

THE FARMERS (EMPOWERMENT AND PROTECTION) AGREEMENT ON PRICE ASSURANCE AND FARM SERVICES ACT, 2020

GUIDELINES FOR FARMING AGREEMENT

Guidelines

These Guidelines are being issued as per sub-section (4) of section 3 of the **Act**. As per the provisions of the **Act**, a farmer may enter into a Farming Agreement for the sale of any farming produce before the actual production takes place. The agreement should cover all the relevant aspects related to parties, product, price, delivery mechanism and conciliation process as described below:

1. Farming Agreement

- 1.1 A Farming Agreement under the **Act** is a written agreement between the farmer/Farmer Producer Organisation (FPO) and sponsor (the person purchasing the farming produce) in respect of **any** farming produce. Under the **Act** verbal agreements are not recognized.
- 1.2 The Farming Agreement should be written in local language and the presentation of terms should be simple and easily understandable to the parties involved.
- 1.3 Except where the **Act** specially makes a deviation, the Farming Agreement must meet the ordinary requirements of contract law to be valid, just like other contracts. Thus, for instance, competent parties must enter into the contract freely and they must each be benefitted under the agreement in a tangible way.
- 1.4 A Farming Agreement should be prepared and signed by all the parties to the agreement.
- 1.5 Farming Agreement may be registered in the e-registry constituted by the respective State Government as per rules framed under section 12 of the **Act**.

2. General conditions for framing the farming agreement

- 2.1 The farming agreement should be prepared/drafted through in-person discussions between the Sponsor or his representative and the FPO/Farmers or their representatives.

In any case, it must be ensured that the **terms** of the agreement are adequately clear to all parties involved.

- 2.2. Where in FPO enters into a Farming Agreement, care should be taken to ensure that the responsibility for the performance of the Agreement is appropriately assigned amongst the members of the FPO.
- 2.3 When a sharecropper is involved in the agreement, he may be made responsible for receiving and using any inputs from the sponsor, for cultivation of produce of the appropriate quality, and for production by using good standard practices. The obligation to deliver the contracted quantities may appropriately rest with the Farmer. No clause in the agreement can be in derogation of rights of such sharecropper.
- 2.4 The Farmer should read the Agreement or have the Agreement read over and explained to him by an appropriate independent third party. He may also seek the advice of a legal advisor on the Agreement before signature.
- 2.5 The agreement should be made available to the farmer/FPO for signing at a reasonable time prior to the commencement of an agricultural season.
- 2.6 The Farming Agreement should clearly indicates the nature of the farming, size of land area, survey number of the farmer's field, business address of Sponsor, name of the village and address of the farmer.

3. Purpose of the farming agreement:

- 3.1 The Sponsor may supply inputs, technology, and extension services to farmer/FPO, if so agreed in the agreement.
- 3.2 The Farmer should agree to produce and sell the farming produce to the sponsor on the agreed terms and conditions.

4. Period of Farming agreement:

- 4.1 The period of farming agreement must be clearly mentioned subject to minimum period of one crop season or one production cycle. Farming agreements may be made for a maximum period of five years.

4.2 In case of certain kinds of farming produce, a single production cycle may run longer than five years. In these instances, the period of validity of the farming agreement may even extend beyond five years.

5. Supply of inputs by the Sponsor:

5.1 The Sponsor may supply the inputs to the farmer/FPO and where this responsibility is being placed on the sponsor, it must be clearly mentioned in the farming agreement.

5.2 Where the sponsor is required to supply inputs, it should be ensured that the agreement specifies this requirement, and the sponsor must provide inputs of the nature and quality required for the performance of the agreement by the farmer.

5.3 The Sponsor shall share the required inputs (including delivery) and technical advice to the farmer either on cost-basis/free of charge/cost-sharing basis.

5.4 If the sponsor delivers the inputs and technical advice on cost-sharing basis, the farmer's share of the costs may be deducted from the payment to made to the farmer by sponsor for the farming produce on delivery.

5.5 The sponsor must deliver the inputs to the farmer at the time and place specified in the agreement.

5.6 The sponsor would ordinarily be responsible for any loss or damage to the farming produce, production site, assets, and any legal consequence of inputs supplied by him.

6. Use of Inputs by the Farmer/FPO:

6.1 The inputs supplied by the sponsor should be checked/verified for its quantity and quality by the farmer who can notify the sponsor in writing in case of any shortfall/defects.

6.2 The farmer should use the inputs in accordance with any instructions framed in the Farming Agreement and should not divert for other purposes.

6.3 The farmer would ordinarily be responsible for any loss or damage to the inputs after their acceptance from the sponsor.

6.4 The farmer can return any unused inputs to the sponsor at the end of the production cycle or otherwise as per the agreement.

