

## TERM CONTRACT

Buyer	Grower
<p>TERRAVESTA ASSURED ENERGY CROPS LIMITED (Company No. 07791830) Cedar Farm South Carlton Lincoln LN1 2RH</p> <p>Telephone: 01522 731873 Email: info@terravesta.com</p>	<p>Name: Address:</p> <p>Holding Number:</p> <p>Contact details:</p> <p>Bank Details:</p> <p>Bank Name:</p> <p>Sort Code:</p> <p>Account Number:</p>

## PURCHASE CONTRACT SPECIFICATIONS

<p><b>Contract Specification</b></p> <p>Contract Account:</p> <p>Contract Number:</p> <p>Farm:</p> <p>Hectares:</p> <p>Year of planting:</p>	<p>Term: [10] years from the Commencement Date:</p> <p>Commencement Date:</p> <p>Contract Tonnage:</p> <table border="1"> <thead> <tr> <th>Delivery Period</th> <th>Tonnage</th> </tr> </thead> <tbody> <tr><td>1</td><td></td></tr> <tr><td>2</td><td></td></tr> <tr><td>3</td><td></td></tr> <tr><td>4</td><td></td></tr> <tr><td>5</td><td></td></tr> <tr><td>6</td><td></td></tr> <tr><td>7</td><td></td></tr> <tr><td>8</td><td></td></tr> <tr><td>9</td><td></td></tr> <tr><td>10</td><td></td></tr> </tbody> </table>	Delivery Period	Tonnage	1		2		3		4		5		6		7		8		9		10	
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<p><b>Crop Specification</b></p> <p>The Crop and each Consignment shall:-</p> <ul style="list-style-type: none"> <li>• be of satisfactory quality;</li> <li>• correspond with any sample taken;</li> <li>• comply with all applicable statutory requirements and regulations relating to the sale and supply of Energy Crops;</li> <li>• be free of contamination and extraneous material including ensuring that the Crop: <ul style="list-style-type: none"> <li>- does not contain any mould or other substances present in concentrations harmful to health;</li> <li>- is not contaminated with process chemicals, non energy crop based feedstock, demolition wood, or wood containing halogenated compounds or wood preservatives;</li> </ul> </li> <li>• be of moisture content of between 0% and 23.00%;</li> <li>• have a cane chop length of between 300mm and 450mm.</li> <li>• The crop shall be produced in accordance with Terravesta's Sustainability Policy.</li> </ul>	<p><b>Bale Specification</b></p> <ul style="list-style-type: none"> <li>• Between 525kg and 850kg;</li> <li>• Strings shall be on the side of each Bale;</li> <li>• No metal (wire) twine to be used;</li> <li>• Hesston Bales of:- <ul style="list-style-type: none"> <li>Length: 2500 mm +/- 150 mm</li> <li>Height: 1300 mm +/- 50 mm</li> <li>Width: 1200 mm +/- 50 mm.</li> </ul> </li> </ul>																						
<p><b>Payment terms:</b> 45 days after the end of the month of collection</p>																							
<p><b>SIGNED ON BEHALF OF THE BUYER</b></p> <p>-----</p> <p>Dated</p>	<p><b>SIGNED ON BEHALF OF THE GROWER</b></p> <p>-----</p> <p>Dated</p>																						

## Contract Terms

### 1. Definitions

1.1 In this agreement the following words and phrases shall, unless the context otherwise requires have the following meanings:-

**"Acceptance"** means acceptance or deemed acceptance by the Buyer of each Consignment or part thereof in accordance with clause 4.9 and "Accepted" shall be construed accordingly;

**"Acceptance Tests"** means the tests to which each Consignment is subjected in accordance with clause 4.4;

**"Bale"** means a bale of the Crop complying with the Bale Specification;

**"Bale Specification"** means the specification for each Bale set out in the Specification;

**"Base Price"** means the Base Price set out in the Price Specification;

**"Code of Good Agricultural Practice"** means the code of agricultural practice in such version as the Department of Food and Rural Affairs, or any successor organisation, may from time to time publish;

