

**FRAM FARMERS LIMITED**

**MEMBERSHIP TERMS**

**April 2020**



## Disclaimer

This document is confidential to the Member and may be shared only with the Affiliates of the Member or their professional advisers but only to the extent necessary for the purposes of: (i) applying to become a Member of the Co-operative; and (ii) complying with the Membership Terms for the Co-operative.

The Co-operative, these Membership Terms, your Membership Agreement and any associated documents are operated and administered by Fram Farmers Limited, an industrial and provident society registered in England and Wales under the Co-operative and Community Benefit Societies Act 2014 with registration number IP22866R and registered office at Station Road, Framlingham, Woodbridge, Suffolk IP13 9EE. Fram Farmers Limited and its Affiliates do not and will not provide any investment advice in connection with a Member's purchase of Goods or Services. Fram Farmers Limited and its Affiliates do not owe any duty to exercise any judgment with regard to the merits of any Transaction entered into by a Member.

**The Co-operative provides a vehicle through which Members may purchase Goods and Services. Fram Farmers Limited as the operator of the Co-operative helps to facilitate Transactions between Members and Suppliers. Accordingly, the contract formed at the completion of a Transaction for Supplier Goods and Services is between the Member and the Supplier.**

**All Goods and Services purchased by a Member originate from a Supplier. Fram Farmers Limited does not sell any Goods or Services to the Members and the Members do not purchase any Goods or Services from Fram Farmers Limited. In the event that a Member instructs Fram Farmers Limited to place an Order on its behalf and thereby accept any Supplier Terms, Fram Farmers Limited acts as agent only and does not assume any liability or responsibility whatsoever in connection with the Goods or Services.**

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

1.1.1 Unless the context otherwise requires, for all purposes of these Membership Terms, the following words shall have the meanings specified:

- “Affiliates”** means, when applied to any person, any subsidiary undertaking or parent undertaking of that person and any subsidiary undertaking of any such parent undertaking, and the terms subsidiary undertaking and parent undertaking shall have the meanings given to them in section 1162 of the Companies Act 2006;
- “Annual Membership Fee”** means the annual fee paid by each Member to Fram Farmers in consideration for the Fram Services, such fee (and due date for payment) to be notified by Fram Farmers to the Members;
- “Applicable Law”** means all law, statutory provisions and other rules, regulations and instruments in force from time to time, including the rules, guidance, principles and codes of practice of any regulatory authority, applicable to any Member and/or the operation of the Co-operative;
- “Contract”** has the meaning given to it in section 2.1.1;
- “the Co-operative”** means the not-for-profit organisation owned by the Shareholders and administered by Fram Farmers;
- “Crop Marketing Services”** means the services provided by Fram Farmers to its Marketing Members in accordance with a Marketing Agreement;
- “Disclaimer”** means the disclaimer set out on the first page of the Membership Terms and the Membership Agreement, which forms part of the Contract;
- “Farm Saved Seed”** means any seed that is retained for use as seed from any harvest of crop grown from the Goods;
- “Fram Account”** means an account established between Fram Farmers and a Supplier to facilitate the placement of Orders in

accordance with these Terms;

- “Fram Bank Account”** means the bank account opened and maintained by Fram Farmers, as notified to the Member from time to time;
- “Fram Farmers”** means **FRAM FARMERS LIMITED** an industrial and provident society registered in England and Wales under the Co-operative and Community Benefit Societies Act 2014 with registration number IP22866R and registered office at Station Road, Framlingham, Woodbridge, Suffolk IP13 9EE or such of its Affiliates as may actually be providing all or part of the Member Services;
- “Fram Order”** means an instruction from the Member to Fram Farmers to enter into a Transaction on its behalf, howsoever arising;
- “GBP”** means Great British Pounds Sterling;
- “Goods”** means the goods which a Supplier is to supply to a Member (or a Sub-Account Holder) in accordance with the Supplier Terms;
- “Marketing Agreement”** means the agreement between Fram Farmers and a Marketing Member relating to the marketing of the Marketing Member’s Goods and/or Services.
- “Marketing Member”** means a Shareholder Member that has entered into a Marketing Agreement;
- “Member Services”** means the services provided by Fram Farmers to its Shareholder Members in connection with the operation and administration of the Co-operative and for the avoidance of doubt includes the Crop Marketing Services (where applicable);
- “Member”** means any person that has entered into a Membership Agreement with Fram Farmers;
- “Member Account”** means an account established and maintained for a Member by Fram Farmers on its books and records through which a Member’s Order history is recorded and

Member Statements are generated;

<b>“Member Code”</b>	means the unique identifying code associated with each Member Account;
<b>“Member Statement”</b>	means the statement issued by Fram Farmers to a Member as further described in section 5.5.1;
<b>“Membership Agreement”</b>	means the agreement of the same name entered into between Fram Farmers and each Member setting out each party’s obligations in respect of access to and use of the Co-operative;
<b>“Membership Terms” or “the Terms”</b>	the terms of membership of the Co-operative as set out herein as they may be amended from time to time;
<b>“Order”</b>	means either a Fram Order or a Supplier Order;
<b>“Parties”</b>	means, together, the Member and Fram Farmers;
<b>“Payment Date”</b>	means the due date for satisfaction of a Member Statement;
<b>“Representative”</b>	means, when applied to any person, a person which carries out or is responsible for any of that person’s functions and shall include each director, officer, or employee of such person;
<b>“Rules”</b>	Means the rules of Fram Farmers as made available on its Website and “rule” shall be construed accordingly;
<b>“Services”</b>	means the services which a Supplier is to supply to a Member (or a Sub-Account Holder) in accordance with the Supplier Terms;
<b>“Shareholder Member”</b>	means a Member that holds Shares and who may benefit from the Member Services;
<b>“Shares”</b>	means the four shares in the Co-operative of the nominal value of 5 (give) GBP allocated to each Shareholder Member as further described in the Rules;
<b>“Sub-Account”</b>	means an account through which a Member may submit Orders and enter into Transactions on behalf of a Sub-

