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A contract farming model agreement in Lesotho

SUSTAINABLE MARKETS, AGRIBUSINESSES AND RURAL TRANSFORMATIONS
SMART

A contract farming model agreement in Lesotho

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Abstract

As an innovative business model, contract farming has the potential to contribute to sustainable development of agribusinesses and agrifood value chains, particularly in developing countries. It can be employed to improve smallholder producers' access to market and productive resources, strengthen the competitiveness of producers and agribusinesses, especially small and medium-sized enterprises (SMEs), and foster a transparent market environment.

The primary objective of the contract farming model agreement is to promote responsible contract farming and good practices in contract development. It has been developed based on a contract farming pilot in Lesotho, jointly facilitated by the Ministry of Agriculture, Food Security and Nutrition (MAFSN) and the Food and Agriculture Organization of the United Nations (FAO).

The model agreement was developed through a participatory approach. It draws upon the principles of responsible contract farming outlined in FAO (2012), and aligns with the *Legal Guide on Contract Farming* developed by the International Institute for the Unification of Private Law (UNIDROIT), FAO and the International Fund for Agricultural Development (IFAD)(UNIDROIT, FAO and IFAD, 2015). It can serve as a helpful reference for contract farming practitioners and anyone with an interest in the field of contract farming.

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Abbreviations

FAO	Food and Agriculture Organization of the United Nations
IFAD	International Fund for Agricultural Development
IISD	International Institute for Sustainable Development
MAFSN	Ministry of Agriculture, Food Security and Nutrition
SME	small and medium-sized enterprise
TCP	Technical Cooperation Programme
UNIDROIT	International Institute for the Unification of Private Law

I. Introduction

Contract farming refers to a business modality where buyers and producers establish an agreement in advance on the terms and conditions for the production and marketing of agrifood products. A typical contract farming agreement includes provisions on price, quantity and quality of the product, as well as delivery and payment terms. It may also cover additional aspects such as the provision of inputs, technical assistance and specified production methods.

The contract farming model agreement in Lesotho has been adapted from a model agreement developed for a contract farming pilot for dry beans in the country. The pilot was part of the FAO TCP project "Building capacities and facilitating enabling environment for contract farming in Lesotho." The project was jointly implemented by MAFSN in Lesotho and FAO during 2021–2023.

The primary objective of this model agreement is to promote responsible contract farming and good practices in contract development. It is designed to serve as a helpful resource for practitioners engaged in contract farming as well as for those interested in such initiatives, both within Lesotho and elsewhere. The model agreement can be highly relevant for businesses, notably SMEs, and institutional buyers in Lesotho and beyond who may employ a contract farming model to procure crop commodities from producers.

The model agreement was developed through a participatory approach and based on the guiding principles of responsible contract farming as outlined in FAO (2012). It aligns with the *Legal Guide on Contract Farming*, jointly developed by UNIDROIT, FAO and IFAD (UNIDROIT, FAO and IFAD, 2015) . It also draws upon the model agreement examples created by FAO and the International Institute for Sustainable Development (IISD) (FAO and IISD, 2018).

The contract farming pilot involves Tasty Food Packers Ltd. as the buyer and local producers and was facilitated by FAO and MAFSN. It is important to note that this model agreement does not represent the final agreement adopted in the pilot. Tasty Food Packer Ltd., with support from FAO, developed the initial draft agreement, outlining its offers to farmers for procuring dried sugar beans. Training and consultation sessions were conducted for the company to develop and refine the draft agreement and for producers to better comprehend the contract terms. The draft agreement underwent three rounds of collective negotiations between the company and farmers, facilitated by MAFSN and FAO. These training and negotiation sessions were open to all interested producers with no obligation to commit to the pilot or sign the agreement.

Tasty Food Packers Ltd. ranks among the four main packers for dry beans in Lesotho. The company engages in purchasing both imported and domestically grown dry beans as well as grains such as maize and rice. These products are then cleaned, packaged and distributed to various retail outlets and food services. The company primarily sources domestically produced dry beans from farmers and traders. Operating as a SME, it focuses on trading, primary processing such as cleaning and packaging, and wholesaling. At present, it does not have the capacity or incentive to provide production support, such as the provision of inputs or technical support to producers.

