

Terms and Conditions of Kite Consulting

Parties:

1. Kite Consulting is a trading name of Dairy Consulting Limited is registered in England No: 14475755 Registered office: Weston Centre, 10 Grosvenor Street, London, United Kingdom, W1K 4QY. Tel: 01902 851007 Fax: 01902 851058

2. The "Client" []

Recitals:

A. Kite is a provider of consultancy services to agricultural and food businesses.

B. The Client is engaged in such a business.

C. The Client wishes to engage the services of Kite on the terms set out in .

1 Definitions

Where used in this Agreement, unless the context clearly requires otherwise, the following terms shall have the meanings set out below:

1.1 "Advance Sourcing" shall refer to the brokering service and mean any arrangement by which Kite acts as agent intermediary or representative of the Client or any group or association of which the Client is a member for arranging or procuring supplies or services for purchase or use by the Client

1.2 "Content" shall mean any and all text, graphics or other creative input incorporated in the Report

1.3 "Terms of Engagement Form" shall mean the document signed by or on behalf of Kite and the Client, incorporating this Agreement

1.4 "Day" shall mean any aggregate period of eight hours of Work, whether or not all carried out on the same date or by the same person

1.5 "Distributor" shall mean any distributor or supplier whose Products are offered to the Client as part of the Advance Sourcing Service

1.6 "Intellectual Property" shall mean all forms of intellectual property including (but not limited to) copyright, patent, database right, registered design and design right

1.7 "Report" shall mean any report, document, advice or other thing or statement prepared or delivered by Kite as part of the provision of the Service

1.8 "Service" shall mean the provision of agricultural and food industry business and technical consultancy services by Kite to the Client

1.9 "Product" shall mean any products, goods or services offered to the Client as part of the Advance Sourcing Service"

2.0 "Work" shall mean time spent by Kite or its employees in providing the Service including (but not limited to) travelling time

2.1 "Year" shall mean the period of twelve calendar months starting with the date of this Agreement and each successive period of twelve calendar months thereafter.

2 Kite's Obligations

2.1 Subject to clause 2.2 below Kite agrees to exercise its reasonable endeavours to provide the Service and produce the Report for the Client under the terms and conditions of this Agreement, and shall use its reasonable skill and care in carrying out the same.

2.2 Further to clause 2.1 above:

2.2.1 Kite shall have discharged its obligation to provide the Service in relation to any discrete request for the provision of the Service ("Request") when the Report is delivered to the Client addressing the matters raised in the Request or any other matters agreed by Kite and the Client to be included in the Report;

2.2.2 If requested by the Client and agreed by Kite, Kite will carry out additional work (at extra charge and subject to any other agreed terms) under any of the headings set out in clause 2.2.3 ("Excluded Activities");

2.2.3 Excluded Activities are:

2.2.3.1 activities necessitated by the negligence or non-cooperation of the Client;

2.2.3.2 site visits and inspections (save for the first four such visits in any Year);

2.2.3.3 demonstrations, trials and any other activity involving labour on the part of Kite or its employees or agents which results in a physical change in the property or products of the Client or the preservation of any such property or products;

2.2.3.4 provision of training at any location by Kite

2.2.3.5 brokering;

2.2.3.6 any additional Report where Kite has already dealt with a Request by providing the Service; or

2.2.3.7 any other activities not covered by the Request.

2.4 It is entirely the Client's decision whether or not, and how, to implement the recommendations or other contents of any Report or Services, and Kite shall not be responsible for any such implementation.

3 Client's Obligations

3.1 Payment for the Service

The Client shall pay to Kite either:

3.1.1 the amounts, and in accordance with the payment terms, as shown on the Terms Of Engagement form plus VAT, as per the payment schedule outlined on the Terms of Engagement Form; or

3.1.2 the Daily Rate as shown in the Terms of Engagement Form for each Day or part Day, provided always that Kite may vary such rate by giving to the Client not less than one months' notice

3.3 Kite shall be entitled to charge the Client at Kite's standard Daily Rate in force from time to time for goods and labour for any Excluded Activities provided by Kite, payment to be made by the Client within 14 days of Kite's invoice.

3.4 If any sum payable by the Client under this Agreement is overdue, the Client shall pay interest on the sum outstanding up to payment at the rate of the base rate of Barclays Bank plc or such other clearing bank as Kite shall select from time to time plus 4%.

3.5 The Client shall be responsible for the conduct of its business and the Client irrevocably and unconditionally indemnifies and shall hold fully indemnified Kite from and against any and all actions, proceedings, losses, damages, liabilities, obligations, costs, claims, charges and expenses suffered or incurred by Kite or whatsoever nature arising out of or in connection with the Client's conduct of its business howsoever arising in relation to the subject matter of this Agreement.

3.6 The Client shall not represent itself as connected to Kite or make any statement or claim or give any warranty on behalf of or pledge the credit of Kite.

3.7 The Client shall treat as confidential the contents of the Report and shall not use, publish or otherwise disseminate the contents of the Report whether for commercial gain or otherwise save that Client shall have a non-exclusive, non-sublicensable, non-transferable right to use it for its own internal business purposes and to share it with such of its employees or contractors as have a need to know the contents of the Report for such purposes.

3.8 The Client shall provide to Kite all necessary information and assistance required by Kite for the provision of the Service and the Client:

3.8.1 shall indemnify Kite against any and all losses, claims or costs incurred by Kite as a result of the receipt by it of such information; and

3.8.2 warrants that all such information supplied by it to Kite is true, accurate and up-to-date.