**"Collection"** means collection of the Crop in accordance with clause 3;

**"Collection Plan"** means the plan issued by the Buyer to the Grower following receipt of the Harvest Declaration setting out the amount and timing for the collection of each Consignment and the intended Processing Site or Processing Sites for each Consignment;

**"Collection Point"** means a designated area on the Farm which has standing, ready access to a nearby road and from which the Buyer will be able to collect the Crop in appropriate vehicles;

**"Commencement Date"** means the commencement of the Term as set out in the Specification;

**"Consignment"** means each load of the Crop comprising such number of Bales to be collected from the Collection Point by the Buyer in accordance with the Collection Plan;

**"Contract Tonnage"** means the anticipated tonnage of Crop to be supplied in each Delivery Period as set out in the Specification;

**"Crop"** means the miscanthus cane crop (under CN code 0602 90 51) grown or to be grown by or on behalf of the Grower on the Farm;

**"Crop Specification"** means the specification of the Crop set out in the Specification;

**"Declared Tonnage"** means the amount of Crop which has been harvested by the Grower as set out in the Harvest Declaration;

**"Delivered Tonnage"** means that tonnage, as determined in accordance with clause 4.4, of each Consignment of Crop which has been collected by the Buyer and Accepted;

**"Delivery Period"** means (save for the first Delivery Period which shall run from the Commencement Date until the next following 31 March and the final Delivery Period which shall run until the final day of the Term only) each consecutive period of 12 calendar months during the Term commencing on 1 April in each year and running to 31st March of the following year and Delivery Periods shall be construed accordingly;

**"Energy Crop"** has the meaning set out in the Renewables Obligation Order 2005;

**"Expert"** means an expert appointed in accordance with clause 9.1;

**"Farm"** means the whole of the farm comprising not less than the number of hectares set out in the Specification upon which the Crops will be grown by or on behalf of the Grower;

**"Force Majeure"** means, in relation to either party, any circumstances or events beyond the reasonable control of that party or in the case of the Buyer the operator of the Processing Site (including, without limitation, any fire (unless started by the relevant party) strike, lock-out or other industrial action) which could not reasonably have been foreseen and prevented by that party acting in accordance with Good Agricultural Practice;

**"Harvest Declaration"** means a notice issued by the Grower to the Buyer in accordance with clause 2.4;

**"Month"** means any calendar month;

**"Moisture Content"** means the average moisture content (as a percentage weight) inclusive of all free and inherent moisture of each Bale making up the Consignment sampled in accordance with clause 4;

**"Price"** means the price for the Crop determined in accordance with the Price Specification;

**"Price Review Dates"** means 31st March and each anniversary thereafter;

**"Price Specification"** means the price specification set out in the Schedule at the end of this agreement;

**"Processing Site"** means the site or sites as set out in the Collection Plan to which all or part of the Crop is to be delivered to be determined by reference to the Moisture Content set out in the Harvest Declaration;

**"Specification"** means the specification set out on the front sheet of this agreement;

**"Terravesta's Sustainability Policy"** means the sustainability policy relating to the cultivation and management of the Crop which shall be issued from time to time by the Buyer to the Grower;

**"Term"** means the period of 10 years from the Commencement Date.

1.2 The expressions "the Grower" and "the Buyer" shall include their respective agents, subcontractors, lawful assigns and successors in title.

### 2. Sale and Harvesting of the Crop and Review Meeting

2.1 The Grower will sell and supply to the Buyer and the Buyer will buy all the Crop subject to terms and conditions and grown by or on behalf of the Grower on the Farm subject to the terms of this agreement.

2.2 The Grower shall adopt and comply with the Code of Good Agricultural Practice, and Terravesta's Sustainability Policy in the cultivation and management of the Crop.

2.3 Save as otherwise agreed the Grower shall be responsible for harvesting the Crop, baling it in accordance with the Bale Specification and storing the baled Crop at the Collection Point, at such times and in such amounts so as to enable the Buyer to collect such amounts of the Crop at such times as is set out in the Collection Plan.