However, the company is keenly interested in improving the quality of dry beans, forging trustworthy and long-term supply relationships with producers, securing a consistent supply of dry beans from domestic sources and potentially introducing market-demanded new bean varieties through contract farming. The company is also contemplating extending contract farming to other grains with similar objectives. Furthermore, other dry bean and grain packers, along with packers, traders and retailers dealing in various commodities in Lesotho have expressed their interest in the contract farming model.

Smallholder farmers in Lesotho, similar to those in other developing countries, face low productivity and numerous challenges. These include limited access to inputs and other productive resources (e.g. quality seeds, fertilizer and finance), a lack of technology and know-how, limited market access, insufficient price and market information, a lack of bargaining power, and generally inadequate capacity for commercial production.

For dry beans in Lesotho, there is no established quality standard or readily available price information either through public or independent private entities. Many farmers produce dry beans in modest quantities and lack transportation to reach market. Hence, many rely on informal market channels such as traders and local markets.

Some have established supply relationships with packers, but these arrangements typically lack written or clear verbal agreements regarding quality, quantity, delivery, payment and other issues.

The contract farming pilot can potentially benefit smallholder farmers in a myriad of ways, including:

- Formal market connection: It connects the farmers with a buyer, enabling them to sell their product through a formal market channel.
- Advance agreement for more stable income: By establishing an agreement in advance regarding quantity and price for the upcoming production season, farmers can secure a more stable income and better manage production and market risks.
- Collective marketing power: It empowers farmers with collective bargaining power through a transparent and facilitated process and fosters more equitable and sustainable business relationships.
- Fair pricing and market information: It helps ensure producers are informed about the market price and paid at a fair price. The pricing mechanism is clearly defined and allows producers to be paid either at a minimum price or the prevailing market price if higher.
- Quality standards: It sets quality standards, aiding farmers in improving the quality and competitiveness of the product.
- Timely payments: It ensures timely payments by defining clear requirements and procedures for delivery, inspection, acceptance, payment and record keeping.
- Flexible selling period: Producers can sell dry beans at any time during the extended contract period, allowing them to capitalize on favourable prices or sell as needed.
- Non-exclusivity: Producers can determine the quantity committed to the buyer and are free to sell excess produce to third parties, maintaining flexibility in their sales channels.
- Transportation solutions: It addresses transportation challenges by offering to collect dry beans from farmers, utilizing the company's existing delivery routes for efficient aggregation.

The model agreement is designed to lay a foundation for building a long-term relationship between the buyer and producers, grounded in mutual trust and respect. It seeks to achieve this by clearly defining responsibilities and setting up communication mechanisms. The agreement also incorporates provisions for force majeure [1], renegotiation, remedies and dispute resolution, all contributing to fairness in risk sharing and contract implementation.

Overall, contract farming holds the potential to enhance the capacity of smallholder farmers for commercial production, thereby improving their livelihoods. From the buyer's perspective, benefits include not only a more consistent supply of higher quality product, but also valuable knowledge and experience gained from the development and implementation of the contract farming scheme. This includes improvements in management and operational efficiencies through for example better record-keeping and optimized logistics. Within the broader context of agrifood value chains, contract farming can play a vital role in creating linkages between farmers and the market, strengthening capacities for both smallholder producers and SMEs and fostering a more transparent market environment.

The provisions in this model agreement are referred to as "Articles" and are numbered. The model agreement comprises seven groups of provisions, supplemented by additional annexes. These provisions cover the following areas:

- parties and related information, including the parties involved, the purpose of the agreement and the production site;

[1] In the context of domestic laws, events that are unpredictable, unavoidable beyond the parties' reasonable control and objectively prevent one or both of them from performing are widely referred to as force majeure events, although different legal systems may employ their own terminologies regarding such events (FAO, IFAD, and UNIDROIT, 2017). Section 11 in this model agreement addresses force majeure.

