the harvest, there may also be a requirement from NABIM (the UK Millers’ association) to test for Ochratoxin A (OTA).

All deliveries of goods for human consumption must meet the EU maximum permissible levels of mycotoxins (e.g., DON, Zearalenone, and Ochratoxin A). Full details are available on the NABIM website www.nabim.org.uk.

Grains bought for specific purposes e.g., incorporation as flour or whole grains into bread, pastries, biscuits, cereal snacks, or breakfast cereals, must be within the maximum permitted levels of Deoxynivalenol, Zearalenone, and Ochratoxin A, as required for that purpose by the end receiver.

**16. Product Liability Insurance**

The Seller is strongly recommended to have adequate product liability insurance to cover any product liability or other claims for which they may become contractually liable. Buyer reserves the right to require proof of such cover prior to any delivery being made.

**17. Variety**

Where the Buyer and Seller agree that a specific variety or varieties is/are to be supplied against a contract this agreement will become a condition of the contract and will form part of the description of the goods. Such agreement will be contractually relied on by the Buyer.

The Buyer reserves the absolute right to reject goods where on delivery the variety is found to be incorrect or, where the goods on first inspection are accepted and subsequently enter the food chain, to claim recovery of any consequential damages claimed against the Buyer, howsoever they arise, whether the cause be, e.g. the inappropriate application of chemical treatments to standing crops or to goods in store, where such applications are not specified on the Combinable Crops Passport presented at the point of delivery, or where it can be demonstrated subsequent to delivery that the Seller failed to supply the stated variety or varieties in accordance with the contractual agreement, or for any claim arising from whatsoever and non-anticipated latent cause or causes.

**18. Ergot**

No consignment of goods will be accepted if found to contain **any** Ergot (however small an inclusion may be). No tolerance will be applied and goods containing Ergot will be rejected.

**19. Rodent Droppings**

No consignment of goods will be accepted if found to contain **any** rodent droppings or dead or alive rodents.

**20. Bio Solids (Human Waste/Sludge)**

By entering into a transaction with the Buyer Seller is understood to be aware that crops grown on land that has had any form of bio-solids (human waste or sludge) applied will be restricting the number of potential outlets for their grain. Currently there are numerous consumer buyers whose terms do not permit the application of bio-solids to farmland. If crops are from land that has had any form of human waste and/or sludge applied to it this **must** be notified to the Buyer prior to entering into any transaction. A proven omission of such notification shall be deemed to be a breach of contract.

**21. Buyback Contracts**

All goods grown on a Buyback Contract with Buyer are to be marketed only through Buyer even if the produce does not meet the minimum specification of the Buyback contract.

**22. Harvest `As available` Terms**

It is the responsibility of the Seller to advise the Buyer that the total contractual quantity of any goods sold on ‘As available’ terms is available for collection, and where appropriate, to advise the variety and quality of the goods. Upon declaration of availability, the Buyer will endeavour to arrange collection/delivery as promptly as they are able at their call within the remainder of the contract period, provided such notice of availability is given by Seller at least 10 business days prior to the end of the contract period. Where such advice is given with less than 10 business days’ notice, this shall entitle Buyer to invoke an extension of the contract period into the next month.

N.B. Sellers are advised that notification to the Buyer of the readiness of ‘As Available’ goods does not entitle them to expect immediate collection and clearance of those goods.

**23. Moisture**

Any changes to MAGB/NABIM/AIC moisture terms/allowances will be incorporated and be effective at the time of transaction.

**24. Temperature**

Grain over 20oC on delivery may be subject to a cooling allowance or rejection, at Buyer’s absolute discretion. Any grain found to be above the outside ambient temperature may be subject to rejection.

**25. Weighing Charges**

A weighing charge of £9.00 + VAT per load will be applied to all loads accepted**.**

**26. Haulage**

Any Seller delivering on Buyer`s behalf to a consumer or off-farm store must comply with the TASCC / GTAS Codes of Practice for Road Haulage and they must adhere to all haulage regulations, protocols and codes of practice in force at the time of delivery. The Buyer will make every effort to avoid capacity load charges. However any such charges, except where specified otherwise in the contract, will be passed on when received from hauliers.

Loading times: The Buyer will pass to Seller any costs reasonably incurred by hauliers due to excessive loading times being experienced.

**27. Overweight Lorries**

Sellers are expected to be aware of their legal responsibilities in despatching overweight lorries. Some end users may charge for off-loading excess weight, as a result of which the Seller may be paid for only the legally allowed maximum quantity on any load accepted.

**28. Crop Year/Origin**

Any contracts entered into shall be only for goods harvested in the current crop year unless specifically agreed otherwise at the time of transaction. Any old crop goods which are delivered against a contract will be considered to be a breach of contract which may give rise to rejection or to a claim for recovery of consequential damages.

All goods are warranted to have been grown in the UK unless specifically agreed otherwise at the time of transaction. The goods must not be or have been stored at any time outside in the open, without structural cover, even as a short-time or temporary provision.