Account Holder (with liability for such Transactions remaining with the relevant Member in accordance with section 3.2);

<b>“Sub-Account Holder”</b>	means a person who is not a Member on behalf of whom a Member holds a Sub-Account;
<b>“Supplier”</b>	means a person that sells Goods or Services to the Member in accordance with its Supplier Terms;
<b>“Supplier Invoice”</b>	means the invoice issued by a Supplier to Fram Farmers in respect of a Member’s Transactions;
<b>“Supplier Terms”</b>	means the terms under which a Supplier provides Goods or Services to a Member;
<b>“Supplier Order”</b>	means an instruction from the Member to the Supplier to process an Order for Goods or Services through its Fram Account;
<b>“Tax”</b>	means all forms of tax, duties, imposts and levies, of any country or jurisdiction, whether payable directly or by withholding, including income tax, and any interest, penalty, surcharge or fine relating thereto.
<b>“Transaction”</b>	means an agreement between a Member (or Fram Farmers on the Member’s behalf) and a Supplier for the purchase of Goods or provision of Services in accordance with the Supplier Terms and, where applicable, the Terms; and
<b>“VAT”</b>	means within the European Union, such Tax as may be levied in accordance with (but subject to derogations from) the Directive 2006/112/EC, and outside the European Union, any Tax levied by reference to turnover, added value, sales and/or consumption.
<b>“Website”</b>	means the Fram Farmers website located at <a href="http://www.framfarmers.co.uk/home">http://www.framfarmers.co.uk/home</a>

## **1.2 Interpretation**

1.2.1 In these Terms unless otherwise specified:

- 1.2.1.1 any reference to any provision of an act of parliament or statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended from time to time; and
- 1.2.1.2 the headings are set out for convenience only and shall have no effect on the interpretation of the individual sections.
- 1.2.2 Fram Farmers shall have the authority to interpret the Terms. Save as otherwise provided, any such interpretations shall be final and conclusive.
  - 1.2.2.1 In the event of any conflict between these Terms and the Membership Agreement, the Terms shall take precedence.
  - 1.2.2.2 In the event of any conflict between these Terms and the Rules, the Rules shall take precedence.
- 1.2.3 Unless stated otherwise:
  - 1.2.3.1 any reference to a section shall be a reference to a section of these Terms;
  - 1.2.3.2 any reference to a clause shall be a reference to a clause of the Membership Agreement; and
  - 1.2.3.3 any reference to a rule shall be a reference to a rule as set out in the Rules.

## 2. GENERAL

### 2.1 Application of the Membership Terms

- 2.1.1 The Membership Terms, together with the Membership Agreement, the Marketing Agreement (where applicable) and any other documentation given contractual force pursuant to these Membership Terms, form a contract between Fram Farmers and each Member (the **Contract**).
- 2.1.2 Entry into the Membership Agreement, and/or the placement of any Order on any day not less than 7 (seven) days from the date of these Terms, constitutes your acceptance of these Terms (or the latest version thereof) in accordance with section 2.3.
- 2.1.3 The Member acknowledges and understands that Fram Farmers has no responsibility or liability for the provision of the Goods or Services, which are governed by the Supplier Terms. A Member may request to review the relevant Supplier Terms at any time.

### 2.2 Scope

- 2.2.1 Fram Farmers contracts with each Member on the terms of the Contract only. Accordingly, these Terms shall apply to the provision of the Member Services and (save as shall have been expressly agreed in writing by a Representative of Fram Farmers and approved in writing by its CEO) shall override any other terms and conditions which the Member may seek to impose.
- 2.2.2 An order for Goods or Services shall become binding on the Supplier in accordance with the relevant Supplier Terms.
- 2.2.3 Fram Farmer's contractual obligations to the Member shall be limited to the provision of the Member Services contemplated by the Contract, only (together with any variations or additions thereto).
- 2.2.4 Unless otherwise indicated, an Order constitutes an instruction from the Member to Fram Farmers to conclude the relevant Transaction on the Supplier's Terms on its behalf as agent. The Member acknowledges and understands that Fram Farmers shall never contract as principal with the Supplier in respect of a Transaction.

### 2.3 Amendments

- 2.3.1 Fram Farmers may amend the Contract (or any part of the Contract), at any time by issuing a notice setting out the text of the amended Terms, and, where appropriate, a brief explanation of the reason for the amendment. A notice setting out an

amendment to the Contract shall state the date from which such amendment comes into effect.

2.3.2 By continuing to use the Member Services after any amendment to the Terms comes into effect in accordance with this section 2.3, a Member will be deemed to accept any such amendments to the Terms. For the avoidance of doubt, no Member shall be entitled to continue its membership unless it accepts the Terms. In the event that a Member does not accept any amendment made in accordance with this section 2.3, the Member may give notice of its intention to terminate its participation in accordance with section 3.4.