- product-related obligations relating to the product's quality, quantity and price;
- production process-related obligations, such as the application of phytosanitary measures and process monitoring activities;
- delivery-related obligations regarding delivery, inspection, acceptance and payment;
- additional obligations, such as communication mechanisms;
- force majeure, remedies and dispute resolution, covering unforeseen events, excuses for non-performance, correction actions and methods for resolving disagreements; and
- duration, termination and renewal, outlining the agreement's lifespan, conditions for its conclusion and renewal terms.

This model agreement is between two parties: the buyer and the producer, with a primary focus on the sale of dry beans. Each individual contract will contain specific details for the producer and must be signed by both the producer and the buyer. However, most provisions in this model agreement are standard across all contracts with different producers.

Specifically, "**X** [Replace X with…]" indicates that a detail in an article is generally to be determined between the buyer and producers collectively. The information in the brackets "[…]" serves as an instruction. For instance, consider the article "The Producer may withdraw from this Agreement within **X** [replace X with the number of calendar days] calendar days of its signing without incurring any liability." The number of calendar days is to be discussed, negotiated and agreed upon between the buyer and producers. In the finalized version of the model contract, each **X** should be replaced with specific details agreed upon by the parties, consistent across all producer agreements.

Certain provisions require individual producers to provide specific information, indicated by an underline, such as "__________ [Insert the number of kilograms]." For example, Article 1.1 is used to identify the parties, Article 3.1 to identify the production site and Article 4.3 to specify the quantity each producer commits to supply.

This model agreement does not contain explanations for its provisions. Interested readers seeking detailed discussions on these provisions can refer to the *Legal Guide on Contract Farming* (UNIDROIT, FAO and IFAD, 2015). For more concise commentaries, FAO, IFAD and UNIDROIT (2017) and FAO and IISD (2018) are recommended. Furthermore, a forthcoming study on the contract farming pilot in Lesotho will provide commentaries for each provision in this model agreement. The study also covers various aspects including the design of the pilot, the process of contract development and negotiations and strategies for managing and scaling up the pilot, among others.

The model agreement can be especially pertinent for businesses and institutional buyers who may employ a marketing-focused contract farming model to procure storable crop commodities from producers, mainly for domestic consumption. It is important to note that the model agreement was developed with specific contextual factors. These include the nature of the commodity, the involvement of smallholder producers and SMEs, as well as conditions, customs and the regulatory environment that may be unique in Lesotho.

For commodities intended for export or processing, there might be more stringent requirements regarding quality standards, production methods and delivery times. While the delivery options and the extended procurement period are suitable for certain storable commodities, they may not be appropriate for others. Buyers seeking greater control over the production process need to tailor their agreements accordingly. In addition, buyers who are more invested in the contract farming operation are more likely to require exclusivity from producers, a condition not mandated in this model agreement. Contract farming involving livestock, fishery and aquaculture products is typically more intricate and necessitates specific considerations and customizations to address their requirements.

II. Model contract farming agreement for dry beans in Lesotho

1 The Parties

1.1 This Agreement is entered into between

____

[Insert the Buyer's name],

with the business registration number

____

[Insert the business registration number],

and with the legal address at

____

[Insert the legal address],

represented by

____

[Insert the name of the Buyer's representative],

with the identification number

____

[Insert the identification number],

________________ [Insert the marital status],

herein referred to as the "**Buyer**,"

and ____

[If the Producer is natural person, insert the name(s) of the Producer],

with the identification number(s)

____

[Insert the identification number(s)],

________________ [Insert the marital status(es)],

and with the legal address at

____

[Insert the legal address(es)];

OR

____

[If the Producer is a legal person, such as a company or corporation, insert the name of the Producer],

with the business registration number

____

[Insert the business registration number],

and with the legal address at

____

[Insert the legal address],

represented by

____

[Insert the name of the Producer's representative],

with the identification number

____

[Insert the identification number],

and ______________ [Insert the marital status],

herein referred to as the "**Producer**."

1.2 The Producer may withdraw from this Agreement within **X** [Replace X with the number of calendar days][2] calendar days of its signing without incurring any liability.

1.3 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**. The Parties will, at all times, endeavour to preserve the spirit and intent of this Agreement by behaving consistently and cooperatively and by providing necessary information in a timely and transparent manner.

