

TCS12-0719

# Terms and conditions for the loan of fertiliser tanks

**Frontier**

## **1. AGREEMENT TERMS**

- 1.1 Frontier Agriculture Limited ("we", "us", "our") are providing to you (the person, sole trader or company set out in the Fertiliser Tank Agreement) on loan without charge the fertiliser tank(s) described in the Fertiliser Tank Agreement (the "Goods") for the period of time stated in the Fertiliser Tank Agreement subject to these Terms and Conditions, and the Fertiliser Tank - Site Bunding Guidance (together being the "Agreement").
- 1.2 You acknowledge and agree that
  - 1.2.1 we retain ownership of and title in the Goods at all times;
  - 1.2.2 you shall take delivery of, and use, the Goods for the purposes only of a business carried on by you;
  - 1.2.3 all use of the Goods shall be subject to the terms of the Agreement;
  - 1.2.4 the Goods will be delivered to the site specified on the Front sheet (the "Site") at our cost but should the Site and/or its access not be ready for delivery of the Goods we will be entitled to charge you for our costs of storage and redelivery of the Goods;
  - 1.2.5 you will, where necessary and at your own expense, obtain all permissions, permits, licences, planning permissions and all and any other consents necessary for the installation, storage and/or use of the Goods, and pay all rents, rates, taxes and charges which may from time to time apply in respect thereof.
- 1.3 At the end of the term of the Agreement (or earlier termination) we will collect the Goods from the Site and transport them to our storage destination and you will give us prompt access to the Site to undertake such collection. The collection and transportation shall be at our cost save where there has been wilful damage to, or neglect of, the Goods, or where we have terminated the Agreement for cause, in which case you will bear the costs of such collection and transport and will reimburse us such costs promptly on demand.

## **2. YOUR OBLIGATIONS**

### **2.1 Use of Goods**

- 2.1.1 You shall use the Goods (and ensure the Goods are used) safely, properly, without risk to health and strictly in accordance with our operating instructions.
- 2.1.2 You shall not remove or alter, or permit removal or alteration of, any identification or registration numbers or marks upon the Goods. You shall not allow the Goods to become, in our opinion, in jeopardy.
- 2.1.3 You agree that you will not use the Goods for any purposes other than to store liquid fertiliser that we have supplied to you, and water. Any use of the Goods for other purposes shall be a material breach of this Agreement for which we shall be entitled to terminate the Agreement on notice with immediate effect and take repossession of the Goods.
- 2.1.4 You shall take all reasonable steps to keep yourself acquainted with the state and condition of the Goods.
- 2.1.5 If you use and/or continue to use the Goods in an unsafe and/or unsatisfactory manner and/or whilst the Goods are in an unsafe and/or unsatisfactory state, you shall be solely responsible for any and all damage, loss and/or accidents arising directly or indirectly from such use. You hereby agree that we shall have no liability in respect of such use. You hereby indemnify us and keep us indemnified against any and all losses, liabilities, claims, actions, damages, costs and expenses (including reasonable professional fees) that we suffer or incur due to such use.
- 2.1.6 You will be responsible for complying with all relevant statutory obligations and Governmental and Local Authority regulations relating to the installation, storage and use of the Goods, including regulation under the Factories Acts, Health and Safety at Work etc. Act, all relevant legislation pertaining to the protection of the environment and observance of the Road Traffic Acts, should they apply.
- 2.1.7 You shall keep accurate, complete and current records of all use, operation, maintenance, servicing and repair of the Goods, and make such records available to us promptly on request to do so.