2.4 As soon as is reasonably practical following the harvesting of the Crop the Grower shall issue the Harvest Declaration to the Buyer providing details of the amount of Crop which has been harvested, its moisture content and the number of bales which it has been baled into whereupon provided the Declared Tonnage is 80% or more of the Contract Tonnage for that Delivery Period the Buyer shall issue the Collection Plan to the Grower by reference to the Declared Tonnage.

2.5 If the Declared Tonnage for any Delivery Period is less than 80% of the Contract Tonnage for that Delivery Period then if the Grower:-

2.5.1 is able to demonstrate to the reasonable satisfaction of the Buyer (acting reasonably and in good faith) that the whole of the shortfall was due to some factor outside its reasonable control the Buyer shall issue a Collection Plan by reference to the Declared Tonnage;

2.5.2 is unable to demonstrate to the reasonable satisfaction of the Buyer (acting reasonably and in good faith) that the whole of the shortfall was due to some factor outside its reasonable control then, the Contract Tonnage for that Delivery Period shall be reduced by reference to such amount, if any, by which the Grower was able to demonstrate to the Buyer as being outside its reasonable control and the Buyer shall issue a Collection Plan by reference to the Declared Tonnage. In addition the Buyer shall be entitled to require the Grower, at its cost and expense to provide an alternative supply of Energy Crop, complying with the Crop Specification, to make up, within the relevant Delivery Period the shortfall between the Declared Tonnage and Contract Tonnage (after account has been taken of any reduction) ("Declared Shortfall"), failing which the Buyer may itself source an alternative supply of Energy Crop, complying with the Crop Specification, to make up, within the relevant Delivery Period, the Declared Shortfall, in which case the Grower shall be liable to the Buyer for the amount by which the cost to the Buyer of sourcing such Declared Shortfall exceeds what the cost of the Declared Shortfall would have been (based upon the Base Price) had it been supplied by the Grower, together with any additional haulage costs incurred by the Buyer.

2.6 Between 1 November and 31 March in each Delivery Period the parties shall agree to meet for the purposes of reviewing (acting reasonably and in good faith) each party's performance under this agreement and making any agreed amendments to the Contract

Tonnage. In default of agreement on any amendments to the Contract Tonnage for any Delivery Period then save as set out in the Schedule the Contract Tonnage for the following period shall equate to the Contract Tonnage for the previous Delivery Period.

### 3. Collection

3.1 The Buyer shall be responsible for the arranging for the collection through appropriate hauliers of each Consignment from the Collection Point in accordance with the Collection Plan (subject to clause 3.2) and its delivery to the relevant Processing Plant for acceptance and processing at the cost and expense of the Grower. The Buyer shall be entitled to set off any such costs incurred by it in the Collection and delivery of the Crop from any sums due to the Grower, whether arising under the terms of this agreement or otherwise.

3.2 Notwithstanding the Collection Plan the Buyer shall be entitled at any time on not less than 48 hours written notice to the Grower to collect all or part of a Consignment.

3.3 The Grower may at any time request that the Buyer collect all or part of a Consignment, subject to such Price variation as set out in the Price Specification; the Buyer shall be entitled to reject such a request in whole or part by written notice to the Grower.

3.4 The Buyer (or its agents) shall be entitled to enter onto the Farm (with vehicles) to collect each such Consignment from the Collection Point.

3.5 Save as otherwise agreed, the Grower shall be responsible for loading each Bale comprising each Consignment onto the appropriate vehicles supplied by or on behalf of the Buyer. The Buyer shall allow 1.0 hours free loading time for loading of each Consignment after which the Buyer shall be entitled to charge the Grower waiting penalties (at the Buyer's prevailing rate) which the Buyer shall set off against any sums due to the Grower whether under the terms of this agreement or otherwise.

3.6 Save as otherwise agreed risk in and title to each Consignment or part thereof shall not pass to the Buyer until Acceptance.

3.7 The Buyer shall ensure that each Consignment is adequately insured on behalf of the Grower until such time as risk and title passes to the Buyer in accordance with clause 3.4.

3.8 The parties shall at all times act reasonably and in good faith with each other in all matters relating to this agreement.