3.9 The Client agrees for the purposes of data protection legislation, to permit Kite to provide third parties with such of its details, and those of its employees and contractors, as are necessary in order to allow Kite to fulfil its obligations to the Client.

4 Intellectual Property

4.1 Save where clause 4.2 below applies, all Intellectual Property in the Services, Report and anything else provided by Kite or on its behalf shall belong to Kite.

4.2	The Client shall retain the Intellectual Property in any content supplied by it for use in its business provided always that the Client shall grant to Kite all necessary licences required by Kite to perform its obligations under this Agreement.		contract for sale impossible provided that this clause shall only have effect at the discretion of Kite except when such event renders performance impossible for a continuous period of two calendar months and provided further that, prior to termination, during the duration of any such cause the obligations of the parties rendered incapable of performance shall be suspended.
4.3	The Client warrants that it has obtained all necessary Intellectual Property rights in the content provided by it and shall indemnify Kite against any loss or liability arising from any infringement by such Content of third party Intellectual Property rights.	6.5	Kite has the right to terminate this Agreement forthwith if the Client:
5	Liability, Warranties	6.5.1	is declared bankrupt or any equivalent declaration of personal insolvency is made in any jurisdiction or a petition or other formal application is presented for bankruptcy or any equivalent declaration;
5.1	Other than in cases of fraud, personal injury or death, the liability of Kite shall not in any event exceed £100,000 (one hundred thousand pounds) and without prejudice to the generality of the foregoing in no event shall Kite be liable under or in relation to this Agreement for any indirect, incidental, exemplary, punitive or consequential damages, or any loss of profit, loss of business or unrealised savings.	6.5.2	is liquidated or has any equivalent form of corporate insolvency applied to it in any jurisdiction or any petition or resolution or equivalent application for such insolvency is presented in any jurisdiction; or
5.2	Kite does not warrant that the Report will be suitable for any purpose whether or not made known to it and the parties agree that not all problems connected with the Client's business will be capable of solution by Kite or otherwise.	6.5.3	is subject to the levying of distress or any equivalent enforcement action in any jurisdiction and the Client shall inform Kite immediately of the occurrence or threat of any event referred to in this clause.
5.3	Kite shall have no liability whatsoever for any loss, claim or cost incurred by the Client caused by any inaccuracy or obsolescence in any information provided by it to Kite and which was used or relied upon by Kite in the provision of the Service. Kite shall have no obligation to obtain corroboration of any information supplied to it by the Client.	6.6	Upon termination of this Agreement all obligations of Kite shall cease save that the Client shall have a licence to make use of the Report in accordance with Clause 3.7, but such termination shall not relieve the Client from its responsibilities under clauses 3 and 4 of this Agreement.
5.4	Kite shall have no liability whatsoever for any use of, reliance on or application of the Report by any person other than the Client for any purpose or for any such reliance or use by the Client other than in connection with its business.	7	Assignment
5.5	The Client accepts that Kite may use data relating to its business for the purposes of statistical analysis or training purposes subject always to Kite's obligation to respect the confidentiality of confidential information provided to it by the Client.		The Client shall not assign or otherwise transfer the benefit or obligations of this Agreement without the prior consent in writing of Kite.
5.6	Save for clauses 6.1 and 6.2 time shall not be of the essence in this Agreement and any date given by Kite to the Client in relation to its provision of the Service shall be an indication only and Kite will exercise its reasonable endeavours to meet any such date.	8	General
5.7	Other than for warranties stated expressly in this Agreement, the parties agree to exclude all implied warranties (including statutory ones) to the full extent that they can be excluded at law.	8.1	The parties are not partners or joint venturers nor is the Client able to act as the agent of Kite
6	Termination	8.2	This Agreement constitutes the entire Agreement between Kite and The Client with respect to its subject matter and supersedes any previous agreements, representations or understandings. The Client acknowledges that in entering into this Agreement it does not do so on the basis of or in reliance upon any representations, promises, undertakings, warranties or other statements (whether written or oral) of any nature whatsoever except as may be expressly provided in this Agreement (and accordingly any conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law).
6.1	Kite may terminate this Agreement forthwith by notice in writing if any sum payable under this Agreement by the Client is not paid when due.	8.3	Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post or by fax or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by fax or by electronic mail to the correct fax number (with correct answerback) or correct electronic mail number of the addressee, provided always that any notice sent by fax or email shall be confirmed in writing by post as soon as practicable.
6.2	Kite may terminate this Agreement forthwith by notice in writing if the Client is in breach of any other term of this Agreement provided that where such breach is remediable Kite shall notify the Client of such breach and allow 30 days for the Client to remedy the breach.	8.4	This Agreement is governed by and shall be construed in accordance with English Law and the parties hereby irrevocably submit to the exclusive jurisdiction of the English Courts.
6.3	Either party may terminate this Agreement at any time by no less than three calendar months' notice in writing to the other, without prejudice to Client's obligation to pay for agreed Services whether or not yet provided at the date of effective termination.	8.5	It is the intention of the parties that no third party shall have any right to enforce this Agreement pursuant to the contract (Rights of Third Parties) Act 1999.
6.4	This Agreement shall terminate if national emergency war prohibitive governmental regulations or any other cause beyond the reasonable control of the parties renders performance of the		