### **2.2 The Site**

- 2.2.1 You shall supply and provide at your own expense:
- (a) our access to the Site for delivery of the Goods, and ensure that the Site has suitable access for articulated road tankers. You are solely responsible for the exact location of the Site and you agree to comply with the industry's current Code of Practice, which you confirm you have received (for further details see the links below);
  - (b) foundations for the Goods with the dimensions we specify to you in writing. We reserve the right to refuse to deliver the Goods until we are satisfied as to the adequacy of the foundations. You are solely responsible for ensuring the foundations are adequate and do so at your own risk. Our delivery of the Goods does not signify any representation by us that the foundations are adequate;

- (c) any works required to be made to the Site whether by planning or any other authorities in connection with obtaining consents necessary for the erection of the Goods or otherwise;
- (d) adequate secondary containment (bundling) for the fertiliser tank that meets the Environment Agency (EA), Environment Agency Wales and Scottish Environment Protection Agency (SEPA) guidance (as applicable). Should you fail to provide such adequate secondary containment for the tank, we shall not provide fertiliser for storage within it until you do so. For further details please access the information available at the following links:

<https://www.agindustries.org.uk/latest-documents/protect-the-environment/>  
<https://www.agindustries.org.uk/latest-documents/code-of-practice-fluid-fertiliser-part3-users/>

- 2.2.2 You shall not remove the Goods from the Site without our prior written consent.
- 2.2.3 Time for delivery shall not be of the essence and we shall not be liable for any losses, liabilities, damages, costs or expenses arising from any delay in delivery of the Goods.
- 2.2.4 In the event you do not accept delivery of the Goods, or we are unable to deliver the Goods because the Site and/or its access is not suitable, or you have not secured the appropriate authorisations or for other reasons attributable to you, then without prejudice to any other right or remedy we may have, we may store the Goods until actual delivery and charge you for the reasonable costs we incur (including insurance) of such storage and of any failed delivery and the redelivery of the Goods to you.

### **2.3 Modification of Goods**

You shall not modify or alter the Goods save in the event the Goods become liable under any statutory enactment to be modified or altered, in which circumstances you shall immediately notify us and thereafter make such modification or alteration at your own expense.

### **2.4 Repair and maintenance**

You agree that you shall keep the Goods in good repair and condition. You shall promptly notify us of any repairs which are required by the Goods and we will arrange for them to be repaired at our cost unless evidence of negligence, wilful damage and/or neglect on your part is evident, in which case we will charge to you the full cost of repairs.

### **2.5 Damage, loss and repair**

- 2.5.1 You agree that you will be responsible for all and any costs and expenses incurred by you and/or by us in relation to any loss of, or damage to, the Goods as provided for in this clause 2.5.
- 2.5.2 You shall notify us immediately in writing of any loss of, damage to and/or defect in Goods, including (without limitation) damage occurring during the installation

or removal of the Goods and/or whilst the Goods are in your control or at your risk.

2.5.3 Subject to clause 2.5.4 below:

- (a) you will be liable for all damage to and loss of the Goods from the point of delivery and transfer of risk to you as provided for in clause 2.7.1. Should the Goods be stolen or damaged beyond economic repair, you will reimburse us the full purchase price of the Goods; otherwise we will repair the Goods at your cost;
- (b) you hereby indemnify us and keep us indemnified against all and any losses, liabilities, claims, actions damages, costs and expenses (including reasonable professional fees) that we suffer or incur due to any loss of and/or damage to the Goods.

2.5.4 Where damage to or loss of the Goods arises due to our negligence or breach of contract, we will repair or replace the Goods at our cost.

## **2.6 Inspection**

You shall allow us (and hereby grant us an irrevocable licence) to access the Site at all reasonable times to inspect, test, adjust and/or repair the Goods.

## **2.7 Risk and Title**

2.7.1 Risk in the Goods shall pass to you on completion of unloading for the Goods at the Site and you shall be obliged to insure the Goods from such time until we take repossession of the Goods.

2.7.2 You acknowledge and agree that we retain ownership of and title in the Goods at all times. You agree that you shall not sell, assign, mortgage, charge or sublet the Goods or any interest in them and/or the benefit of this Agreement.

## **2.8 Insurance**

2.8.1 You shall insure and keep the Goods and their contents insured to their full replacement value with full comprehensive cover and keep them fully insured against all losses, liabilities and/or damages suffered to persons and/or property from their use including (without limitation) personal injury and death, environmental damage whether caused by leakage, spillage or any other cause, with our interest noted on the policy.

2.8.2 You shall notify us forthwith of any loss of or damage to the Goods and/or of any loss or damage caused by the use of the Goods and/or any contents stored in the Goods.

