



AGRICULTURE AND FOOD AUTHORITY

HORTICULTURAL CROPS DIRECTORATE

Nairobi Horticultural Centre next to JKIA,
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CROPS ACT, 2013

GUIDELINE FOR CONTRACTUAL AGREEMENTS BETWEEN THE PRODUCER AND DEALER IN THE INDUSTRY

CONTRACT FORMAT

PRODUCER/DEALER AGREEMENT

AGREEMENT made this -----day of ----- two thousand and
nineteen ----- **BETWEEN:**-----
- of ----- a registered produce dealer (Registration No-----)
hereinafter called “dealer” which expression shall where the context so admits include its
successors and assignees of the First part; **AND**----- of-----
----- a producer entity of horticultural produce (Registration No.-----
-----) hereinafter called the “producer” which expression shall where the context so
admits include its successors and assignees) of the second part

WHEREAS

- a) The dealer is duly registered under the Horticultural Crops Development Authority Order; and
- b) The producer has requested the dealer to provide services referred to below and the dealer has agreed to provide such services to the producer upon the terms and conditions appearing hereinafter.

NOW IT IS HEREBY AGREED BETWEEN THE PARTIES AS UNDER THE FOLLOWING GUIDELINES;

AIMS AND OBJECTIVES OF CONTRACTS

The guidelines shall:

- i) Act as a Memorandum of Understanding between the producer and dealer of fresh horticultural produce.
- ii) Serve as a guideline for the producer and dealer in order to conduct good business practices, which will be mutually beneficial and help promote the wellbeing of the horticultural industry in Kenya.
- iii) Act as a guideline or framework to development of a legally binding contract to be executed by the producer and dealer.
- (iv) Force majeure

OBLIGATIONS OF THE PRODUCER AND DEALER

- a) The **producer** shall
 - i) Be organized into well-managed registered legal entities.
 - ii) Relate to specific dealers only under a contract as specified in this Order.
 - iii) Request for training on any aspect that deals with quality control as need arises, including:
 - Safe and effective use of pesticides
 - Proper record keeping and analysis of production costs.
 - Proper post-harvest handling techniques.
 - Group leadership, management and administration.
 - Procurement and use of appropriate certified inputs.
 - Production technology

- b) The **Dealer** shall:
 - i) Relate to specific producer entities under a contract as specified in this Order
 - ii) Provide the necessary extension services to the producer(s).
 - iii) Relate directly with the producer.
 - iv) To establish means and ways of financing the producer.
- c) All parties in the contract shall;
 - i) Undertake to conduct their business diligently and professionally at all times.
 - ii) Submit agreement to HCD for vetting/witnessing before execution
 - iii) Seek for arbitration in the event that there is a contravention of contract obligations.

TERMS AND CONDITIONS

The contract shall include specific terms and conditions of payment, responsibilities for production, handling and collection of produce, and any other essential elements, which will create a clear understanding of obligations of both the producer and the dealer.

THE ESSENTIAL ELEMENTS THAT A CONTRACT SHALL INCLUDE:

a) Quantity and quality of produce to be supplied at a particular time and contract price

- i) The contract shall specify the **quantity** in either boxes/cartons/crates or kilos to be supplied by the producer(s) over a period of time.
- ii) Contract should specify a **minimum quantity** of produce to be provided by the dealer (i.e. quantity below which no collection will be effected.)
- iii) Producer and dealer shall agree to produce and **market high quality** levels of produce and this shall be specified clearly in the contract.

b) Seed and other Inputs

- i) The contract shall specify who is responsible for inputs, including labour.
- ii) If buyer requires the use of certified seeds/planting materials by the seller, it shall be specified in the contract.
- iii) Contract shall address which party will be responsible for supplying and applying other inputs such as fertilizer and pesticides.
- iv) Terms and conditions for purchase or sale of inputs must be included within the contract.

c) Generally Accepted Production Practices

Growers shall agree to undertake Good Agricultural Practices and procedures.