1.4 The Producer warrants to:

(i) have received a copy of this Agreement, no less than **X** [Replace X with the number of working days][3] working days before the signature of this Agreement;

(ii) have read this Agreement or have had this Agreement read by an independent third party, and understand its content and purport; and

(iii) have had the opportunity to seek the advice of ______________ [Please choose the relevant option(s) below] on this Agreement before signature.

a. independent legal adviser(s)

b. producer organisation(s)

c. extension or marketing service officer(s)

d. other entity (or entities)

____

[Insert the name(s) of other entity (or entities)]

2 The Purpose

2.1 The Buyer agrees to buy **X** [Replace X with the name(s) of the product(s)][4], herein referred to as the "**Goods**," produced by the Producer, and the Producer agrees to produce and sell the Goods to the Buyer, in accordance with the provisions set out below.

[2] For example, within 30 calendar days.
[3] For example, no less than ten working days.
[4] For example, dried sugar beans.

3 The Production Site

3.1 This Agreement relates to the Goods produced on __________________ [Insert the number of hectares] hectares of land,

located in ____

[Insert the name of the nearest village with the name of the village chief],

the "**Production Site**," and the Producer is proved to have the ownership or right to use of such land [Choose the applicable option below]:

(i) by providing the Buyer with a copy of

____

[Insert the name of the proof of the ownership or right to use, such as the title deed, the lease agreement or certificate];

OR

(ii) by providing the Buyer with a letter from the village chief

________________________________ [Insert the name of the village chief].

4 The Product

Product quantity

4.1 The Producer agrees to deliver to the Buyer a minimum of __________________ [Insert the number of kilograms] kilograms of the Goods produced on the Production Site.

4.2 The Producer may sell the Goods produced in excess of the amount stipulated in Article 4.1 to the Buyer or to a third party. The Buyer retains the right of refusal to purchase the Goods in excess of the minimum quantity under Article 4.1.[5]

Product quality

4.3 The Producer agrees to supply the Goods which comply with the following quality standards[6]:

(i) The weight of the defective Goods or foreign objects or materials mixed with the Goods shall be less than **X** [Insert the percentage number] of the total weight of the Goods;

(ii) The Goods have a moisture level not higher than **X** [Insert the percentage of the moisture level] percent.

[5] Articles 4.1 and 4.2 indicate non-exclusivity, by which the producers can decide on the quantity committed to the buyer and retain the option to sell any surplus to third parties. In contrast, exclusivity can require the producers to sell their entire production, possibly excluding the amount for their own consumption, exclusively to the buyer.

[6] These quality measures are generally suitable for dry beans. It is essential to specify quality standards for the specific commodity under the agreement. These standards should align with any established and pertinent standards, and should be feasible for both the buyer and producers to implement and agreed upon between the parties.

5 Production process

Phytosanitary measures

5.1 The Producer shall apply the agreed phytosanitary measures defined in the Annex 1 before flowering to minimize the formation of weevils. The Producer shall keep the record of the use of such measures and shall produce to the Buyer the record and any accompanying documentation upon request.[7]

Monitoring: Field visits and periodic reports

5.2 Subject to the Buyer sending a notice at least **X** [Replace X with the number of working days][8] working days in advance, and in the presence of the Producer or its representative, the Buyer or its representative may visit the Production Site and consult with the Producer for the purpose monitoring the production progress of the Goods. The visit shall be carried out at a time agreed by both Parties and shall not unduly burden or inconvenience the Producer.

5.3 The Producer shall send periodic reports in key moments of the production of the Goods to the Buyer according to the Annex 2.

6 Communication between the Parties

6.1 The Buyer or the Producer shall notify the other Party in writing on any issue, which may impact its ability to fulfil the obligations under this Agreement as soon as possible and within **X** [Replace X with the number of calendar days][9] calendar days from the day when the Party had the knowledge about such an issue (or issues).

7 Pricing mechanism

7.1 The Buyer agrees to pay the Producer for the Goods which are accepted by the Buyer and conform with the quality standards under Article 4.3 according to the following pricing mechanism:[10]

(i) The Buyer will pay the minimum price of **X** [Replace X with the price] Lesotho Loti per kilogram of the Goods to the Producer. This minimum price will be calculated on the basis of the market prices of imported and domestically produced dried sugar beans in Lesotho at the time of signature of the Agreement.