7. Promotion of Awareness to Farmer/FPO for quality production

- 7.1 The Sponsor should promote awareness and impart trainings to the Farmer/FPO about good agricultural practices (GAPs), protection of produce from pests and diseases and on other production related aspects.
- 7.2 Sponsor should also provide information and explanation to the farmer/FPO about various standards (physical and physico-chemical) that may be followed for grading the farming produce as per the agreement.

8. Production of Farming produce by the farmer/FPO

- 8.1 The Farmer must follow the production methods (e.g. for production of organic produce or under any certification scheme) and standards (social, labour, environmental or cultural standards) for cultivation of crop as outlined in the farming agreement.
- 8.2 The Sponsor or his representative/s may visit the production site for the purpose of providing advice, supervising any production process and/or verifying the Farmer's compliance with the prescribed production methods.
- 8.3 Frequency and time of visits as provided in the agreement, should coincide with normal business hours and should not unduly burden or inconvenience the farmer.

9. Inspection of the farming produce:

- 9.1 After production, the sponsor/his representative may inspect the farming produce to comply with the quality standards as laid out in the Farming Agreement.
- 9.2 If the sponsor accepts delivery of the Produce, it shall be considered as per law that he has inspected the Produce and shall have no right to retract acceptance on the ground that it does not meet specifications that could have been ascertained through inspection.
- 9.3 The farmer should be present during the inspection of the Produce.
- 9.4 The costs associated with the inspection should be borne by the sponsor.

10. Delivery of the farming produce:

- 10.1 The packaging material may be supplied by the sponsor subject to provisions of the agreement.

- 10.2 The farming produce should be packaged by the farmer as per the commodity-specific requirements before delivery to the sponsor as provided for in the agreement.
- 10.3 The farmer should not use the packaging materials supplied by the Sponsor for any purpose other than the delivery of the produce to the sponsor.
- 10.4 Bags/containers that are left over after packaging the produce should be returned back by the farmer to the sponsor.
- 10.5 The Sponsor should weigh the packaged produce before accepting delivery.
- 10.6 The Sponsor should provide for the weighing equipment and while weighing the produce, the weight of the containers may be deducted from total weight.
- 10.7 The costs of packaging, weighing and loading of farming produce should be borne by the Sponsor subject to provisions in the agreement.
- 10.8 In the event of any rejection, the sponsor should inform the farmer about the reasons and offer them the chance to inspect the rejected consignment or have it inspected by a third party. Third party may be a certified assayer, KVK, seed certifying agency, qualified agriculture scientist etc.

11. Grades and Standards of farming produce

- 11.1 Sponsor should promote awareness among the Farmer/FPO about various grades and standards of the farming produce
- 11.2 The grade standards to be followed for the farming produce may be related to physical/physico-chemical/both properties such as: size, shape, colour, brix-acid ratio, oil content, specific gravity, acid value, free fatty acid, Refractive index etc.
- 11.3 The quality grades may be categorized into (i) premium quality (ii) fair average quality and (iii) below fair average quality.

12. Pricing Mechanism

- 12.1 The produce must be purchased at a price provided for in the farming agreement. The price may be linked to market price and in such case, a minimum guaranteed price must be specified. Similarly, the method of determining payment above the minimum guaranteed price and a clear price reference must be provided in the agreement. This price referencing may be done in a number of ways, including the following options:

Option 1: Variable price with variable component over and above the guaranteed price, based on a reference price (say, modal price reported at the nearest APMC with e-NAM facility at the time of delivery)

Option 2: Fixed price according to different quality grades of the produce

Grades	Fixed Price (Rs/ctl)
Grade A	X
Grade B	Y
Grade C	Z

Option 3: Fixed price or variable price at the time of delivery of produce to the Sponsor, whichever is greater but cannot be below the guaranteed price.

Option 4: Agreement may provide for payment of bonus both in the case of fixed price or variable price mechanisms.

Examples:

- 1) **Fixed price with bonus:** If the agreement provides for payment of INR 10 per kg for banana of Grade A at the time of delivery along with bonus of INR 2 per kg, then farmer on delivery of banana conforming to quality grade, will be entitled to receive payment of Rs. 12 per kg.
- 2) **Variable price with bonus:** If the agreement provides for payment of INR 5 per kg for banana of Grade A, with additional amount as 50% of market determined price on day of delivery based on predefined price reference like modal price of nearest APMC yard or any e trading platform etc., and bonus of INR 2 per kg then following possibilities may arise;
 - a) If the market determined price is below INR 5 per kg, for example it is Rs 3 per kg then farmer will be entitled to INR 5 (guaranteed price)+INR 2 (bonus) i.e. INR 7 per kg.
 - b) If the market determined price is INR 12 per kg, then farmer will be entitled to INR 5 (guaranteed price)+INR 6(50% of INR 12) + INR 2 (bonus) i.e. INR 13 per kg.