d) Record Keeping

- i) Each grower and buyer shall implement a complete record keeping system for production and handling of produce.
- ii) Minimum record keeping requirements for traceability and accountability shall include:
 - Identification of previous crop.
 - Type of seed used and treatment given.
 - Date of planting.
 - Application of pest control products; date, rate, weather conditions.
 - Irrigation dates and quantities.
 - Harvesting: dates and weather conditions.

e) Field Support and Training

(a) Every dealer shall provide contracted producer with sufficient training, during the contract period on:

- Group management and administration.
- Good Agricultural Practices

f) Harvesting and Post-Harvest Practices

- (i) Seller shall agree to undertake acceptable management practices for harvesting and handling of produce, which will ensure high quality levels.
- (ii) These practices include:
 - Use of clean containers during field handling of produce.
 - Protection of produce from heat and direct sunlight.
 - Maintenance of hygienic conditions.
 - Use of clean water for washing of produce where necessary.

g) Inspection and Grading

Dealer and producer shall agree and specify responsibilities for inspection and grading of produce, type of document to be executed upon collection/delivery of produce, agree at what stage goods change title and obligations of each party.

h) Packaging Supply and Procedures

- i) Contract shall specify which party is obligated to supply packaging materials.
- ii) Packaging procedures such as condition and quantity of produce, grade and type of produce, placement within a container.

i) Conditions of Collection and/ or Delivery

- i) The contract shall specify the collection periods of produce (time and year).
- ii) Specify conditions for the events of non-collection.
- iii) If dealer fails to collect at specified time, he shall be obliged to pay the contracted price for that produce.
- iv) Specify collection times and penalties in case of default of either party.
- v) Agree on tolerance levels (%) on shortages and excesses.

j) Dealings with third parties

- i) Both producer and dealer shall not engage in any transactions with other individuals or intermediaries involving the contracted produce.
- ii) The produce under contract should only be sold to the dealer of the produce.

k) Rejected Produce

- i) Point of rejection of produce shall be specified upon in the contract.
- ii) Conditions for the return of the rejected produce shall be specified.
- iii) Disposal of rejected produce shall be specified.
- iv) Any produce which the dealer has accepted delivery of shall not be returned to the producer.

l) Payment Terms and Mechanism

- (i) Producer and dealer shall specify the mode, terms and mechanism of payment.

m) Penalties

- (i) The contract agreement shall specify penalties including type and amount of compensation to either party as a result of failure to abide by the terms of the contract.

n) Duration of Contract

- (i) Duration and maturity of contract shall be specified.

o) Termination Clause

- i) Conditions for termination of contract shall be specified.
- ii) Either party may terminate the contract by giving the other a written notice within a reasonable period equivalent to a full production and marketing cycle of the produce..

p) Natural Calamities and Non-Commercial Risks (*Force majeure*)

- (i) In the event of natural calamities (such as floods, hail, earthquakes e. t. c) it shall be stated clearly in the contract that both parties shall not be held responsible.
- (ii) Furthermore, in the event of non-commercial risks (such as war, national labour, strikes etc) the affected party shall be held harmless for non-performance.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement on the day and date hereinbefore mentioned.

SIGNED for and on behalf of the

Dealer

Producer

Name:.....

Name:

Date:.....

Date:

Witness:-.....

Witness:-.....

Date:.....

Date:

Witness.....HCD

Witness.....HCD

Date.....

Date.....

HORTICULTURAL CROPS DIRECTORATE

Model Contract for the Supply of Horticultural Crops

(CONTRACT FORM 1)

Between

BUYER

Name (*name of company*)

.....

Registration number

.....

Address (*address of place of business of the Buyer, phone, e-mail*)

.....

and

FARMER (Individual farmer or farmers' organisation)

Name (*name of individual farmer or of organisation representing the interests of a group of farmers*)

.....

Registration number (*in case of an organisation representing a group of farmers*)

.....

Address (*address of place of business of the Supplier, phone, e-mail, where appropriate*)

.....

The conditions under which the crop will be cultivated, supplied, and purchased are set out below.