(ii) If the market price at the time of acceptance of the Goods is higher than the minimum price under Article 7.1. (i), the Buyer will pay the Producer the market price at the time of acceptance of the Goods.

(iii) If the market price at the time of acceptance of the Goods is lower than the minimum price under Article 7.1. (i), the Buyer will pay the Producer the minimum price under Article 7.1. (i).

(iv) The market price is based on the market price for the procurement of imported dried sugar beans by packing companies in Lesotho and the market price of domestically produced dried sugar beans offered by packing companies to producers in Lesotho.[11]

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[7] The contract may incorporate provisions to outline specific production methods, such as the application of phytosanitary measures described here for dried sugar beans in Lesotho. The details of these requirements can be stipulated in one or more annexes.

[8] For example, at least seven working days.

[9] For example, within ten calendar days.

[10] The term illustrates the pricing mechanism for dried sugar beans adopted in the contract farming pilot in Lesotho. There is no price information published by a public or an independent private entity in Lesotho.

[11] It is recommended to refer to the price information published either by a public or an independent private entity to establish the basis for price termination. In absence of such information, it is advisable to establish the basis for price determination using accessible and relevant price information. In this context, the purchasing prices for dry beans offered by the leading packing companies to producers are pertinent. These prices can be obtained directly by contacting the companies. They are

7.2 The Buyer shall, **X** [Replace X with the frequency],[12] inform the Producer about the price of the Goods offered by the Buyer to procure the Goods, and the price is based on the market price determined under Article 7.1. (iv).

7.3 When the Producer informs the Buyer in advance about the delivery of the Goods in accordance with Articles 8.5 and 8.9, the Buyer shall inform the Producer the price of the Goods at the time of the communication and the expected price at the time of acceptance of the Goods.

8 Delivery

8.1 The Producer may deliver the Goods to the Buyer at any time starting from the harvest of the Goods to the conclusion of this Agreement.

8.2 For the purposes of delivery, the Buyer may be represented by a Buyer's representative, and the Producer may be represented by a Producer's representative.

8.3 The Producer may, at its own discretion:

(i) deliver the Goods to the Buyer's warehouse with its own means;

OR

(ii) request the Buyer to collect the Goods from a designated collection location.

Delivery option 1: The Producer delivers the Goods to the Buyer's warehouse.

8.4 The Producer shall inform the Buyer about the readiness to deliver the Goods to a selected warehouse

____

[If a warehouse is selected at the time of the signature of the Agreement, insert the name and address of the warehouse; otherwise, insert NA]

of the Buyer at least **X** [Replace X with the number of working days][13] working days before the date when the Producer intends to deliver the Goods.

8.5 The Buyer shall inform the Producer about the price of the Goods in accordance with Article 7.3 and the operational time of the selected warehouse to receive the Goods.

8.6 The costs of transportation of the Goods to the Buyer's warehouse shall be paid by the Producer.

8.7 The Goods shall be packed in a bag (or bags) or a container (or containers) labelled with the name of the Producer, in a manner that cannot be easily erased, such as marked by a permanent marker pen, by the Producer before or upon delivery.

8.8 The Goods shall not be packed in bags or containers previously used to store fertilizers, pesticides, other agrochemicals, inputs or other substances that may alter the Goods.

Delivery option 2: The Producer requests the Buyer to collect the Goods at a collection location.

8.9 The Producer shall inform the Buyer at least **X** [Replace X with the number of working days][14] working days in advance about the readiness to deliver the Goods. The Producer and the Buyer shall agree on the collection location and time in advance for the Buyer to collect the Goods. The Buyer shall inform the Producer about the price of the Goods in accordance with Article 7.3.

often advertised on radio or community message boards, and information is also available through word of mouth. These prices are influenced by the price of imported dry beans in Lesotho, which is a significant factor in determining the market price.

[12] For example, at least once in every two weeks, at least once a month, or at least once a week during the harvest season and at least once every two weeks during other times.