2.3.3 No amendment to the Terms shall have the effect of extinguishing any right or discharging any liability incurred under the Terms before such amendment came into effect.

## **2.4 Confidentiality**

2.4.1 Each Party shall treat as confidential the existence and terms of the Contract and shall use best endeavours to ensure that such information is not divulged to any third party except where necessary to enable a Party to perform its obligations or enforce its rights under the Contract for and in such cases subject to any third parties first undertaking a similar obligation of confidentiality. Each Party may disclose the existence and terms of the Contract pursuant to an order of any court or as may otherwise be required by Applicable Law. This obligation does not apply to information, which at the time of disclosure is in the public domain or in the Member's lawful possession without restriction on disclosure.

2.4.2 Unless agreed otherwise, each Party agrees to treat as confidential the existence and terms of any claim, dispute or award arising under, out of or in connection with the Contract.

## **2.5 Data protection**

2.5.1 By providing personal information and using the Co-operative, the Member acknowledges and consents to the collection, use, distribution and maintenance of its personal information in the manner described in the Fram Farmers GDPR and privacy policy found at [www.framfarmers.co.uk/privacy](http://www.framfarmers.co.uk/privacy).

## **2.6 Severability**

2.6.1 Each section and sub-section (each a "**Term**") of the Terms is severable and distinct from the others. If any Term or part of a Term is or at any time becomes to any extent invalid, illegal or unenforceable for any reason, it shall to that extent be deemed not to

form part of these Terms and the validity, legality and enforceability of the remaining Terms shall not be thereby affected or impaired.

## **2.7 Waiver**

- 2.7.1 Except as specifically provided in these Terms, no waiver of any of these Terms or any part thereof shall be effective unless the same shall be in writing, and then such waiver shall be effective only in relation to the Member to which it is addressed and for the specific purpose for which the same is given, and such waiver shall not operate as a waiver of any future application of such Term or part thereof.
- 2.7.2 The waiver of any right, and the failure to exercise any right or to insist on the strict performance of any of the Terms, shall not operate as a waiver of, or preclude any further or other exercise or enforcement of that or any other right.
- 2.7.3 The failure of Fram Farmers to enforce or insist upon compliance with any Term shall not be construed as a waiver with regard to any Member's failure to comply with such Term.

## **2.8 Governing law and dispute resolution**

- 2.8.1 The Terms shall be governed by and construed in accordance with the laws of England and Wales.
- 2.8.2 All disputes or questions which may arise out of or in connection with or in relation to the Contract shall be decided in accordance with rule 19 (Disputes) of the Rules.
- 2.8.3 However, save for any claims for the recovery of any amounts due and payable under the Contract which are not disputed in good faith, if any dispute or difference as to the construction of the Contract or any other matter or thing of whatsoever nature arising thereunder or in connection therewith (the "**Dispute**") shall arise as between the Parties, then Representatives of each Party shall first meet within ten days of a written request from either Party to the other, in a good faith effort to resolve the Dispute without resource to legal proceedings.
- 2.8.4 For the avoidance of doubt, Fram Farmers shall not be party to any dispute whatsoever or howsoever arising relating to the quality or quantity of the Goods, delivery of the Goods and/or the adequacy of the Services, all of which are the sole responsibility of the Supplier.

## **2.9 Notices**

- 2.9.1 Unless agreed otherwise, any notice required to be given hereunder shall be given in accordance with clause 7 of the Membership Agreement.

## **2.10 No Third Party Rights**

2.10.1 The Parties do not intend that any terms of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

## **2.11 No Partnership**

2.11.1 Nothing in the Terms is intended to, or shall be deemed to, established any partnership or joint venture between the Parties.

## **2.12 Force Majeure**

2.12.1 Neither Party shall be liable for any delay or inability to perform, in whole or in part, the Contract to the extent such performance is delayed, hindered or prevented by an event of Force Majeure (as defined below) which is beyond its reasonable control.

2.12.2 For the purposes of the Agreement, an event of “**Force Majeure**” shall include but not be limited to:

2.12.2.1 fire, flood, ice, frost, fog, hurricane, storm, landslide, lightning, perils of the sea, tidal wave, tornado, typhoon, or other acts of God;

2.12.2.2 acts of public enemies, piracy, war (whether civil or otherwise, and whether declared or undeclared) or the threat or reasonable apprehension thereof, blockade, embargo, sabotage, terrorist activity or the threat or reasonable apprehension thereof, explosion, riot, unrest or delay resulting from political instability, intervention by military authorities, insurrection, mobilisation or civil unrest;

2.12.2.3 strikes, labour disputes or other form of industrial action, nationalisation or any other kind of disturbance or interruption of work regardless of its origin; and/or

2.12.2.4 any acts, orders or restrictions of government, local authorities or any court, including delay or interruptions resulting from any restrictions imposed by government or local authorities and also including import and export restrictions of any kind,

but shall not include:

2.12.2.5 an event or circumstance that results in a Party not having sufficient funds to comply with an obligation to pay money in accordance with this Contract.