12.2 The Farming Agreement should avoid complex formulas or measurements of quantity and quality to arrive at price of farming produce.

13. Sale of farming produce by the farmer to the sponsor:

13.1 The place and mode of delivery of the produce should be specified in the farming agreement clearly. The sale of farming produce by the farmer to the sponsor may be at the farm gate subject to provisions in the agreement, especially where the farmer lacks any feasible transportation facilities.

13.2 In case the farmer is asked to deliver the produce at a specific location, the sponsoring firm should appropriately reimburse the transportation cost incurred by the Farmer.

13.3 The sponsor should collect the farming produce from the farm gate/delivery point within agreed time according to the delivery schedule.

13.4 It is advisable that Farmers or their representatives be present when the produce is collected from the farm and delivered to the Sponsor.

13.5 If the Sponsor fails to take delivery of conforming produce within the stipulated days mentioned in the agreement, the farmer may sell the produce to a third party and may claim from the Sponsor the difference between the price in their Agreement and the actual price that the Farmer received for the Produce. Penalty to the extent of 150% of such claim may also be imposed by the sub divisional authority.

13.6 The Farmer should not deliver the produce to Sponsor which was not produced on the production site specified in the agreement, especially where this is material to the produce or its quality or the delivery to the Sponsor.

14. Payment of Sales Proceeds

14.1 The Sponsor should make the payment to the farmer on the day of delivery of the Farming Produce.

14.2 After accepting the produce, the Sponsor must issue a sales receipt specifying the time, date, quantity, grade, rate/unit and amount of sales proceeds paid to the farmer.

14.3 Payment to the Farmer may be made through bank transfer to the farmer's account or in cash where electronic transfer cannot be done subject to the mode and manner of payment as prescribed by the respective State Government in rules framed under section 6 (4) of the **Act**.

15. Availing Credit and Insurance Facilities

- 15.1 Either the Farmer/Sponsor can seek insurance for the crop.
- 15.2 If the Farmer agrees to purchase the crop insurance or weather insurance, it may be at his own cost or be paid for by the sponsor if provided for in the agreement.
- 15.3 If the sponsor agrees to purchase insurance on behalf of the farmer, it may be at the sponsor's own cost.

16. Ownership Rights of Sponsor on Farmer's/FPO Assets

- 16.1 Under the **Act**, the Sponsor is not permitted to use the farming agreement to gain or enjoy ownership rights on the Farmer's land.
- 16.2 No permanent change should be made by the Sponsor on the Farmer's land.
- 16.3 The Sponsor can make temporary modifications on land, only if the Farmer agrees. However, before the expiry of the farming agreement, the Farmer's land should be restored to its original condition.
- 16.4 If the permanent structure on land is not removed as agreed by the Sponsor, the ownership of such structure would vest with the farmer after expiry of the farming agreement period.
- 16.5 The Farming Agreement cannot provide for any transfer, sale, lease and mortgage of the land or premises of the farmer to the Sponsor.
- 16.6 The Farmer/FPO should ensure that their ownership of the land is secure and legally valid before entering into agreements regarding production on such land.
- 16.7 Farmer should not opt for selling/changing the ownership of the land, while in agreement with the Sponsor regarding production of farming produce from that land.

17. Force Majeure

- 17.1 Both the Parties should make themselves aware about Force Majeure events relating to farm production.
- 17.2 In the occurrence of Force Majeure, the affected party should notify the other party in writing about the event with the necessary details.
- 17.3 The affected party should collect and submit the evidences of the Force Majeure event to the other party to discuss about possible mitigation strategies.

- 17.4 If the affected party delays or hinders communication about the occurrence of Force Majeure event and subsequently is not able to perform the obligations as laid out in the Farming Agreement, he may be made liable for such failure where it prevents action to mitigate damage.
- 17.5 If both the parties are well notified about the continued occurrence of the Force Majeure event, the obligations under the agreement may be suspended and in such a case, no damages or penalties would be imposed on either party for delay in performance of obligations.
- 17.6 If any particular obligation in the Farming Agreement is suspended due to Force Majeure event, the affected party should inform to other party about this event.

17.6.1 If the suspension is feasible, both the parties can re-negotiate the terms laid down in the agreement.

17.6.2 If the suspension is not feasible (in some circumstances), then both the parties may terminate the contract. Under such event, all outstanding payments relating to the inputs supplied for the production would fall due or be waived, depending upon the understanding between the two parties. They may even enter into a new Agreement for the supply of the produce.