[13] For example, at least three working days.

[14] For example, at least three working days.

8.10 The Producer shall bear the costs of the transportation of the Goods to the collection location. The Buyer shall bear the cost of the transportation to come to the collection location and the cost of the transportation of the Goods from the collection location to the Buyer's warehouse.

8.11 The Goods shall be packed in a bag (or bags) or a container (or containers) labelled with the name of the Producer, in a manner that cannot be easily erased, such as marked by a permanent marker pen, by the Producer before or upon delivery.

8.12 The Goods shall not be packed in bags or containers previously used to store for fertilizers, pesticides, other agrochemicals, inputs or other substances that may alter the Goods.

8.13 The Buyer or its representative shall collect the Goods from the Producer or its representative at the agreed location and time under Article 8.9.

8.14 If one Party fails to meet at the agreed collection location and time due to unexpected and justifiable reasons, it shall inform the other Party as soon as possible. The Parties shall renegotiate to have the Goods delivered through the delivery option 1 or 2.

8.15 The Buyer or its representative shall undertake the first inspection the Goods at the collection location, and the second inspection at the Buyer's warehouse according to Articles 9.1–9.5 below.

9 Inspection and acceptance

9.1 The Producer or its representative shall be present during the inspection and acceptance of the Goods, especially regarding weighing and establishing the quality of the Goods, and the payment of the Goods.[15]

Inspection of the Goods at the collection location for the delivery option 2[16]

9.2 The Buyer or its representative shall check the quality of the Goods in accordance with the quality standards under Article 4.3.

9.3 Following checking of the Goods, the Buyer or its representative may:

(i) agree to accept the Goods to be delivered to the Buyer's warehouse;

OR

(ii) if defected beans or foreign objects or materials present in the Goods are at an unacceptable level, or the moisture is at an unacceptable level, according to Article 4.3, ask the Producer to clean or dry the Goods and bring back the Goods for re-inspection through the delivery option 1 or 2.

9.4 The Buyer or its representative shall provide the Producer or its representative with a written delivery slip with the content specified in Annex 3. The written delivery slip shall be signed by the Buyer or its representative and the Producer or its representative.

Inspection of the Goods at the Buyer's warehouse

9.5 Upon arrival of the Goods at the Buyer's warehouse, the Buyer shall weigh the Goods and inspect the quality of the Goods in accordance with the quality standards under Article 4.3 at its own cost.

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[15] When arranging inspection and payment, it is essential to assess the need and feasibility of having Producer or its representative present. In this pilot, the presence was deemed necessary for the inspection, discussing cleaning services and ensuring safe payment, considering potential disputes and safety issues. It is also practical for producers to use public transportation to reach the Buyer's warehouse, especially under delivery option 2, without the need to carry the Goods. This approach was intended to build trust and test logistic operations during the pilot phase. As such, both Parties concurred with this modality. However, conducting these processes without the Producer or its representative's presence might be feasible and advantageous in the future or in other cases.

[16] In this scenario, the driver lacks the necessary equipment, such as a portable scale or a moisture meter, as well as the expertise to weigh the product accurately or assess its quality. Therefore, the driver may perform an initial check of the product quality, while the weighing and quality inspection will be conducted at the buyer's warehouse. If the driver possesses the capability to perform weighing and quality inspection, alternative terms can be established.

Acceptance of the Goods

9.6 Following the inspection of the Goods, the Buyer may:

(i) agree to accept the Goods conforming to the quality standards under Article 4.3;

OR

(ii) if the Goods do not meet the quality standards under Article 4.3:

a. ask the Producer to clean or dry the Goods and deliver again the Goods for re-inspection through the delivery option 1 or 2;

OR

b. propose to the Producer that the Buyer will clean the Goods for a fee of **X** [Replace X with the price] Lesotho Loti per kilogram of the Goods and the cleaning fee will be deducted from the final payment;

OR

c. refuse to accept the Goods if the quality standards under Article 4.3 cannot be achieved or are not achieved through further cleaning or drying.

9.7 In case of rejection of the Goods, the Buyer shall provide the Producer or its representative a written explanation of why the Goods have been rejected.