2.8.3 You shall punctually pay all premiums due for such insurance and promptly produce to us written evidence of such payment and policy cover upon request to do so. If you fail to pay any premiums required to be paid in respect of insurance under this clause 2.8 and/or to pay any sums required to be paid under clause 2.10, we may pay those amounts on your behalf and you must reimburse us on demand.

## **2.9 Indemnity against third party claims**

- 2.9.1 You shall indemnify us and keep us indemnified in respect of all and any losses, liabilities, damages, claims, actions, costs and expenses (including reasonable professional fees) that we suffer or incur as a result of:
- (a) any claim arising out of the state, condition and/or use of the Goods or in any way arising in respect of the Goods provided under this Agreement, and/or
  - (b) any claim arising from pollution and/or any investigation and/or remediation required by a relevant regulator arising in respect of the Goods provided under this Agreement.
- 2.9.2 Your indemnity in clause 2.9.1 shall survive termination of this Agreement.

## **2.10 Pay taxes and outgoings**

You shall keep the Goods free of all liens and distrains and pay all taxes, outgoings and impositions in respect of the Goods and their provision under this Agreement and the Site, excepting only any taxes on, or assessed by reference to, our profits or any VAT which we are able to reclaim from HM Revenue and Customs.

## **2.11 Insolvency**

You shall not suffer the levy against you of any distress or execution, nor present or suffer to be presented any application for an interim order or petition for a bankruptcy order within the meaning of the Insolvency Act 1986, nor enter into or attempt to enter into a composition with your creditors, nor call or suffer to be called a meeting (whether formal or informal) of your creditors or any of them nor allow an administrator to be appointed.

## **2.12 Notice of accidents**

If the Goods are involved in any accident resulting in injury to persons or damage to property, you agree that you will notify us immediately by telephone and confirmed in writing. You agree to make no admission, offer, promise of payment or indemnity in respect of the same without our written consent.

## **3. FURTHER STIPULATIONS**

It is mutually agreed that:

### **3.1 Termination**

- 3.1.1 This Agreement may be terminated by you or us without cause at any time on giving the other party at least 14 days' written notice.
- 3.1.2 We may terminate this Agreement with immediate effect on notice to you if:
- (a) you breach any of the provisions of the Agreement;
  - (b) being a company or other incorporated body: you are unable to pay your debts within the meaning of s.123 of the Insolvency Act 1986, or you convene a meeting of your creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition, scheme

or arrangement with (or assignment for the benefit of) your creditors, or a receiver, administrative receiver or similar officer is appointed over all or a substantial part of your business or affairs, or a meeting is convened for the purpose of considering a resolution or other steps are taken for your winding up (whether by the presentation of a winding up petition or otherwise) or for the making of an administration order (other than for the purposes of solvent reconstruction or amalgamation);

- (c) being an individual: you are unable to pay your debts within the meaning of s.268 of the Insolvency Act 1986, or a petition is presented for your bankruptcy, or you make an arrangement or compromise for the benefit of your creditors whether pursuant to the provisions of Part VIII Insolvency Act 1986 or otherwise (a "Personal Insolvency Event");
- (d) being a partnership: you are unable to pay your debts, or a petition is presented for your winding up under the provisions of the Insolvent Partnerships Order 1994 whether or not involving individual insolvency proceedings against your partners and presented by creditors or by the partners themselves, or such a petition is presented against you in conjunction with bankruptcy or individual insolvency or petitions against any partner, or if you enter into any composition, scheme or arrangement or voluntary arrangement including your business and assets or the share of any partner, or in the event of action for a partnership account and/or a winding up of or a dissolution of you under the Partnership Act 1890 or if any partner suffers a Personal Insolvency Event;
- (e) any of the events listed in clauses 2.11 and/or 2.12 occur to you and/or you breach clause 5.1.