- 2.12.3 Neither Party shall be entitled to claim Force Majeure for economic reasons, for example due to a change in the market price of the Goods.
- 2.12.4 The Party declaring Force Majeure (the “**Affected Party**”) shall take commercially reasonable steps to remove, relieve or minimise the effects of the circumstance that gave rise to the event of Force Majeure.
- 2.12.5 As soon as reasonably practicable following the occurrence of an event of Force Majeure, the Affected Party shall give notice in writing to the other Party setting out in reasonable detail the nature of the event of Force Majeure, its likely duration and its effect, or anticipated effect on the Affected Party’s performance of the Contract.
- 2.12.6 The Affected Party shall give notice in writing to the other Party as soon as reasonably practicable once the event of Force Majeure has come to an end.
- 2.12.7 Save for payment obligations, the Parties’ obligations under the Contract shall be suspended from the date of the Force Majeure notice and the time for performance of the Contract shall be extended to the extent reasonably necessary following the end of the Force Majeure.

## **2.13 Assignment**

- 2.13.1 Neither Party may assign, transfer or sub-contract the benefit or burden of the Contract without first obtaining the written consent of the other Party, which consent the other Party may give or withhold in its absolute discretion.

### **3. MEMBERSHIP**

#### **3.1 Compliance with the Terms**

- 3.1.1 Fram Farmers reserves the right to reject a Member application for any reason, in its absolute discretion.
- 3.1.2 Each Member shall, and shall procure that its Representatives shall, act in accordance with the Terms.
- 3.1.3 A Member shall notify Fram Farmers if it reasonably foresees that it will be unable to comply with any part of the Contract, including as a result of Applicable Law to which it is subject.

#### **3.2 Sub-Account Holder Orders**

- 3.2.1 A Member may submit Orders on behalf of its Sub-Account Holder.
- 3.2.2 Before a Member submits any Orders on behalf of a Sub-Account Holder, it shall ensure that it has notified the Sub-Account Holder that it shall not have any rights under any part of the Contract or otherwise, save for any liability which may not be excluded. For the avoidance of doubt, the Contract is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not. Nothing in these Terms shall serve to constitute a legal relationship between Fram Farmers and a Sub-Account Holder.
- 3.2.3 Each Member acknowledges that where it submits Orders and enters into Transactions on behalf of a Sub-Account Holder:
  - 3.2.3.1 it remains subject to the Terms with the same obligations and liabilities as a Sub-Account Holder as if it were executing the Orders and Transactions for itself; and
  - 3.2.3.2 Fram Farmers has no liability to the Sub-Account Holder.

#### **3.3 General**

- 3.3.1 The Member will act as principal at all times to each Transaction.
- 3.3.2 Unless expressly agreed otherwise, Fram Farmers shall enter into Transactions on behalf of a Member as agent only.
- 3.3.3 For the avoidance of doubt, Fram Farmers shall not enter into Transactions as agent for any person other than a Member (including Sub-Account Holders).
- 3.3.4 A Member must be granted a Member Code to gain access to the Co-operative.

### **3.4 Termination of Membership**

- 3.4.1 A Member shall give notice of its intention to terminate the Contract by resigning from membership in accordance with rule 12 (**Cessation**) of the Rules. The termination will not be effective until the terminating Member satisfies all outstanding liabilities under the Contract.
- 3.4.2 Fram Farmers may terminate a Member's membership in accordance with rules 12 (**Cessation**) and 13 (**Expulsion**) of the Rules. For the avoidance of doubt, any termination of membership in accordance with the Rules shall automatically terminate the Contract.
- 3.4.3 In addition to any termination rights set out within the Rules and the remainder of these Terms and without prejudice to any other rights it may have, Fram Farmers may by notice in writing to the Member terminate the Contract with immediate effect in the event that the Member:
- 3.4.3.1 at any time defaults on any payment due under the Terms or commits a breach of any of the Terms provided that if the default or breach is remediable, Fram Farmers has given the Member notice of such breach within and the breach has not been remedied within seven days thereafter;
  - 3.4.3.2 at any time suffers any distress or execution to be levied on any of its property or assets in any jurisdiction;
  - 3.4.3.3 at any time takes any step or action in connection with its entering into administration or any composition or arrangement with its creditors;
  - 3.4.3.4 being a company, at any time has a receiver or administrator (or like equivalent) appointed anywhere in the world over its undertaking, property or assets or any part thereof or suffers any resolution or petition to wind up its business (other than for the purposes of a bona fide amalgamation or reconstruction) to be passed or presented in any jurisdiction;
  - 3.4.3.5 being an individual, he dies, or being a partnership or a body corporate, it is dissolved or wound up for a reason other than the purpose of reconstruction or amalgamation;
  - 3.4.3.6 being an individual, at any time commits any act of bankruptcy or has a petition or receiving order in bankruptcy presented or made against him anywhere in the world; or

3.4.3.7 shall at any time be unable to pay its debts within the meaning of the Insolvency Act 1986 (or any amending legislation).

3.4.4 Upon any lawful termination of the Contract (but again without prejudice to any other rights which it may have):

3.4.4.1 Fram Farmers shall be entitled to immediately recover from the Member (notwithstanding that any period of credit extended to the Member may not have expired) all sums then due to Fram Farmers in accordance with these Terms and any associated Member Statement (including any interest and other charges properly levied thereunder); and

3.4.4.2 in respect of a Shareholder Member, the Shares will be cancelled.

### **3.5 Annual Fees**

3.5.1 Fram Farmers reserves the right to charge such fees (including the Annual Membership Fee) as may be specified on the Website and/or at rule 18 (**Subscription and Fees**) of the Rules from time to time.