9.8 The Producer has the right to sell to a third party all the Goods rejected by the Buyer.

9.9 The agreement between the Parties on the quantity and quality of the Goods received by the Buyer under Article 9.6. (i) constitutes acceptance of the Goods.

10 Payment

10.1 Upon acceptance of the Goods, the Buyer shall make the payment to the Producer or its representative in cash immediately OR to the Producer via bank transfer to the bank account nominated by the Producer within **X** [Replace X with the number of working days][17] working days.

10.2 The Buyer shall provide the Producer or its representative a written receipt for the sale of the Goods with the content specified in Annex 4. The written receipt shall be signed by both the Buyer and the Producer or its representative.

11 Force majeure

11.1 For the purposes of this Agreement, Force Majeure Event means any event that arises after the Agreement has been signed, is unpredictable, inevitable, beyond the Parties' reasonable control, and that objectively prevents one or both of the Parties from performing their obligations, including, but not limited to, wars, insurrections, riots, civil disturbances, interruption of transportation or communication services, major changes to agricultural and other relevant laws or policies, blockades, embargoes, strikes and other labour-related interruptions, epidemics, earthquakes, storms, droughts, fires, floods, other exceptionally adverse weather conditions, or other natural, economic, social or political events that would result in the failure for one Party to meet its obligations under this Agreement.

11.2 As soon as reasonable 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 duration, the effect of the Force Majeure Event on the Party's ability to perform any of its obligations under the Agreement, and any relevant evidence of the Force Majeure Event.

[17] For example, within two working days.

11.3 The Affected Party shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

11.4 Provided the Affected Party has complied with Articles 11.2 and 11.3, the Affected Party shall not be considered to be in breach of this Agreement or otherwise liable for any failure or delay in the performance of its obligations under the Agreement caused by the Force Majeure Event.

11.5 The Parties may agree to suspend or renegotiate the obligations affected by the Force Majeure Event during the continuance of the Force Majeure Event, and no damages or penalties for the delay in performance shall be due.

11.6 If an obligation is suspended by reason of the Force Majeure Event for more than **X** [Replace X with the number of calendar days][18] calendar days from the Affected Party giving the notice of the Force Majeure Event, or if suspension is not feasible, the other Party may terminate the Agreement.

12 Remedies

12.1 The Buyer or the Producer shall notify the other Party in writing on any issue, which may impact its ability to fulfil the obligations under this Agreement according to Article 6.1.

12.2 Where the Party failing to comply with any of its obligations in this Agreement (the Breaching Party) becomes aware that it is or will be in breach of its obligations under the Agreement, it shall immediately take all reasonable measures at its own cost to prevent or cure the breach within **X** [Replace X with the number of calendar days][19] calendar days.

12.3 The Parties shall apply 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.

12.4 Where the Breaching Party does not or cannot cure the breach in accordance with Article 12.2, the other Party (the Aggrieved Party) may take any of the following corrective actions. The Aggrieved Party may

(i) require the Breaching Party to negotiate to adjust the purchase price to reflect the fair value of the Goods that do not confirm to the quality standards under Article 4.3;

OR

(ii) reject the Goods and withhold payment.

12.5 Where the Buyer fails to accept the Goods conforming to the quality standards under Article 4.3 before the end of the Agreement, the Producer may sell the Goods to a third party and claim from the Buyer the difference between the price of the Goods under this Agreement and the price that the Producer received for the Goods.

12.6 Where the attempt to cure by the Breaching Party or the corrective action by the Aggrieved Party has failed to cure or correct the breach, the Aggrieved Party may terminate this Agreement, with a written notice to the Breaching Party and following a minimum of **X** [Replace X with the number of calendar days][20] calendar days from the moment when the breach was identified.

12.7 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.

[18] For example, for more than 14 calendar days.
[19] For example, within 14 calendar days.
[20] For example, following the minimum of 30 calendar days.

13 Renegotiation of the terms

13.1 Both Parties have a right to renegotiate the terms of this Agreement without affecting the validity of the Agreement under the following circumstances:

(i) where circumstances change so drastically as to affect the quantity, quality, price and delivery of the Goods;

OR

(ii) in anticipation of a renewal of the Agreement indicated in Article 14.3 below.

