Terms and Conditions of Kite Consulting

These Terms and Conditions are the only terms and conditions upon which Kite is prepared to deal with the Client and they shall govern, and shall be incorporated into, the Agreement and any other contract relating to the supply of the Service. They apply to the exclusion of and prevail over all other terms and conditions which the Client may purport to apply, impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

1 Definitions

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

"**Agreement**" means the Terms of Engagement Form (or any other terms agreed in writing between Kite and the Client for the supply of the Service) and the Terms and Conditions set out herein or any updated version thereof of these Terms and Conditions;

"**Client**" means the company, partnership or person named in the Terms of Engagement Form or otherwise placing an order for the Service;

"Insolvency Event" means circumstances in which a party is unable to pay its debts, becomes insolvent or enters into liquidation or receivership, or suffers any event analogous to any of the above;

"**Intellectual Property Rights**" means patents, rights to inventions, trademarks, rights in confidential information (including, without limitation, know-how and trade secrets), copyright, design rights and all similar or related intellectual property rights existing anywhere in the world, whether registered or not and including, without limitation, any applications for the same;

"**Kite**" means Kite Consulting, a trading name of AB Agri Limited, a company registered in England (company number 00193800) with its registered office at Weston Centre, 10 Grosvenor Street, London, W1K 4QY;

"Kite Affiliates" means Associated British Foods plc (**"ABF"**) and any subsidiary of ABF, from time to time;

"**Report**" means any report, document, advice or statement prepared or delivered by Kite as part of the provision of the Service;

"**Service**" means the agricultural and food industry business and technical consultancy service more particularly described in the Specification;

"**Specification**" means the specification detailed or referenced in the Terms of Engagement Form or any updated specification subsequently agreed between the Parties in writing (including, by email), as applicable;

"**Terms of Engagement Form**" means the document signed by or on behalf of Kite and the Client, incorporating these Terms and Conditions;

"VAT" means value added sales tax payable in the UK or any similar sales tax; and

"**Year**" means 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 Kite shall commence its performance of the Service on the Start Date set out in the Terms of Engagement Form or such date as stipulated in the Specification, in each case subject to successful completion of all necessary compliance checks by Kite, and shall continue until the earlier of the following:

2.1.1 Kite completes the Service in accordance with the Specification or any other requirements agreed with the Client in writing; or

2.1.2 the Agreement is terminated in accordance with these Terms and Conditions.

2.2 Subject to clause 2.3 below, Kite agrees to exercise its reasonable endeavours to provide the Service and (if relevant) produce the Report for the Client:

2.2.1 with reasonable skill and care;

2.2.2 in accordance with the Specification in all material respects; and

2.2.3 to meet any completion dates specified in the Terms of Engagement Form, but any such dates shall be estimates only and it is acknowledged that time shall not be of the essence for performance of the Service.

2.3 Any additional work requested by the Client that is not included in the Specification will be agreed separately with Kite and will be subject to an extra charge. Kite shall be entitled to charge the Client at Kite's standard rates in force from time to time for such additional work and payment shall be made in accordance with clause 3.

2.4 The Client shall remain solely responsible for any acts, omissions or decisions it makes as a result of the recommendations or other contents of any Report or Service, and Kite shall have no liability for any the implementation of such decisions.

3 Price and Payment

3.1 Without prejudice to clause 3.3, the Client shall pay to Kite either:

3.1.1 the fee as shown on the Terms of Engagement Form (or otherwise agreed in writing) and any fees for additional work in accordance with clause 2.3; or

3.1.2 on a time and materials basis at the rates set out in the Terms of Engagement Form (or such rates otherwise notified by Kite to the Client),

(the "**Charges**").

3.2 Kite shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Kite engages in connection with the Service including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Kite for the performance of the Service, and for the cost of any materials.

3.3 Subject to providing reasonable prior notice to the Client and complying with any applicable laws and regulations, Kite reserves the right to increase the Charges from time to time.

3.4 The Charges are exclusive of VAT and any other taxes and duties that are payable in respect of the Service, which the Client shall be liable to pay to Kite.

3.5 All invoices shall be paid by the Client within the number of days stipulated in the payment schedule in the Terms of Engagement Form where applicable and otherwise as stipulated on the relevant invoice. Time for payment shall be of the essence.

3.6 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 higher of the base rate of Barclays Bank plc (or such other clearing bank as Kite shall select from time to time) plus 6% and the rate in force from time to time pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.

4 Client's Obligations

4.1 The Client shall indemnify Kite in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Kite arising out of or in connection with the Client's instructions, the Client's negligence or Client's conduct of its business, howsoever arising in relation to the subject matter of this Agreement.

