

# MINIMUM PRICE, BOTTOM LINE PRODUCTION CONTRACT

BAMB has introduced a pre-planting and pre-harvest production contract called 'Minimum Price/Bottom Line Contract' which allows a farmer (seller), and BAMB (buyer) to agree on the price at which the crop will be sold or bought. The production contract is a supply chain management tool that will minimize price risks due to price fluctuations dictated by market conditions and empower local farmers to commercialize their arable farming operations. This arrangement facilitates forward buying and selling of commitments and not necessarily the physical commodity.

## WHAT ARE THE BENEFITS?

- It offers the producer 100% guarantee on a minimum price for the product. In instances where buying prices drop during harvest season, the farmer's income is secured.
- On delivery, the producer is paid promptly (i.e. the contracted price within 7-14 days).
- The producer capitalizes on any price rises.
- It gives farmers an opportunity to budget and plan their farming operations well in time.

## WHO QUALIFIES

- This facility is open to any farmer who produces locally provided he can produce 5Mt or more per contracted crop.

**N.B.** Farmers are encouraged to contract a portion of their crop, and to sell the remainder of their crop at prevailing prices during the harvest season.

Increase efficiency and output at your farm and be part of the commercialisation of the arable sub-sector

Category	Bags	Tonne
Subsistence/Emerging farmers	100 – 200	5
Commercial farmers	200+	10 +



*Feeding the Nation since 1974*

**Contract Number:** NO \_\_\_\_\_ / \_\_\_\_\_ / 20\_\_\_\_ / 20\_\_\_\_\_

**Contract Date:** \_\_\_\_\_ / \_\_\_\_\_ / 20\_\_\_\_\_

**A. Farmer's Personal Details / Company Details**

Name _____	Company Name _____
Surname _____	Directors _____
First Names _____	_____
Date of Birth _____ / _____ / _____	Vat Reg. No. _____
Gender: Male <input type="checkbox"/> Female <input type="checkbox"/>	
Identity/Passport No: _____	
Marital Status: _____ In Community of Property: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Postal Address: _____	
_____	

**Physical Address**

- Agricultural Region: \_\_\_\_\_ District \_\_\_\_\_
- Extension Area: \_\_\_\_\_ Location: \_\_\_\_\_

Telephone: Business \_\_\_\_\_ Home \_\_\_\_\_ Mobile \_\_\_\_\_

Email Address: \_\_\_\_\_

**B. Contracted Quantities and Price**

COMMODITY	CONTRACTED QUANTITIES AND PRICE		
	Quantity (Mt)	Price/Mt	Sub Total
Sorghum – Sweet/Red			
Sorghum – Sweet/White			
White Maize			
Yellow Maize			
Millet			
Groundnuts			
Purple Cowpeas			
Tswana/Other Cowpeas			
Black Eye Beans			
White Harricots			
Jugo Beans			
Tepary Beans			
China Peas			
Sunflower			
<b>Total</b>			

**Delivery:** Name of BAMB Depot: \_\_\_\_\_

Time of Delivery: From \_\_\_\_\_ April 202\_\_\_\_ To: \_\_\_\_\_ Sept 202\_\_\_\_\_

Form of Product Delivery: Bags \_\_\_\_\_ Bulk \_\_\_\_\_

All collections/deliveries shall be made at Buyer's call

**FOR OFFICIAL USE**

	<b>Tonne</b>
	5
	10 +
<b>Bags</b>	
	100 – 200
	200+
<b>Category</b>	
<input type="checkbox"/>	Subsistence/Emerging farmers
<input type="checkbox"/>	Commercial farmers

**Please note:** As part of this contract the seller agrees to allow access to BAMB for inspection at any given time/period.