13.2 The Party wishing to renegotiate under Article 13.1 shall give a notice to the other Party about its intention to renegotiate and the circumstance, and shall submit a written proposal of suggested modifications within X [Replace X with the number of working days][21] working days from the day when the Party had knowledge about such a circumstance.

13.3 The Party that receives the written proposal of suggested modifications shall provide a response within **X** [Replace X with the number of working days][22] working days from the receipt of the written proposal.

13.4 Notwithstanding Article 13.1, both Parties retain the right to renegotiate the terms of this Agreement, at any time, based on their mutual consent.

14 Duration, renewal and termination

Duration

14.1 This Agreement is valid from the date of signature to **X** [replace X with the ending date of the Agreement].

Termination

14.2 This Agreement may be terminated:

(i) following a Force Majeure Event in accordance with Article 11.6;

OR

(ii) following a breach of the Agreement in accordance with Article 12.7;

OR

(iii) by mutual agreement of the Parties;

OR

(iv) by either Party by giving a written notice to the other Party at least **X** [Replace X with the number of calendar days] [23] calendar days in advance.

Renewal

14.3 Upon the expiration of this Agreement in accordance with Article 14.1, the Parties may agree in writing to its renewal.

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[21] For example, within seven working days.
[22] For example, within seven working days.
[23] For example, at least 30 or 60 calendar days in advance.

15 Dispute resolution

15.1 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 them within **X** [Replace X with the number of calendar days][24] calendar days through negotiation and cooperation.

15.2 If the Parties to this Agreement are unable or unwilling to resolve the dispute amicably, the Parties shall seek local and independent mediation as soon as possible and not later than **X** [Replace X with a time period][25] since the disagreement was put in evidence by one of the Parties.

15.3 Where the dispute has not been resolved in accordance with Articles 15.1 and 15.2, either Party may submit the dispute to a private arbitration or the courts of Lesotho for resolution.

15.4 This Agreement, and any dispute arising out of it, is governed by the laws of Lesotho.

16 Signature

Signed by the Producer	Signed by the Buyer
Name: ______________________	Name: ______________________
On behalf of the Producer, signed by	On behalf of the Buyer, signed by
Name: ______________________	Name: ______________________
Position: ______________________	Position: ______________________
Signature:	Signature:
Date: ______________________	Date: ______________________

Done at: ____

[Insert the location of signature of the Agreement]

in the presence of

Name: ______________________ [Insert the name of the witness]

Occupation: ______________________ [Insert the occupation of the witness]

Address: ____

[Insert the address of the witness]

Signature of the witness:

Date: ______________________

[24] For example, within 30 calendar days.
[25] For example, not later than two months.

Annexes

Annex 1: Phytosanitary measures to prevent weevils

Annex 1 contains the phytosanitary measures to prevent weevils that have been discussed and agreed between the Parties under Article 5.1.

Annex 2: Communication between the Parties

The Producer shall provide periodic reports on the progress of the production of the Goods to the Buyer through WhatsApp messaging (preferred), telephone messaging, telephone calls or in-person visits to the Buyer's warehouse once every two months or as otherwise agreed by the Parties for the purpose of enhancing communication between the Parties and monitoring the production of the Goods.

Annex 3: Content of the written delivery slip

The content of the written delivery slip provided by the Buyer or its representative to the Producer or its representative under the delivery option 2 shall include at least the name of the collector on behalf of the Buyer, the name(s) of the Producer, the name of the Producer's representative if relevant, the date, the location and the quantity of the bags labelled with the name(s) of the Producer.

Annex 4: Content of the written receipt for the sale of the Goods

The content of the written receipt for the sale of the Goods provided by the Buyer to the Producer or its representative shall include at least the name of the Buyer, the name(s) of the Producer, the date, the location, the quantity, the quality standard applied, the price, the total payment of the Goods and the method of payment.

References

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UNIDROIT, FAO & IFAD. 2015. *UNIDROIT/FAO/IFAD Legal Guide on Contract Farming*. Rome, FAO. https://www.fao.org/3/I4756E/i4756e.pdf

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