1. Obligations of the Farmer concerning land and cultivation

The Farmer undertakes to cultivate the crop at his/her own costs on the following piece of land:

Area	
Town or village	
Name or place of field	

The Farmer shall use only the seeds, plants, and any additive (such as fertilizers) approved by the Buyer.

The Farmer shall allow the Buyer or his representative to visit the farm field from time to time and to inspect the crop at all stages.

The Farmer agrees to observe the Buyer's or his representative's technical instructions and quality standards. In particular, the Farmer undertakes to:

[The following are only listed as examples. Buyer should here specify its main technical/quality requirements]

- Land use prior to crop	<i>Specify previous crop on the land</i>
- Nursery bed	<i>Establish a nursery bed</i>
- Seed	<i>Type of seed and treatment given</i>
- Planting	<i>Between (specify date) and (specify date)</i>
- Herbicide applications	<i>Date and rate</i>
- Pesticides applications	<i>Date and rate</i>
- Fertilizers	<i>Date and rate</i>
- Harvesting	<i>Dates and weather conditions</i>
- Drying and sorting	
- Presentation of crop for collection	<i>Specify for example type of bag, whether it is supplied by Buyer</i>
- Record keeping	<i>Identify previous crop; type of seed used and treatment given</i>
- Other	

2. Obligations of the Farmer concerning the sale of the crop

The Farmer shall sell its entire crop exclusively to the Buyer or to its designated intermediary/dealer or representative. The Farmer is strictly prohibited from selling the crop covered under this agreement to any other person or company without the consent of the Buyer.

3. General obligation of the Buyer

The Buyer shall provide Farmers, organized in groups or clusters, with assistance and advice on cultivation techniques, quality standards and other technical requirements all along the contract period.

4. Price of Seeds and other inputs supplied by the Buyer

The Buyer will supply the seeds and inputs to the farmer at the following prices and conditions.

Product	Quantity	Price (KSh)	To be paid at time of purchase	To be deducted from the purchase of the crop

5. Delivery and Purchase of Crop

The Buyer undertakes to purchase the entire crop under this contract, provided it meets the Buyer's standards as specified during the production phase. The purchase prices are set out below.

Product/Variety	Condition/Quality	Price (KSh) per kg [or box/crate/bag, as appropriate]
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Place of delivery of crop by Farmer	[specify]
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Period of delivery	Between [specify] and [specify]
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The Buyer shall provide a receipt for each purchase, specifying, the type of crop, quality, quantity, and total price.

Produce for which the Buyer has provided a receipt cannot be rejected or returned to the Farmer.

Disputes or differences concerning quality, quantity or pricing will be resolved as specified under the dispute resolution clause below.

6. Payment

The Buyer shall pay Farmer in full using [specify mode of payment, for example M-Pesa or cheque] not more than [specify number of days] following delivery to the Buyer or to a designated dealer/middleman.

7. Designated intermediary/dealer/middleman by Buyer

The Buyer may designate an independent dealer/middleman who will perform a number of tasks such as providing technical assistance and advice, collecting crops, paying the crop price. Such independent dealer/middleman must be legally registered.

The name of the designated dealer/middleman will be notified in writing or by any other appropriate means, by the Buyer to the Farmer.

8. Natural calamities and non-commercial risks

In the event of natural calamities such as floods, hail, earthquakes, or in the event of war, strikes or other such situations that impede the execution of the contract, and that are beyond the control of the affected party and cannot be avoided or overcome, the affected party shall not be deemed to be liable to the other party by reason of non-performance of its obligations.

9. Duration of validity of Contract

This contract is valid from [specify date] to [specify date].

If the parties wish to continue their contractual relationship for the next crop, a new contract will be agreed upon. However, the dispute resolution clause for this contract is valid, even beyond the date of the present contract.

10. Resolution of Disputes

Any or all disputes concerning this contract first shall be referred to Horticulture Crops Directorate, to be settled through mediation in accordance with Horticulture Crops Directorate's guidelines and practices. Where the mediation attempt has failed, both parties may seek other redress.

Date and Signature of the Parties

Buyer

Date.....

Name.....

Signature.....

Farmer

Date.....

Name.....

Signature.....