### 3.1.3 Upon the termination of this Agreement:

- (a) you shall promptly clean and empty the Goods at your own cost and expense and ensure they are in a good condition and state of repair, and fit for purpose;
- (b) if the Agreement is terminated early by you without cause, or by us for cause, we shall be entitled to enter the Site and take possession of the Goods and at your cost transfer them to our storage destination, and you shall permit us to do so;
- (c) if the Agreement is terminated by us without cause, or by you for cause, we shall be entitled to enter the Site and take possession of the Goods and transport the Goods at our own cost, and you shall permit us to do so.

3.1.4 If you do not return the Goods or make the Goods available for collection in the condition set out in clause 3.1.3, then we may charge you for any reasonable costs we incur in returning the Goods to that condition.

## **3.2 Inspection by you**

3.2.1 You must inspect the Goods promptly following delivery or installation. Unless within three working days of installation you give us written notice specifying any defect in, or other proper objection to, the Goods, it shall be conclusively

presumed that have been delivered to you in good condition and repair and fit for purpose except for latent defects not apparent on reasonable inspection.

### **3.3 Conditions and warranties and limitation of liability**

- 3.3.1 No person or entity, other than our senior management team, has any authority to make on our behalf any representation concerning the Goods and/or their provision under this Agreement.
- 3.3.2 You are entitled to the benefit of all conditions, warranties or other terms express or implied, relating to the Goods which are given to us by the suppliers or manufacturers of the Goods but only insofar as we are entitled to transfer them to you.
- 3.3.3 Subject to the foregoing, we do not provide the Goods subject to any condition, warranty or other term express or implied save those implied by law and, without prejudice to the generality of the above, there is excluded:
- (a) in cases where the Goods are provided by reference to a description, any condition that the Goods will correspond with the description; or
  - (b) any condition of satisfactory quality of the Goods; or
  - (c) any condition of fitness of the Goods for any particular purpose.
- 3.3.4 Nothing in this Agreement shall limit or exclude our liability for death or personal injury caused by our negligence or for any liability which cannot be excluded by operation of law.
- 3.3.5 We shall not be liable to you in respect of the delivery, installation, use and/or repossession of the Goods for any:
- (a) indirect or consequential loss;
  - (b) loss of goodwill;
  - (c) loss of business; and/or
  - (d) loss of profit.
- 3.3.6 Subject to clauses 3.3.4 and 3.3.5, our total liability to you arising out of or in connection with this Agreement (whether arising in contract, tort, negligence or otherwise) shall not exceed fifteen thousand pounds sterling (£15,000) per annum.
- 3.3.7 This clause 3.3 survives termination of the Agreement.

### **3.4 Contents of the Goods**

We shall not be liable to make good any loss of contents of the Goods, nor shall we be liable for any loss or damage, including loss or damage caused by pollution and/or any investigation or remediation required by a relevant regulator, which



may occur as a consequence of any leakage or spillage of fertiliser from the Goods, unless such loss or damage is caused by any inherent defect in the Goods as supplied, and you hereby undertake to indemnify us against any and all losses, liabilities, damage, claims, actions, costs and expenses (including reasonable professional fees) which may be suffered by us arising from any spillage or leakage. This clause survives termination of this Agreement.

### **3.5 Our expenses**

Any expense incurred by us **in** recovering possession of the Goods on default by you in returning them under clause 3.1.3 above or in us repossessing them shall be reimbursed by you to us on demand.

### **3.6 Goods to remain personal unencumbered property**

3.6.1 As between us and you, the Goods provided under this Agreement shall remain personal or movable property and shall continue **in** our ownership notwithstanding that they may have been affixed to any land or building.

3.6.2 You are responsible for any damage caused to land or buildings from the Goods being affixed to them, or removal of the Goods from them (whether we or you affix or remove them) and you indemnify us and keep us indemnified against any and all losses, liabilities, damages, claims, actions, costs and expenses (including reasonable professional fees) suffered or incurred from the same. This clause survives termination of the Agreement.

3.6.3 We may inform the owner of the premises where the Goods are from time to time located of our ownership of the Goods.