3.5.2 Fram Farmers reserves the right to charge an additional crop marketing fee in relation to the provision of Crop Marketing Services.

3.5.3 Amounts payable to Fram Farmers shall be paid in GBP.

## 4. PRICE

### 4.1 Price

4.1.1 Subject as hereinafter provided, the price payable by the Member in respect of any Transaction shall be the price or rate previously quoted or agreed between:

4.1.1.1 Fram Farmers and the Supplier in respect of a Transaction resulting from a Fram Order; and

4.1.1.2 the Member and the Supplier in respect of a Transaction resulting from a Supplier Order,

in each, such price to be confirmed in the Supplier Invoice and Member Statement. Unless otherwise indicated, all prices or rates quoted or agreed shall be exclusive of any applicable VAT, which Fram Farmers reserves the right to levy at the prevailing rate on all amounts actually charged to the Member.

### 4.2 Additional costs and charges

4.2.1 Notwithstanding the provisions of section 4.1 above, Fram Farmers reserves the right to increase the price payable for any Goods or Services procured on behalf of the Member in order to reflect any increase in the price at which the Supplier charges for the Goods or Services as set out in a Supplier Invoice. Fram Farmers also reserves the right to increase the price payable in order to reflect the current rate of any applicable EU or UK Tax which is in force at the date of delivery.

4.2.2 Unless expressly included in the original quote or agreed price, all transportation, insurance, storage and other associated costs and charges incurred by the Supplier in delivering the Goods, then all additional costs and charges thereby incurred by the Supplier shall ultimately be for the account of the Member and Fram Farmers shall be entitled to recover the same from the Member as an additional item as specified in a Member Statement.

4.2.3 In the event of a Member (or its Sub-Account Holder) for any reason failing or being unable to accept delivery of the Goods when tendered or causing despatch or delivery to be withheld through the non-payment of any sum due to the Supplier, then all additional costs and charges thereby incurred by the Supplier shall ultimately be for the account of the Member and Fram Farmers shall be entitled to recover the same from the Member as an additional item as specified in a Member Statement.

### 4.3 Price adjustments

4.3.1 Fram Farmers shall also be entitled to adjust the Member Statement to reflect any agreed variations or additions to the Member's Order.

4.3.2 Subject to any provisions in the relevant Supplier Terms to the contrary, in no circumstances shall any increase in the price of Goods or Services pursuant to this section entitle the Member to cancel an Order or attempt to unwind a Transaction, but the Member shall be entitled to receive notification of any such increases as soon as possible after their occurrence.

## 5. PAYMENT

### 5.1 Member direct debit payments

- 5.1.1 A Member shall satisfy any relevant Member Statement by direct debit payment to the Fram Bank Account. Each direct debit payment shall be made by the Payment Date.
- 5.1.2 Unless agreed in writing prior to the Payment Date (howsoever agreed), payments shall be made by the Member without set-off, withholding or counterclaim.

### 5.2 Payment on termination

- 5.2.1 Notwithstanding the provisions of section 5.1 above, all sums payable to Fram Farmers under the Contract, (whether documented by invoice or not), shall immediately become due and payment in the event of the occurrence of any of the events specified in section 3.4.3 above.

### 5.3 Overdue payment

- 5.3.1 If the Member fails to make any payment of a Member Statement by the Payment Date, then without prejudice to any other right or remedy available, Fram Farmers shall, upon notice to the Member be entitled to reject any future Orders of that Member and notify the Suppliers of the same until any default by the Member is remedied. In respect of any unpaid amounts, Fram Farmers may (without prejudice to any other right or claim), charge interest in accordance with section 5.3.2.
- 5.3.2 If the Member fails to make payment of the Annual Membership Fee, then without prejudice to any other right or remedy available, Fram Farmers shall, upon notice to the Member, be entitled to reject any future Orders of that Member and notify the Suppliers of the same until any default by the Member is remedied. In respect of any unpaid amounts, Fram Farmers may (without prejudice to any other right or claim), in respect of any unpaid amounts charge interest at the following rates per month (or at such other rate as may be advised by Fram Farmers from time to time) accruing on a daily basis from the due date for payment to the date of actual payment:
- 5.3.2.1 provided the Member notifies Fram Farmers on or before the date that is 3 (three) days before the due date, £100 plus VAT administration fee plus: (i) a 12% per annum interest charge; or (ii) £100 interest charge, whichever is greater; or
- 5.3.2.2 provided the Member fails to notify Fram Farmers on or before the date that is 3 (three) days before the due date, £300 plus VAT administration fee plus: (i) a 12% per annum interest charge; or (ii) £100 interest charge, whichever is greater.

5.3.3 If the Member fails to comply with the notice sent by Fram Farmers in accordance with sections 5.3.1 or 5.3.2 to settle the amount outstanding under the said invoices, then Fram Farmers shall be entitled to pass a resolution to terminate the Member's membership in accordance with rule 12 (**Cessation**) of the Rules without further liability to the Member and without prejudice to any other right or remedy that Fram Farmers may have under the Contract.

#### **5.4 Supplier invoicing**

5.4.1 The Member acknowledges and understands that following the delivery of Goods or provision of Services to the Member, the Supplier will issue Fram Farmers with a Supplier Invoice in respect of the associated fees and charges. All Supplier Invoices will be placed on the Member Account, clearly identify the Member as the ultimate recipient of the relevant Goods and/or Services and shall be reflected in the Member Statement in accordance with section 5.5.