**29. Malting Barley**

Barley bought for malting, unless otherwise stated at the time of transaction, may be purchased on the basis of maximum or minimum nitrogen content levels. No tolerance will be applied to these levels unless specifically provided for in the contract.

Broken/skinned grains/stones – Malting barley containing excessive broken/skinned grains or stones may be liable to price allowance or rejection at Buyers’ absolute discretion.

* Only agrochemicals accepted by the British Beer & Pub Association (BBPA) for use on standing or stored barley may be used on or in the production of malting barley. Some end buyers will not accept barley which has been treated with Satisfar (Etrimphos).
* Some maltsters currently charge for drying. The resultant weight loss on barley which is over 14.5% moisture on delivery will be regarded as a non-recoverable loss to the Seller. This is above the MAGB moisture allowance level and will be passed to the Seller as an additional cost.
* Moisture allowances - All maltsters’ allowances are based on the receivers purchase price.
* Malting barley delivered to an inland store or port facility before 1 November 2020 may be subject to drying charges at the Buyer’s absolute discretion.
* From 1 November 2020 Malting Barley will not be accepted if it is above 14.5% moisture content on delivery.

**30. Bread Making Wheat (Screenings and admixture)**

No consignment of wheat shall contain more than 2.0% by weight of either admixture or screenings, or with a combined weight of each of not more than 2.0%. Screenings are represented by the non-wheat tails retained over a 3.5mm slotted hole sieve and through a 2.0mm slotted hole sieve.

Admixture represents other miscellaneous botanical and non-botanical impurities, stone, straw, earth and other extraneous matter found in the remainder of any sample tested.

Each consignment must be completely free from ergot, and from mouldy, tainted or discoloured grains. Consignments found to contain any Ergot (however small that inclusion may be) will be rejected.

Gluten in wheat for milling must be present and have elasticity and extensibility and be of colour and quality satisfactory to the Buyer or end receiver.

Any sign or presence of insect infestation in part or in whole, dead or alive, in any delivery consignment may result in rejection of the consignment.

**31. Bio stimulants**

No grain sold to COFCO International UK LTD may be derived from crops which have been treated with any bio stimulant materials manufactured from animal co-products, at whatsoever stage of the development of the crops involved. Any application of bio stimulant materials MUST be declared on the Grain Passport accompanying each and every delivery. Goods declared to have been treated with a bio stimulant will not be accepted and will be required to be replaced by contractually conforming goods, at the absolute discretion of the Buyer.

**32. Analysis of Oilseed Rape for Latent Defects not readily ascertainable by inspection on delivery**

The first, and contractually definitive, analysis of Oilseed Rape under the terms of FOSFA 26A contract (clause 11) will be undertaken by the end receiver of the goods, or by a FOSFA analyst or by the Buyer’s TASCC accredited laboratory whose analyses shall be contractually binding. The goods will be analysed to determine levels of (but not limited to) Erucic Acid, Glucosinolates, Free fatty Acid and Benzo-Alpha Pyrene (BAP).

Defects in the form of excess contents of any one of the above levels may result in the rejection of a load containing such excesses or, if the goods have been discharged, a retrospective claim for damages may be made by the Buyer within 60 days from the date of delivery, whether or not the Seller shall have been paid for the goods during that period at the contractual price.

Where the Seller challenges the analysis of any one constituent found by analysis in Rapeseed a portion of the sample of goods taken at the point of delivery may be sent to an agreed independent analyst whose analysis shall be final and binding. If the second analysis supports, the result/s of the first analyses the Seller shall be liable to pay all charges incurred for the second analysis.

**33. Futures based contracts**

Where the price per tonne is to be established at a later date based on the price of London Wheat Futures, the Seller is undertaking a “commitment to supply”. In the event that the Seller does not supply the committed tonnage, even if this is declared prior to the price per tonne being finalised, the Buyer reserves the right to claim damages calculated by the difference between the open market price of the goods and the Futures-based contract price.

**34. Delivered contracts**

Whenever it is possible the Buyer will issue fixings to the agreed destination within the contract period, but reserve the right to collect the goods on an ‘ex farm’ basis with a discount in the contract price to reflect the cost of haulage

**35. Extension of collection/delivery period**

The Seller is to grant an extension of the original contract period up to and including the final day of the following month at an increase to the contract price of £1.00 per tonne. Should the Seller fail to deliver within the extension period, any settlement for default shall be based on a default price ascertained on the first business date following the extension period. The original contract price shall apply for the determination of damages.

**36. General Data Protection Regulation (GDPR)**

Each Party shall comply, and shall ensure that its staff and contractors comply, at all times with all applicable laws relating to the processing of personal data including, but not limited to The Data Protection Act 1998, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the General Data Protection Regulation (EU) 2016/679 and any laws implementing, replacing, or supplementing the same.