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harvested, baled or collected by the Buyer) may have been contaminated by materials products chemicals bacteria or anything else which might adversely effect the suitability of the Energy Crop for use as a fuel whereupon the provisions of clause 4.8 shall apply in respect of that part of the Crop which is contaminated.

4.12 The Grower shall at all times during the term of this agreement maintain a standard product liability insurance policy in relation to the supply of Energy Crop with an indemnity amount of not less than £5 million and with exclusions and levels of deductibles which are commensurate with those generally accepted by suppliers of Energy Crop in the UK acting in accordance with the Code of Good Agricultural Practice.

## 5. Warranties and Liability

5.1 The Grower warrants that the Crop and each Consignment will comply with the Crop Specification and that each Bale will comply with the Bale Specification and subject to clause 5.2, without prejudice to the provisions of clauses 2.5 and 4.8, shall indemnify the Buyer for all costs expenses and liabilities incurred or suffered by the Buyer as a result of the Crop or any Consignment or Bales in either case, or part thereof, not so complying with the Crop Specification and/or the Bale Specification.

5.2 Subject to any obligations set out under any indemnity in this agreement and the provisions of clauses 2.5 and 4.8, neither party shall have any liability whatsoever for any of the following, howsoever caused or arising:

- 5.2.1 loss of profit, loss of revenue, loss of use, goodwill or, business interruption; or
- 5.2.2 indirect, consequential or special loss or damage.

5.3 For the avoidance of doubt, neither party excludes or limits liability to the other party for death or personal injury caused by negligence, for fraud or fraudulent misrepresentation nor where liability cannot be excluded or limited as a matter of law.

5.4 Save as expressly provided in this agreement all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## 6. Price and Payment

6.1 The Price shall be determined by reference to the Delivered Tonnage of each Consignment by reference to the Price Specification for the Delivery Period in which the relevant Consignment is Harvested.

6.2 Upon each Price Review Date, the Price set out in the Price Specification shall increase in line with the percentage increase in the Retail Prices Index (excluding mortgage interest) for the 12 months to the 31 December immediately preceding the relevant Price Review Date. The Buyer shall be entitled by not less than one month's written notice to the Grower to vary the price adjusters set out in the Price Specification to take account of any increase in costs to it, such variation to take effect from the Price Review Date immediately following delivery of such notice.

6.3 Within 14 days of Acceptance, the Buyer shall send to the Grower a written statement ("the Statement") showing the calculation of the Price payable to the Grower for that Consignment.

6.4 Within 7 days of the end of each month in which any Consignment has been collected by the Buyer the Buyer shall issue the Grower a statement detailing the aggregate amount of Delivered Tonnage collected during that month and the aggregate Price payable for all Consignments collected in that month ("the Monthly Statement") together with an invoice (generated by the Buyer under a self billing mechanism) for the amount set out in the Monthly Statement together with any applicable VAT, less the cost of any haulage for which the Grower is responsible. In default of the Buyer raising such an invoice within 14 days of the end of the relevant month, the Grower shall be entitled to raise such an invoice.

6.5 Any invoice raised by either party in accordance with clause 6.4 for Delivered Tonnage shall be paid by the Buyer direct to the Growers bank account by CHAPS payment, within 45 days from the end of the month in which the relevant Consignment was collected ("the Due Date").

6.6 In the event of any dispute as to the amount due under an invoice raised then the dispute shall be referred to the Expert for determination in accordance with clause 9, with the amount not in dispute being paid on the Due Date and the amount in dispute being paid within 5 days of the resolution or final determination of the dispute.

6.7 In the event that either party fails to pay any sum due under the terms of this agreement on the Due Date, the other shall be entitled to charge interest on the amount due at 2% above the base lending rate from time to time of Barclays Bank plc, from the date upon which payment was due, until payment is made.

6.8 In the event that a party terminates this agreement in accordance with clause 8.2.1 or clause 8.3 it shall be entitled to set off against any undisputed amounts which it is due to pay the other, any undisputed amounts which are due from the other.