5.4.2 An adjustment to a Supplier Invoice (whether for reasons specified in these Terms or otherwise) shall be reflected in the Member Statement.

5.4.3 To enable the invoicing process to run effectively, a Member shall quote its Member Code to the Supplier when placing a Supplier Order. Fram Farmers shall quote the Member Code when placing a Fram Order.

#### **5.5 Member Statements**

5.5.1 Fram Farmers shall issue the Member with a Member Statement at any time. Each Member Statement shall include at least the following information:

5.5.1.1 the total charge due from the Member to Fram Farmers in respect of the Supplier Invoices received by Fram Farmers relating to relevant Transactions;

5.5.1.2 the relevant Member Code;

5.5.1.3 a copy of each relevant Supplier Invoice received by Fram Farmers that have not been included on a prior Member Statement, to which the total charges (as described in 5.5.1.1) relate;

5.5.1.4 the last date on which the Member can challenge the Member Statement;

5.5.1.5 the Payment Date.

5.5.2 The Member Statement shall set out the process under which a Member may challenge all or any part of the Member Statement in good faith (for the avoidance of

doubt, a failure to specify this process shall in no way affect the validity of the Member Statement). The Parties shall use reasonable endeavours to resolve any such challenge in advance of the Payment Date. If a Member does not challenge a Member Statement in accordance with this section by the date indicated on the Member Statement, the Member will be deemed to have accepted the Member Statement.

- 5.5.3 If the total charge is adjusted between the date of Member Statement and the Payment Date, Fram Farmers shall reissue the Member Statement so as to include the revised amount (for the avoidance of doubt, the reissue of a Member Statement in accordance with this section shall not amend the original Payment Date).
- 5.5.4 By placing any Order and accepting these Terms, the Member acknowledges and understands that it is the ultimate recipient of the Goods and/or Services to which the Supplier Invoice(s) relate.

## 6. DELIVERY

### 6.1 Substitution

6.1.1 At the express agreement of the Member, the Supplier may make suitable substitutions and modifications to the specifications of the Goods and Services ordered by the Member and to make such reasonable adjustments (upwards or downwards) to the Supplier Invoice as are necessary to reflect the change. Fram Farmers shall use reasonable endeavours to inform the Member promptly in the event that the Supplier notifies Fram Farmers of such a change.

### 6.2 Delivery

6.2.1 Unless otherwise agreed, the Supplier shall be responsible for arranging delivery of the Goods to the Member's (or any other location as directed by the relevant Member (included but not limited to a Sub-Account Holder's premises)) in accordance with the relevant Supplier Terms. Accordingly, Fram Farmers shall not be liable to any Member for any loss or damage whatsoever (including consequential losses, loss of profit and other losses of a similar nature) which may be suffered or sustained by the Member as a result of:

6.2.1.1 any failure by the Supplier to adhere to any times or dates given; or

6.2.1.2 any damage to the Goods caused before, during or after delivery.

6.2.2 Unless otherwise agreed, Fram Farmers shall never be responsible for supervising the discharge of any load and/or to check that the delivered goods correspond with the Goods purchased by the Member under a Transaction.

### 6.3 Passing of title and risk

6.3.1 Title and all risk of loss or damage to the Goods shall pass from the Supplier to the Member in accordance with the Supplier Terms. At no point shall risk or title pass to Fram Farmers or its Affiliates.

6.3.2 Notwithstanding whether title has passed to the Member in accordance with the Supplier Terms (or to a Sub-Account Holder in accordance with any bilateral arrangement between a Member and a Sub-Account Holder), Fram Farmers may maintain an action for a sum equivalent to the price of the Goods, as may be set out in the relevant Member Statement.

## **7. LIMITATION OF LIABILITY**

### **7.1 Status of the Member**

7.1.1 Fram Farmers provides the Member Services to the Member on the basis that the Member is neither a consumer nor deals as a consumer within the meaning of the Unfair Contract Terms Act 1977, the Unfair Terms in Consumer Contracts Regulations 1999, the Consumer Protection from Unfair Trading Regulations 2008, the Consumer Contracts Regulations 2013 and the Consumer Rights Act 2015.

7.1.2 Fram Farmers also provides the Member Services to the Member on the basis that the Member has satisfied itself as to the suitability of the Goods for use and/or resale by it in accordance with its own specialised knowledge and skill without placing any reliance on the skill or judgement of Fram Farmers, or its Representatives.

### **7.2 Defective Goods or Services**

7.2.1 Fram Farmers will not accept any liability for any defective Goods or Services supplied by the Supplier. Fram Farmers may (but is not obliged to) assist the Member in notifying the Supplier of any such defects (such assistance to be provided in Fram Farmers' capacity as agent, only).

### **7.3 Our Liability**

7.3.1 Fram Farmers' liability to the Member (both in contract and tort) in respect of all claims which the Member may bring against it arising out of, under or in connection with the Contract and/or the quality or performance of the Member Services supplied thereunder shall be limited in aggregate to a sum not exceeding the aggregate Annual Membership Fees paid by the Member to Fram Farmers during the duration of Contract. Fram Farmers will not accept any liability for consequential and indirect losses, loss of profit and other losses of a similar nature, whether or not such losses or profit or losses of a similar nature are indirect or consequential losses.