4.2 The Client shall provide to Kite all necessary information and assistance required by Kite for internal compliance checks in accordance with clause 9.3 and for the provision of the Service and the Client:

4.2.1 shall indemnify Kite in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Kite arising out of or in connection with the receipt by it, its agents, subcontractors or consultants of such information;

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

4.2.3 shall obtain and maintain all necessary licences, permissions and consents which may be required for the Service before the start date set out in the Terms of Engagement Form.

5 Intellectual Property

5.1 Subject to clause 5.3, all Intellectual Property Rights in the Service, the Report (including, without limitation, any and all text, graphics or other creative input incorporated in the Report), and anything else provided by Kite or on its behalf to the Client (whether owned by Kite prior to the Agreement or developed during the course of the Service) shall belong to Kite.

5.2 Subject to clause 5.3 and Kite's receipt of payment in full for the relevant Service, Kite hereby grants the Client a fully paid-up, worldwide, non-exclusive, royalty-free perpetual licence to use and copy the Report for the purpose of receiving and using the Service and the Report in its business.

5.3 The Client shall retain the pre-existing Intellectual Property Rights in any content supplied by it to Kite in connection with the Service.

5.4 The Client hereby grants Kite a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any content provided by the Client to Kite for the duration of the Agreement for the purpose of providing the Service.

5.5 The Client warrants that it has obtained all necessary rights to the Intellectual Property Rights in the content provided by it and shall indemnify Kite in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Kite arising out of or in connection with any claim brought against Kite, its agents, subcontractors or consultants for actual or alleged infringement of a third party's Intellectual Property arising out of, or in connection with, the receipt or use in the performance of the Service of content provided by the Client.

6 Liability and Warranties

6.1 The following provisions set out the entire financial liability of Kite (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of: (a) any breach of the Agreement; including wilful breach; (b) any claim in connection with the Service, the supply of the Service (including, without limitation, supply of the Report) by Kite, or the use of the Report by the Client; or (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Agreement.

6.2 Nothing in these Terms and Conditions excludes or limits the liability of Kite: (a) for human death or human personal injury caused by Kite's negligence; or (b) for any matter which it would be illegal for Kite to exclude or attempt to exclude its liability or which otherwise cannot be excluded at law; or (c) for fraud or fraudulent misrepresentation.

6.3 Subject to clause 6.2, Kite's total liability (including damages, costs and interest) for a Claim shall be limited as follows:

6.3.1 in respect of a Claim for physical damage to the property of the Client, Kite's total liability shall be limited to the higher of: (i) the total of all sums paid or payable by the Client to Kite under the Relevant Agreements in the twelve month period immediately preceding the first instance of such physical damage to the property of the Client (**"Liability Year"**); and (ii) £1,000,000;

Kite shall be entitled to set-off from the limitation cap in (i) or (ii) the amount of any other Claim arising in that Liability Year for which Kite is liable which shall have the effect of reducing the limit whether at (i) or (ii) accordingly; and

6.3.2 in respect of any other Claim (other than that falling within Condition 6.3.1), Kite's total liability shall be limited to the price paid or payable for the Service which is the subject matter of the Claim.

For the purposes of this Condition 6.3, (a) a **"Claim"** means any and all claims made by the Client against Kite whether in contract, tort (including negligence or breach of statutory duty), misrepresentation or any other cause of action arising from or in connection with the same or similar underlying cause whether under this Agreement or any other any other Agreement; and ; and (b) **"Relevant Agreements"** means this Agreement and any other Agreements, taken together, between Kite and the Client.

6.4 Subject to clause 6.2, Kite shall not be liable for any pure economic loss, loss of profit, loss of anticipated savings or cost reductions, loss of business, depletion of goodwill (in each case whether direct or indirect) or for any indirect or consequential loss whatsoever and howsoever caused which arise out of or in connection with the Agreement.

6.5 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.

6.3 Kite shall have no liability whatsoever for:

6.3.1 any liabilities, costs, expenses, damages or losses incurred by the Client caused by any inaccuracy or omission in any information provided by it to Kite and which was used or relied upon by Kite in the provision of the Service and Kite shall have no obligation to obtain corroboration of any information supplied to it by the Client; or

6.3.2 use of, reliance on or application of the Report by any person other than the Client for any purpose or reliance or use by the Client other than in connection with its business.

6.4 If Kite's performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**"Client Default"**):

6.4.1 without limiting or affecting any other right or remedy available to it, Kite shall have the right to suspend performance of the Service until the Client remedies the Client Default, and to rely on the Client Default to relieve it from its obligations in each case to the extent the Client Default prevents or delays Kite's performance of any of its obligations;

6.4.2 Kite shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Kite's failure or delay to perform any of its obligations as a result of a Client Default; and

6.4.3 the Client shall reimburse Kite on written demand for any costs or losses sustained or incurred by Kite arising directly or indirectly from the Client Default.