## 7. Force Majeure

7.1 If any party is affected by Force Majeure it shall promptly notify the other party of the nature and extent of the circumstances in question.

7.2 No party shall be deemed to be in breach of this agreement or otherwise be liable to the other party for any delay in performance or the non-performance of any of its obligations under this agreement to the extent that the delay or non-performance is due to any Force Majeure event of which it has notified the other party and the time for performance of that obligation shall be extended accordingly.

7.3 The parties shall take all reasonable steps acting in accordance with the Code of Good Agricultural Practice to mitigate the effect of any event of Force Majeure including the sourcing or selling of alternative Energy Crops from or to third parties.

7.4 If either party is prevented from performing its respective obligations under this agreement by reason of Force Majeure for a continuous period of three months either party shall be entitled to terminate this agreement on written notice without liability or compensation due to the other party but without prejudice to any accrued rights or liabilities prior to the date of such termination.

## 8. Duration and Termination

8.1 This agreement shall come into force on the date of this agreement and subject to earlier termination in accordance with this clause 8 shall continue for the Term, whereupon save as otherwise agreed this agreement shall terminate.

8.2 Either party shall be entitled immediately to terminate this agreement with immediate effect by giving written notice to the other if the other:-

- 8.2.1 goes into liquidation or has a resolution passed for its voluntary winding up (except for the purposes of a solvent amalgamation, reconstruction or other reorganisation and so that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that party under this agreement); or
- 8.2.2 ceases to carry on business; or
- 8.2.3 is in continuing or material breach of this agreement and such breach has not been remedied within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied (a breach shall be considered capable of remedy if the party in breach can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence) within the 30 day remedy period).

8.3 In the event that either party:-

- 8.3.1 makes any voluntary arrangement with its creditors;

8.3.2 becomes subject to an administration order or is otherwise put into administration;

8.3.3 has a secured creditor take possession or control of all or any of its assets; or

8.3.4 has a receiver, administrative receiver or administrator appointed in respect of all or any of its assets or undertakings,

the other party ("the Innocent Party") may serve written notice on that party ("the Insolvent Party") to the effect that, unless the Insolvent Party within 42 days of receipt of such notice demonstrates to the reasonable satisfaction of the Innocent Party that it will be able to perform its future (but not accrued) obligations under this agreement, the Innocent Party shall be entitled to terminate this agreement. In default of the Insolvent Party being able to so demonstrate to the Innocent Party within 42 days of such notice the Innocent Party shall be entitled by notice in writing to the Insolvent Party to terminate this agreement with effect from such notice.

8.4 The Buyer shall be entitled immediately to terminate or suspend this agreement with immediate effect by giving written notice to the Grower in the event of the termination or suspension for whatever reason of the agreement or the performance of the agreement between Terravesta Fuels Limited and any power generation company with which it has entered into for the supply of either miscanthus or miscanthus pellets or any of their respective successor entities.

8.5 A waiver by any party of a breach of a provision of this agreement shall not be considered as a waiver of a subsequent breach of the same or another provision.

8.6 The right to terminate this agreement given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned.

8.7 On the termination of this agreement for any reason, subject as otherwise provided in this agreement and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this agreement.

8.8 Upon termination of this agreement:-

8.8.1 save as provided for in clause 6.8, each party shall pay all sums arising to the other;

8.8.2 save where the agreement terminates in accordance with clause 8.1 or the Grower terminates in accordance with clause 8.2 or 8.3 the Grower shall indemnify the Buyer for all costs expenses and liability incurred by the Buyer as a result of such termination including but not limited to those relating to sourcing Energy Crop to replace the Contract Tonnage for the remainder of the Term which would have been provided by the Grower had termination not occurred.

## 9. Dispute Resolution

All disputes differences or questions arising out of this agreement or as to the rights or obligations of the parties under it or in connection with the construction of it shall be referred for determination to an independent expert to be agreed between the parties or failing agreement within 14 days on the nomination by any party of an arbitrator to be appointed at the request of any party by the President for the time being of The Law Society of England and Wales having due regard to any representations made to him as to the appropriate qualifications of such arbitrator ("Expert"). In so acting the Expert shall act as an expert and not arbitrator, his decision shall save in the event of manifest error be final and his costs shall be borne in such proportions as he shall determine.