18. Breach of Agreement:

- 18.1 If a Party (or both) could not fulfill the obligation(s) laid down in the farming agreement (and there is no excuse such as a Force Majeure event), it may be considered a breach of agreement.
- 18.2 When a party suffering because of a breach (“Aggrieved Party”) has substantial evidence that the party causing the breach (“Breaching Party”) is or will be in breach of its obligations, it should immediately notify and submit in writing to the Breaching Party that all reasonable measures should be taken to minimize and mitigate the damage caused by the breach of the agreement. The loss incurred by the Aggrieved Party on this ground should be compensated by the Breaching Party subject to farmer’s liability being limited to the extent of advance given by sponsor or cost of farm services provided to farmer by the sponsor.

18.3 When the Aggrieved Party informs the other party about the possible breach of obligation(s) of the Agreement, the Breaching Party may take one of the following measures at its own cost to compensate the former from the losses:

- a) replacing any non-conforming Produce with Produce which conforms with the requirements of this Agreement;
- b) replacing any non-conforming Inputs with Inputs which conform with the requirements of this Agreement;
- c) modifying or correcting the current Production Method or Process (with instructions issued by the Aggrieved Party or any relevant certification body); and/or
- d) Completion of any partial delivery, or taking delivery as the case may be, within the time frame agreed between the Parties.

18.4 The Breaching Party should not replace the conforming Produce or Inputs with non-conforming Produce or Inputs that are hazardous, dangerous or unsafe.

18.5 When the Breaching Party has committed a material breach of the Agreement (which may be any of the following events below) deliberately and this is not cured either by the Breaching Party or by the Aggrieved Party, the Aggrieved Party may issue a notice to the Breaching Party to invoke conciliation and dispute resolution. This may happen if:

- a) the Farmer fails to deliver the Farming Produce promptly (and there is significant delay) in accordance with the delivery Schedule
- b) the Sponsor fails to take delivery promptly from the farm gate or at the desired location as agreed by both the parties;
- c) the Sponsor fails to pay the sales proceeds at the required time; or
- d) the Farmer enters into marketing arrangement with third party other than the Sponsor in the farming agreement (where the agreement is one for exclusive purchase rights).

19. Termination of the Farming Agreement

19.1 The Farming Agreement may be terminated between the two parties in any of the following circumstances:

- a) by mutual agreement of the Parties;

- b) by either Party by giving written notice to the other Party, if the Agreement provides for the same.
- 19.2 Upon expiration of the Farming Agreement, both the Parties may agree in writing to its renewal.
- 19.3 Whenever a Party's ability to fulfil its obligations under this Agreement becomes fundamentally altered due to a significant change of circumstances, that Party may request a renegotiation of one or more of the terms of the Agreement, and the other Party should consider that request in good faith. For example:

Problems caused by inadequate inputs or technical advice provided by the sponsor should not result in financial losses for the Farmer.

Problems caused by mismanagement, inadequate use of inputs or failure to comply with the technical advice supplied by the sponsor, should not penalise the sponsor.

20. Dispute Resolution

- 20.1 Both the parties should formulate the farming agreement in a simple and local language to avoid possible misunderstandings and disputes among them. A mechanism for conciliation amongst the parties to the agreement must be included in the terms of agreement.
- 20.2 If the dispute arises during the period of contract, it should be resolved amicably through frequent negotiations and mutual consensus. Aggrieved party may invoke the formation of conciliation board as per terms of the agreement by writing formally to the other party. The conciliation board so invoked shall mediate and attempt resolution within 30 days of such reference.
- 20.3 If the Conciliation process is not provided in the agreement, the same shall be constituted by the Sub-Divisional Magistrate (SDM) with the conciliation board which should consist of an appropriate number of representatives (with equal representation of parties, as far as feasible) and one independent domain expert.
- 20.4 When the dispute has not been resolved within 30 days, any party may file a complaint with the Sub-Divisional Authority.

- 20.5 The Sub-Divisional Authority follows the procedure and exercises the powers and functions as per the rules notified under the **Act**.
- 20.6 If the decision of the Sub-Divisional Authority is not acceptable by either of the parties, they may file an appeal to the Appellate Authority.
- 20.7 The orders passed by the Appellate Authority are final under the **Act**.

21. Miscellaneous

- 21.1 Sponsor on identification of crop and potential Farmers should organize an awareness camp and educate the Farmers on the benefits and importance of Farming Agreement.
- 21.2 Farming produce produced under a Farming Agreement under the **Act** would be outside the ambit of any state law regarding APMCs and sale at APMC Yards.
- 21.3 The whole process for entering into and implementing the agreement should be carried out in a fair and transparent manner and in good faith. A good practice is for farmer to be involved in discussions with the sponsor from the beginning of the negotiation and agreement formation phases, to make sure he understands all the conditions included in the agreement, and to ensure that his interests and rights are considered.