7.3.2 Fram Farmers will not be responsible for:

7.3.2.1 any breach by the Supplier of the Supplier Terms;

7.3.2.2 the quality of the Goods or Services; or

7.3.2.3 any other losses that are not caused by Fram Farmers' breach of the Contract,

and any terms or conditions implied by statute, common law or otherwise are expressly excluded from this Contract to the fullest extent permitted by Applicable Law.

- 7.3.3 It is the Member's responsibility to ensure that the Goods comply or will comply with any legislation or regulation relating to their use and Fram Farmers shall not therefore incur any liability whatsoever in respect thereof. Neither will Fram Farmers incur any liability in relation to any Goods which have been subjected to any incorrect, abnormal or improper use, modification, combination with other goods or application whether by the Member, a Sub-Account Holder or by any other third party.
- 7.3.4 Fram Farmers shall not in any circumstances be liable to the Member in respect of failure of any crop to yield to any particular degree regardless of any information given by Fram Farmers or any of its Representatives.
- 7.3.5 Nothing in these Terms excludes or restricts Fram Farmers' potential liability for fraudulent representations made by Fram Farmers or for death or personal injury caused by its negligence or wilful misconduct.
- 7.3.6 Without prejudice to section 7.3.2.2 above, the Member acknowledges and understands that Fram Farmers cannot and does not give any guarantee or make any warranty that the Goods provided by a Supplier are free from genetically modified material and shall not be liable to the Member for any losses whatsoever and howsoever arising from the presence of genetically modified material.
- 7.3.7 Fram Farmers shall not, in any circumstances be liable to a Member or any other person for:
- 7.3.7.1 loss of or anticipated loss of profit, loss of or anticipated loss of revenue, loss of use, business interruption, loss of use of any equipment, loss of any contract or other business opportunity or goodwill or punitive loss; or
  - 7.3.7.2 indirect loss or consequential loss,
- regardless of whether Fram Farmers has been advised of the possibility of such loss or whether such loss otherwise could have been foreseen.
- 7.3.8 For the avoidance of doubt, Fram Farmers shall not be liable to any person who is not a Member.

#### **7.4 No Warranty**

- 7.4.1 Save for any warranties or conditions which may be implied by statute, Fram Farmers makes no warranties or representations about the Goods whatsoever.

## **7.5 Indemnity**

- 7.5.1 Each Member shall indemnify Fram Farmers Limited against any and all losses, liabilities, damages, claims, costs or expenses suffered or incurred by Fram Farmers Limited arising directly out of or in connection with the Member's breach of the Contract, any Transaction or Applicable Law including any claim by a third party (including any Supplier) and any act or omission of a Representative save to the extent that the losses, liabilities, damages, claims, costs or expenses arise as a result of the bad faith, fraud, wilful default or gross negligence of Fram Farmers.
- 7.5.2 Nothing in this Contract shall require the Member to indemnify Fram Farmers if to do so is not in accordance with the Applicable Law.

## **8. APPOINTMENT OF FRAM FARMERS AS AGENT**

### **8.1 Appointment**

8.1.1 In consideration of the Annual Membership Fee and satisfaction of the Member Statements, the sufficiency of which is hereby acknowledged by the Parties, the Member appoints Fram Farmers and Fram Famers accepts the appointment to act for and on behalf of the Member in relation to Transactions (the “**Appointment**”).

### **8.2 Conclusion of Transactions**

8.2.1 Following the receipt of a Fram Order, Fram Famers is authorised by the Member to conclude Transactions for the purchase of Goods or Services in the name of and on behalf of the Member, without further reference to the Member.

8.2.2 The Member reserves the right to submit Supplier Orders directly, at its discretion.

8.2.3 The Member acknowledges and understands that Fram Farmers is authorised to incur liabilities on behalf of the Member (in accordance with the Supplier Terms, only).

### **8.3 Obligations of Fram Farmers**

8.3.1 The Member acknowledges and understands that the Appointment is limited to Order submission, Transaction execution and the satisfaction of Supplier Invoices, only.

8.3.2 Unless otherwise agreed, Fram Farmers shall not and does not have any authority to do any of the following on behalf of the Member:

8.3.2.1 hold or take title to Goods;

8.3.2.2 take delivery of Goods;

8.3.2.3 inspect Goods (or samples of Goods); or

8.3.2.4 take part in any dispute or commence or defend any court of other dispute proceedings or settle or attempt to settle or make any admission concerning any such proceedings relating to the Supplier Terms.

8.3.3 In respect of the Appointment, Fram Farmers agrees:

8.3.3.1 to act towards the Member conscientiously and in good faith and not to allow its interests to conflict with the duties that it owes to the Member under this Contract and Applicable Law;

- 8.3.3.2 to comply with all reasonable and lawful instructions of the Member from time to time concerning any Order, and generally to carry out its agency in such manner as it thinks best to promote the interest of the Member;
- 8.3.3.3 to describe itself in all dealings with a Supplier in relation to an Order as agent of the Member;
- 8.3.3.4 to employ a sufficient number of suitable personnel to ensure the proper fulfilment of Fram Farmers' obligations under the Appointment; and
- 8.3.3.5 not to, without the Member's prior written consent, make or give any representations, warranties or other promises on behalf of the Member beyond those contained in the relevant Supplier Terms.