## 10. Confidentiality

The terms of this agreement are confidential and neither party may disclose the terms of this agreement to any third party without the prior written consent of the other.

## 11. General

11.1 The Buyer may by written notice to the Grower assign its rights, subject to its obligations under this agreement to any third party.

11.2 The Grower shall be entitled to assign in whole or part, its rights, subject always to the obligations arising under this agreement, to such person who may from time to time undertake the principal farming operations on the Farm, but not otherwise.

11.3 Nothing in this agreement shall create or be deemed to create a partnership between the parties.

11.4 11.4.1 This agreement contains the entire agreement between the parties with respect to its subject matter, supersedes all previous agreements and understandings between the parties and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties.

11.4.2 Each party acknowledges that in entering into this agreement it does not rely on any representation warranty or other provision including any standard terms and conditions of sale or purchase except as expressly provided in this agreement and accordingly all conditions warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law but nothing in this agreement shall affect the liability of either party for fraudulent misrepresentation.

11.5 A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## 12. Notices

12.1 Any notice or other information required or authorised by this agreement to be given by either party to the other shall be given by:-

- 12.1.1 delivering it by hand; or
- 12.1.2 sending it by pre-paid registered post; or
- 12.1.3 sending it by e-mail facsimile transmission or comparable means of communication;

to the other parties as set out in the Specification.

12.2 Any notice or information given by post in the manner provided by clause 12.1 which is not returned to the sender as undelivered shall be deemed to have been given on the third day after the envelope containing it was so posted and proof that the envelope containing any such notice or information was properly addressed pre-paid registered and posted and that it has not been so returned to the sender shall be sufficient evidence that the notice or information has been duly given.

12.3 Any notice or information sent by e-mail facsimile transmission or comparable means of communication shall be deemed to have been duly given on the date of transmission provided that a confirming copy of it is sent to the other party at the address set out in the Specification within 24 hours after transmission.

12.4 Service of any document for the purposes of any legal proceedings concerning or arising out of this agreement shall be effected by either party by causing it to be delivered to the other party at its registered or principal office or to such other address as may be notified to it by the other party in writing from time to time.

12.5 Any party to this agreement may notify the other parties of any change to the address or any of the other details set out in the Specification provided that such notification shall only be effective with effect from the date specified in such notice or five days after the notice is given whichever is later.

## 13. Governing Law and Jurisdiction

13.1 This agreement and any disputes or claims arising out of or in connection with its subject matter are governed by and construed in accordance with the laws of England.

13.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

## **SCHEDULE**

### **PRICE SPECIFICATION 2014/2015**

Base Price = £ 72.00 / tonne on a delivered basis based on:-

- 0-15.99% Moisture Content
- cane movement at buyers call
- all bales between 526kgs and 700kgs
- Grower loading the Bales
- No ground litter or leaf to be baled

### **Price variations**

The Base Price shall be subject to following variations (as applicable):-

Haulage	Haulage to be undertaken by Buyer at the cost of the Grower.												

Moisture Content %	0-15.99	16.0-18.0	18.01-19.99	20.00-23.00	23.01+	
	Base Price	Minus £5.50/t	Minus £5.50/t	Minus £13.00/t	Rejected and returned at Grower's cost to Collection Point	

Movement & Barn Bonus	April	May	June	July	August	September	October	November	December	January	February	March
	Minus £3/t if movement requested by Seller.	Plus £1/t	Plus £2/t									

Bale weights Kg	400-475kg	476-500kg	501-525kg	526-600kg	601-650kg	651kg plus
	Minus £4/t	Minus £3/t	Minus £2/t			

Loading	Grower	Buyer
	0	Quote

Barn bonus applicable at stated rates for crop that has been stored in a barn.

Thereafter adjusted on an annual basis in accordance with clause 6.2. The Base Price applicable to any Crop shall be the prevailing Base Price for the relevant Delivery Period in which that Crop was harvested.