

## Richard Austin Agriculture Limited Standard Terms and Conditions for Supply of Services

- **Definitions**

- When the following words with capital letters are used in these Terms, this is what they will mean:

**Analysis:** analysis and testing provided by Us during the performance of Our Services;

**Charges:** the charges payable by you for the supply of the Services in accordance with clause 2;

**Contract:** the contract between you and Us for the supply of Services in accordance with these Terms;

**Events Outside Our Control:** is defined in clause 9;

**Priority Service:** is a faster Service offered by Us at your request and Our discretion

**Report:** our report provided to you following Analysis

**Request Form:** the request form provided by Us and completed by you requesting to purchase Services from Us;

**Services:** any Services agreed by Us to be supplied to you;

**Terms:** the terms and conditions set out in this document and any special terms agreed in writing between us

**We/Our/Us:** RICHARD AUSTIN AGRICULTURE LIMITED a company incorporated and registered in England and Wales with company number 06936430 whose registered office is at Little Field, Fen Road, Frampton West, Boston, Lincolnshire PE20 1RZ

- When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.

- **Our Contract with you**

- These are the Terms on which We supply Services to you.
- Please ensure that you read these Terms carefully, and check that the details on the Request and in these Terms are complete and accurate, before you submit the Request. If you think that there is a mistake, please contact Us to discuss it, and please make sure that you ask Us to confirm any changes in writing to avoid any confusion between you and Us.
- Each order for Services shall be identified on Our Request Form by you and shall be deemed to be an offer by you.
- No Request placed by you shall be deemed to be accepted by Us until we have either issued a written acknowledgement of the order or (if earlier) we deliver the Services or part of the Services to you at which point the Contract will be formed.
- We consider that these Terms constitute the whole agreement between you and Us with respect to the services detailed in your Request, Report and/or invoice which shall apply to the exclusion of any other terms and conditions. We will only accept samples for analysis or other work on the basis of these Terms which shall apply to the exclusion of any other terms or conditions which you may seek to impose or which are applied by trade, custom, practice or course of dealing.
- All descriptions and illustrations of Services contained in any of our websites, advertising matter or other literature are intended merely to present a general idea of the Services shown and none shall form part of any Contract.
- If We are unable to supply you with the Services set out in your request, We will not accept your offer and will inform you of this in writing.

- We have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and We shall notify you in such event.
- If any of these Terms conflict with any terms of the Request Form, the Request Form will take priority.
- **Prices and Charges**
- Services will be invoiced at the price ruling at the time of receipt of the relevant Request Form or the receipt of samples, whichever is the later, unless as otherwise agreed in writing.
- Any prices quoted are net of VAT and any government duty, levy or tax applicable, which will be charged at the appropriate rate ruling at time of despatch of the Services.
- **Delivery and Supply of Services**
- We aim will use all reasonable endeavours to provide any Report forming part of Our Service within 30 days from the date of our acknowledgement unless we have agreed in writing to provide you with Priority Service.
- All times and dates given by Us for delivery or completion of Services are given as a best estimate, and shall mean from the date that any samples are received by Us. Time for delivery of Our Services can not be made the essence of the Contract by notice. If no dates are specified, delivery will be within a reasonable time.
- Subject to the other provisions of these Terms We will not be liable for any loss (including loss of profit), costs, damages charges or expenses caused directly or indirectly by any delay in the delivery of the Services (even if caused by Our own negligence), nor will any delay entitle you to terminate or rescind the Contract unless such delay exceeds 50 Business Days from the date of our acknowledgement
- If for any reason you will not accept delivery, or if We are unable to deliver on time because you have not provide appropriate instructions, authorisations or access the Services will be deemed to have been carried out and completed.
- We may refuse to deliver further Services if any of our invoices for any Services is not paid in full within the time stipulated in clause 6.
- **Damage or detached/illegible labels**
- If prior to Analysis sample containers are found to be damaged so as to lead to a risk of contamination or if labels have become detached or illegible during transit, We will either:
  - arrange for further samples to be taken if you have chosen the level of Service which includes the taking of samples by Us/Our agent; or
  - We will contact you and make arrangements to provide you with a further sampling kit if you have contracted for the level of Service which does not involve the taking of samples by Us/Our agent. We reserve the right to raise a charge to cover the costs of any additional sample kit.
- **Payment**
- We reserve the right at all times to request payment of the price for the Service prior to completing the Service. Alternatively and in Our absolute discretion payment is due within 30 days of the date of Our invoice.
- The time for payment shall be of the essence and no payment shall be deemed to have been received until we have received cleared funds.
- You shall make payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- If you fail to pay any sum due to Us under the Contract by the due date for payment, you will be liable to pay interest to Us on such sum from the due date for payment at the annual rate of 4% above the base lending

rate of Barclays Bank Plc, accruing on a daily basis until payment is actually made of the overdue amount together with interest.