3.6.4 You agree that you shall:

- (a) hold the Goods as bailee for us and separately from other goods in your possession;
- (b) take all reasonable care of the Goods and keep them in the condition in which they were delivered;
- (c) ensure that the Goods are clearly identifiable as belonging to us at all times;
- (d) not remove or alter any mark on the Goods indicating their ownership by Frontier;
- (e) inform us immediately **if** you become subject to any of the events or circumstances set out **in** clauses 2.11 and/or 3.1.2; and
- (f) on reasonable notice grant us access to the Site and permit us to inspect the Goods.

### **3.7 Notices**

Any notice hereunder shall be **in** a permanent readable form and shall be deemed properly given if addressed to the party concerned at its principal place of business or last known address or sent by email to the most recent email address to which correspondence has been sent to the party receiving the notice,

provided that no failure to transmit message is received in response to such email.

#### **4. DATA PROTECTION**

- 4.1 We comply with our legal obligation under UK Data Protection laws in the way we collect, store and process personal data.
- 4.2 We will process your personal data only in accordance with the lawful basis for processing that data and will ensure that we take steps to ensure the reliability of those of our employees who are used to process such personal data.
- 4.3 We warrant that we have appropriate technical and organisational processes and procedures in place to safeguard against any unauthorised or unlawful processing and against accidental loss or destruction of, or damage to your personal data.
- 4.4 The Frontier privacy policy details how we will collect and use your personal data, when we may share your information with companies in the Frontier Group and selected third parties. The current Privacy Policy will be displayed on our website at [www.frontierag.co.uk](http://www.frontierag.co.uk)

#### **5. ANTI-BRIBERY AND CORRUPTION**

- 5.1 You and we agree to comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including (without limitation) the Bribery Act 2010 (all of the aforesaid being "Relevant Requirements") and agree:
  - (a) not to offer, promise, give or receive any improper financial payment and/or other improper advantage to or from any person, customer or supplier;
  - (b) not to make or offer, directly or indirectly, any payment, gift or other advantage to a public official with the intention of influencing them and obtaining or retaining an advantage in the conduct of business;
  - (c) not to do, or omit to do, any other act which constitutes a breach of the Relevant Requirements.

#### **6. GENERAL**

- 6.1 No variation to this Agreement shall take effect unless it is in writing and signed by authorised signatories of both parties.
- 6.2 We shall not be responsible for failure to perform any of our obligations under this Agreement arising by any act beyond our reasonable control including (without limitation) act of God, act of terrorism, war, adverse weather, action by Government or Government authority whether at Port, Local, National or European Union level, strike-out, combination of workman accident or breakdown of plant or machinery, power failure, crop failure, fire, pandemic or epidemic or otherwise.

- 6.3 Other than our group companies, a person who is not a party to the Agreement shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 to enforce any of these conditions.
- 6.4 A failure by us to exercise, or a delay in exercising, any right of remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other right or remedies which we may otherwise have and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of any right or remedy or the exercise of any other right or remedy. Equally, any waiver by us of a breach of any of the terms of this Agreement or of any default under this Agreement shall not be deemed a waiver by the seller of any subsequent breach or default and shall not affect the other terms of this Agreement.
- 6.5 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between you and us, constitute either you or us as acting as an agent of the other, or authorise you or us to make or enter into any commitments for or on behalf of the other.
- 6.6 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but shall not affect the validity and enforceability of the rest of this Agreement.
- 6.7 This Agreement is personal to you, and you shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of your rights and obligations under this Agreement without our prior written consent.

## **7. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with it (whether contractual or tortious or otherwise) shall be subject to the exclusive jurisdiction of the courts of England.

## **8. INTERPRETATION**

- 8.1 Capitalised terms used in these terms which are not defined in these terms will have the meaning attributed in the Fertiliser Tank Agreement.
- 8.2 Headings contained in this Agreement are for ease of reference only and do not affect the construction of this Agreement.
- 8.3 In this Agreement the singular includes the plural and vice versa.
- 8.4 Any reference in this Agreement to a statutory provision shall be construed as a reference to that provision as from time to time amended or re-enacted.
- 8.5 No conditions other than specifically set out in the Fertiliser Tank Agreement and herein shall be deemed to be incorporate in or to form part of the Agreement.

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