6.5 Kite shall not be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control and, without prejudice to clause 7.1.4, Kite's obligations to perform the Service under the Agreement shall be suspended.

6.6 All warranties not expressly included in the Agreement are, to the fullest extent permitted by law, excluded from the Agreement.

6.7 This clause 6 is intended to survive termination of the Agreement.

7 Termination

7.1 Kite may terminate the Agreement immediately on notice in writing to the Client if:

7.1.1 any sum payable under the Agreement by the Client is not paid when due in accordance with the terms of the Agreement;

7.1.2 the Client is in breach of any term of the 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;

7.1.3 the Client suffers an Insolvency Event or fails an ongoing compliance check undertaken in accordance with clause 9.3; or

7.1.4 where Kite has been prevented from performing its obligations in accordance with clause 6.5 for two consecutive calendar months.

7.2 Either party may terminate the Agreement at any time by no less than three calendar months' notice in writing to the other.

7.3 Upon termination of the Agreement all Kite's obligations shall cease save that the Client shall have a licence to make use of the Report in accordance with Clause 5.2, but such termination shall not relieve the Client from its responsibilities under clauses 3, 4 and 5 of the Agreement.

7.4 Upon termination of the Agreement, all unpaid Charges for the Service shall immediately become due and payable.

7.5 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

8 Confidentiality

8.1 Each party acknowledges that it may have access to confidential information relating to the business or affairs of the other party. Each party specifically agrees that it will keep confidential and will not use for any purpose other than the performance of (or the exercise of rights in respect of) the Agreement (as applicable), and will not, subject to clause 8.2 and 8.3, without the prior written consent of the other, disclose, directly or indirectly, to any third party, any such confidential information.

8.2 Kite may disclose confidential information received from the Client to Kite Affiliates, relevant service providers and professional advisors, under conditions of confidentiality.

8.3 Nothing prevents use or disclosure by either party of information which is already in the public domain (other than due to default of such party) or which such party acquires independently of the other party and without restriction on disclosure or use or prevents disclosure to the extent required by law or regulation.

8.3 The Client accepts that Kite may use data relating to the Client's business for the purposes of statistical analysis or training subject always to Kite's obligation to respect the confidentiality of confidential information provided to it by the Client.

9 General

9.1 The Parties acknowledge and agree that where personal data is provided by or on behalf of the Client for the purposes of Kite providing the Service, Kite will be the data processor for the Client and the Client will be the data controller in respect of such personal data. In this situation, both Parties agree to comply with applicable data protection legislation.

9.2 Nothing in the Agreement creates a partnership or joint venture or relationship of employer and employee or principal and agent between the parties and no employee of one party shall be deemed to be or become an employee of the other party

9.3 Kite reserves the right (at its ultimate discretion) to undertake internal compliance checks on the Client prior to the commencement of any Service and on an ongoing basis throughout the duration of the Agreement.

9.4 The Agreement contains the whole agreement between the parties in respect of the applicable subject matter and shall supersede all prior written or oral agreements, arrangements and understandings between the parties relating to such subject matter.

9.5 If any provision of the Agreement is held to be invalid or unenforceable it shall, to the extent of such invalidity or unenforceability be deemed severable and the remaining provisions, and the remainder of such provision, shall continue in full force and effect.

9.6 A waiver of any right or remedy under the Agreement is only effective if granted in writing, and if so granted shall not be deemed a waiver of any subsequent or other breach or default.

9.7 The Agreement will not be enforceable by any person other than Kite or Kite's Affiliates and the Client.

9.8 Kite may assign the Agreement or sub-contract the whole or any part thereof. The Client shall not attempt to assign, transfer, charge or otherwise deal with its rights or obligations under the Agreement without the prior written consent of Kite.

9.9 The rights and remedies of Kite under the Agreement shall be cumulative, and no right or remedy of Kite set out in the Agreement shall be deemed to be in lieu of any other right or remedy.

9.10 Any notice required or permitted to be given by either party to the other shall be in writing addressed to the other party at its registered office or principal place of business. Notice (save for commencement of proceedings) may also be sent by email, to an approved e-mail address (as notified by the recipient party in writing). A notice shall be deemed to have been received within 72 hours or within 24 hours if sent by email (provided that no failed delivery or out of office message is received).

9.11 These Terms and Conditions may be updated by Kite by notice in writing from time to time. Any such updates shall apply to any Service performed after such update. Subject to the foregoing, no variation to these Terms and Conditions shall be valid or effective unless it is made in writing, refers to these Terms and Conditions and is duly signed or executed by, or on behalf of, each party.

9.12 The Agreement and any dispute or claim arising out of or in connection with it, or its subject matter or formation, whether of a contractual or non-contractual nature, shall in all respects be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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