#### **8.4 Obligations of the Member**

- 8.4.1 In respect of the Appointment, the Member agrees:
  - 8.4.1.1 to act towards Fram Farmers conscientiously and in good faith and not to allow its interests to conflict with the duties that it owes to Fram Farmers under this Contract and Applicable Law;
  - 8.4.1.2 provided always that Fram Farmers performs its obligations in accordance with the Appointment, to indemnify Fram Farmers against any liabilities which Fram Farmers may incur as a result of acting with reasonable care and skill within the scope of its authority under the Appointment as agent for the Member;
  - 8.4.1.3 to inform Fram Farmers within a reasonable time if any Transaction concluded on its behalf by Fram Farmers will not be performed by the Member, and of the reason for such non-performance; and
  - 8.4.1.4 to satisfy the Member Statements in accordance with the process set out at section 5.

#### **8.5 Termination of the Appointment**

- 8.5.1 The Appointment shall terminate in accordance with the remainder of these Terms.

## **9. ORDERS**

### **9.1 Orders**

9.1.1 A Member may enter a Fram Order or a Supplier Order.

9.1.2 The Member acknowledges and understands that:

9.1.2.1 the entry of a Fram Order constitutes an instruction to Fram Farmers to enter into a Transaction with a Supplier on its behalf;

9.1.2.2 the entry of a Supplier Order constitutes an offer to the Supplier to enter into a Transaction with Fram Farmers on behalf of the Member;

9.1.2.3 each such Order may result in a binding Transaction between the Member and the Supplier; and

9.1.2.4 Fram Farmers has no control over, and shall not be liable for, the Supplier's acceptance or rejection of any Order.

9.1.3 All Orders are placed at the Member's own risk.

### **9.2 Supplier Orders**

9.2.1 Before placing a Supplier Order, the Member must ensure that it provides sufficient details to the Supplier to enable the Supplier to place the Order on the Fram Account and generate an accurate Supplier Invoice.

### **9.3 Cancellation of Orders**

9.3.1 Fram Farmers cannot guarantee that Orders which have been accepted by the Supplier can be cancelled or suspended. In the event that Fram Farmers receives an instruction from the Member to cancel an Order, it shall use reasonable endeavours to do so, subject to the provisions of the relevant Supplier Terms.

## 10. ADDITIONAL TERMS

### 10.1 Additional Terms

10.1.1 The Contract shall also be subject to any additional terms that may be agreed between Fram Farmers and the Member from time to time.

### 10.2 Additional Terms Applying to Crops

10.2.1 Without prejudice to section 4, above (and any relevant provisions of any Supplier Terms), the Member shall not be entitled to request any deductions from or adjustment to any Member Statement to take account of any levies made by the Agriculture and Horticulture Development Board (or any entity which may replace it during the continuance of the Contract) and other applicable EU and UK government levies.

### 10.3 Additional Terms Applying to Seeds

10.3.1 Without prejudice to clause 5 of the Membership Agreement, Fram Farmers shall use reasonable endeavours to ensure that all seed products sold by a Supplier (**Seed**) are guaranteed to comply at the time of delivery with the relevant UK Seeds Regulations then in force.

10.3.2 Subject to section 10.3.1 above, all information of whatever kind which is provided by Fram Farmers or its Representatives, in relation to varietal characteristics or fitness of particular seeds for stated purpose (or otherwise relating to the performance of those seeds) is given for general guidance only and shall not constitute a representation or warranty by Fram Farmers. The Member is therefore advised to satisfy itself that any seeds that are the subject of an Order are of a variety and performance which is satisfactory for its requirements before placing that Order.

10.3.3 For the avoidance of doubt, Fram Farmers shall not be liable to the Member (or any Sub-Account Holder) for any loss or damage whatsoever (including consequential and indirect losses, loss of profit and other losses of a similar nature, whether or not such losses or profit or losses of a similar nature are indirect or consequential losses), howsoever arising from or in connection with:

10.3.3.1 latent defect or loose smut being contained in any Seed;

10.3.3.2 a yield on any harvest of crop grown from the Seed below the expected level of yield, whether or not that expected level has been communicated by or to Fram Farmers; and/or

10.3.3.3 any crop grown from or with Farm Saved Seed or any subsequent crop grown therefrom.

10.3.4 In the event of the Seed becoming the subject of a grant of plant breeders' rights under the Plant Varieties and Seeds Act 1964 at any time between the date of the Order and the date of delivery, the Supplier may adjust the Contract price to include the cost of any royalty which will then be payable to the owner of the rights. The Supplier may also have the right to adjust price accordingly if, in the case of a variety which is already the subject of plant breeders' rights, there is any change in the rate of royalty payable during the same period. Any such price adjustment will be reflected in the Member Statement.

#### **10.4 Additional Terms Applying to Agrochemicals**

10.4.1 It shall also be the responsibility of the Member (or any Sub-Account Holder) to ensure that it complies with:

10.4.1.1 all instructions for use, which are supplied with any agrochemicals; and

10.4.1.2 any regulations governing the use of agrochemicals.

#### **10.5 Additional Terms Applying to the Crop Marketing Services**

10.5.1 Fram Farmers shall also provide Crop Marketing Services to Marketing Members in accordance with the terms of the Marketing Agreement and/or in accordance with any other terms as may be agreed in writing between Fram Farmers and a Marketing Member.