- **Our Responsibilities**
- Whilst We will provide Our Services using reasonable care and skill to ensure that the results from the Analysis are as accurate as possible. The Services depend, inter alia, on Your effective co-operation and on the information submitted to Us.
- Save as required by law, no representation or warranty, whether express or implied or otherwise as to the accuracy of the Report is given by Us, and all Reports are prepared on the basis that:
  - there is no responsibility to any person or body other than you;
  - each individual soil sample comprises a variety of soil particles and other soil content;
  - the Analysis relates to the sample received by Us, and is representative only of that sample. No warranty is given by Us that the results from the Analysis relate to any part of the field or growing area not covered by the sample received
  - the analysis of any subsequent or previous samples of soil collected from the same sample collection site may vary significantly due to the timing of the sample collection, the sampling method, as well as the natural variance of contents within an individual sample portion.
- **Your Responsibilities**

8.1 As a part of Your Responsibilities You shall:

- a) ensure that the terms of your Request and any information you provide to Us are complete and accurate;
- b) co-operate with Us/Our Agents in all matters relating to the Services;
- c) to make sure that access to the sample collection site is passable and any permissions that are necessary for the access or collection of samples are obtained from all the relevant third parties;
- d) provide Us with such information and materials as We may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- e) if you have selected a Service which does not include the collection of samples by Us, be responsible for the correct collection, labelling and delivery of samples to Us and you will be responsible for the consequences of any acts or omissions which have occurred prior to the arrival of the Sample at Our laboratory.
- f) notify Us in writing within 7 days of delivery of Our Report if you consider, that We have not carried out the Services We have agreed to provide pursuant to the Contract.

8.2 If Our performance of any of Our obligations under the Contract is prevented or delayed by any act or omission by You or failure by You to perform any relevant obligation (**Your Default**):

- a) We shall without limiting Our other rights or remedies have the right to suspend performance of the Services until You remedy Your Default, and to rely on Your Default to relieve Us from the performance of any of Our obligations to the extent that Your Default prevents or delays Our performance of any of Our obligations;
- b) We shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from Your failure or delay to perform any of Your obligations as set out in this clause 8; and
- c) You shall reimburse Us on written demand for any costs or losses sustained or incurred by Us arising directly or indirectly from Your Default.

- **Events Outside Our Control**

- We reserve the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Services ordered by you (without liability to you) if we are prevented from or delayed in the carrying out of Our Services due to an Event Outside Our Control, including, without limitation strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake,

subsidence, epidemic or other natural disaster, or failure of public or private telecommunications or electricity networks.

- Provided that if the Event Outside Our Control in question continues for a continuous period in excess of 90 days, you shall be entitled to give Us notice in writing to cancel the Contract.
- **Limitation of Liability**
- Nothing in these Terms shall limit or exclude Our liability for:
  - (a) death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation; or
- Subject to clause 10.1:
  - We shall under no circumstances whatever be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any decisions made or expenditure incurred on the basis of the information provided in any report or analysis, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract;
  - Subject to the provisions of clause 8.1 We shall under no circumstances whatever be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, unless we receive written notification of your claim, giving sufficient details of your claim together with such physical evidence as we may reasonably require within 12 months of the date of delivery of our report or twelve months of the date of our acknowledgement of your request (whichever shall be the later); and
  - (c) Our total liability to the you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £5,000,000.00
- The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- This clause 10 shall survive termination of the Contract.
- **Cancellation/Termination Rights**
- Before We begin to provide the Services in accordance with clause 2.4 you may cancel your offer in the Request for the Services by contacting Us. We will confirm your cancellation in writing to you.
- Once We have begun to provide the Services to you, you may not cancel the Contract except in accordance with clause 11.3
- Once We have begun to provide the Services to you, you may cancel the Contract for Services with immediate effect by giving Us written notice if:
  - We break this Contract in any material way and We do not correct or fix the situation within 14 days of you asking Us to in writing;
  - We go into liquidation or a receiver or an administrator is appointed over Our assets;
  - We change these Terms under clause 2.8.to your material disadvantage;
  - We are affected by an Event Outside Our Control and the stipulations in clause 9.2 are specified
- Without limiting any other rights or remedies, We may terminate the Contract if you break the Contract in any other material way and you do not correct or fix the situation within 7 days of Us asking you to in writing.
- **Consequences of Termination**

- On termination of the Contract for any reason:
  - You shall immediately pay to Us all of the outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by You immediately on receipt;
  - the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
  - clauses which expressly or by implication survive termination shall continue in full force and effect.
- **Variation**
- Except as set out in these Terms, no variation of the Contract including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Us.
- **Other Important terms**
- We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify you in writing if this happens, but this will not affect your rights or Our obligations under these Terms.
- You may only transfer your rights or your obligations under these Terms to another person if We agree in writing.
- This Contract is between you and Us. No other person shall have any rights to enforce any of its terms.
- Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.
- If We fail to insist that you perform any of your obligations under these Terms, or if We do not enforce Our rights against you, or if We delay in doing so, that will not mean that We have waived Our rights against you and will not mean that you do not have to comply with those obligations. If We do waive a default by you, We will only do so in writing, and that will not mean that We will automatically waive any later default by you.
- These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts.
- All Intellectual Property Rights in or arising out of or in connection with the Services and Our Report shall be owned by Us.
- **Contact Details**

**Richard Austin Agriculture Limited**

**Little Field, Fen Road**

**Frampton West, Boston,**

**Lincolnshire PE20 1RZ**

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