# Terms and Conditions of the contract

- 1. Seller and Buyer** being the only two parties who have any rights whatsoever under this contract have this day entered into a contract whereby the Buyer agrees to buy and the Seller agrees to sell commodities on the following terms and conditions
- 2. Origin of Product:** The product(s) sold under this contract must be grown in Botswana
- 3. Quantity:**
  - 3.1** Where deliveries of individual consignments reach a tonnage within the tolerance of the contractual quantity, the contract shall be deemed to have been completed.
  - 3.2** A tolerance of five (5) percent more or less or to the nearest full truck load whichever is the lesser quantity is accepted
  - 3.3** Any quantity delivered in excess of the upper tolerance shall be deemed a breach of contract and entitle the buyer to reject the excess if the buyer so wishes. If the Buyer does not reject, the price of any quantity in excess of the upper tolerance shall be the prevailing market price. If the Seller delivers less than the minimum quantity permitted by the tolerance, the Seller shall be deemed to be in default and shall compensate the Buyer in accordance with the default clause herein.
- 4. Mass Determination**
  - 4.1** The Buyer shall advise the seller by fax or email within 24 hours of the end of each delivery period or at such times as may otherwise be agreed between the parties, the following information:
    - a. Seller's Contract No.
    - b. Truck Registration Nos.
    - c. Gross, Tare and Net mass
  - 4.2** In the case of delivery to silo/warehouse, the mass taken at the weighbridge shall be binding on both parties.
  - 4.3** All weighing tickets at weighbridges shall be electronically printed. Weighbridges used to determine the mass shall conform to the verification periods for weighing and measuring instruments used in the trade as required by BOBS
  - 4.4** In the case where delivery to a branch without a weighbridge, a sample of bags will be weighed on a platform scale and the total weight agreed between the receiver and the Seller.
  - 4.5** The weigh bridge must be calibrated.
- 5. Quality**
  - 5.1** All commodities to which this contract refers shall be of First Grade/Grade 1 only. The Buyer shall have the right of rejection if the commodities do not comply with this requirement or specifications as set by BOBS (Botswana Bureau of Standards)
  - 5.2** If the seller is willing to sell the contracted commodity that fails to meet Grade 1 specifications, the Buyer (BAMB) shall purchase it at the prevailing market price for that grade, provided such grade does not fall below Grade 2.
- 6. Sampling and analysis**
  - 6.1** Where the commodity is delivered at the silo/warehouse, the quality shall be determined by the branch manager or representative, and the quality so determined shall, unless parties agree otherwise in writing, be final and binding on the parties.
  - 6.2** Where the commodity being sold is delivered to the Buyer's nominated branch fails to meet the quality as specified herein, the receiver shall not unload the commodity, and shall notify the Seller of the deficiency as soon as possible, but not later than 24 hours from arrival of the commodity. Failure of the receiver to give such notice as required shall preclude the Buyer from claiming for deficiency against the Seller. The Seller shall be allowed 24 hours from the time of the notice of deficiency being given to inspect the commodity to verify its quality. If the Seller waives this right, the Seller shall have been deemed to accept the receiver's findings as to quality.
  - 6.3** Should the Seller and Buyer fail to agree on the quality of commodity, a second sample shall be drawn in accordance with the Agricultural Products Standards (where available) by a third party agreed to by both parties. Such sample shall be sealed and shall bear on the label all relevant information required for analysis. All analysis shall be done by an independent analyst agreed to by both parties. The results so determined shall be final and binding upon the parties. If, however, results from this analysis cannot be mutually agreed by the parties, the matter shall be submitted to arbitration for determination as herein provided. All costs of sampling and analysis shall be borne by the defaulting party.
- 7. Vehicle Cleanliness**
  - 7.1** The Seller has the responsibility to ensure that any road vehicle or rail truck is fit to carry grain for human consumption. The buyer has liberty to reject any truck that they see deem unfit. Any additional haulage costs arising from the rejection of any road vehicle or rail truck shall be the liability of the Seller.
- 8. Pre-delivery Storage**
  - 8.1** Commodities sold for delivery against this contract must at all times be stored in clean and hygienic conditions. Seller shall allow Buyer, prior written agreement, access to any store containing the contract commodities and if required shall produce evidence of a thorough, methodical and effective inspection and cleaning system of the store and any equipment used to handle the commodities.
- 9. Passing of Ownership and Risk**
  - 9.1** Ownership and risk shall remain with the Seller until the commodities are delivered to the Buyer. If, however, delivery has not taken place through no fault of the Seller, and the Seller has notified the Buyer in writing that the commodities are ready for delivery, then risk shall pass to the Buyer at one of the following times:

- 9.1.1** If a delivery date has been agreed in this contract, immediately on the expiration of that date;
  - 9.1.2** If a period for delivery has been agreed in this contract, immediately upon the expiration of the last day of that period;
  - 9.1.3** If a spot delivery or no delivery date or period has been agreed, at the expiration of one calendar month from the date of sale as evidenced by the date on this contract
  - 9.2** Provided in each case that the Seller has, before the expiration of such of the above time limits for delivery as is applicable, notified the Buyer in writing that the commodities are in a deliverable state and appropriated to the contract.
- 10. Payment terms**
    - 10.1** Price – The price per ton of produce delivered at a specified branch of BAMB is as stated above.
    - 10.2** Payment shall be made in Gaborone within fourteen (14) working days on presentation of the following documents:
      - a. Purchase Order Receipt
      - b. Grading Form
  - 11. Non Payment**
    - 11.1** The seller reserves the right to withhold deliveries under this contract until all and any outstanding payments under this contract have been received.
  - 12. Business Day/ Non Business Day**
    - 12.1** A business day is the period between 0800 hours and 1645 hours. Saturdays, Sundays and officially-recognized national holidays applicable throughout Botswana and any days which may from time to time be declared as non-business days for specific purposes shall be deemed non-business days
  - 13. Force Majeure**
    - 13.1** Neither the Buyer nor the seller shall be responsible for delay in delivery of the commodity or any part thereof occasioned by the Act of God, action by any government, strike, lockout, breakdown of machinery, power failure or fire, provided that the party invoking this clause dispatches written notice to the other party within five (5) business days after the beginning of the contract period, whichever is later. Unless otherwise mutually agreed, the party invoking Force Majeure is entitled to an extension (the first extension) of not more than thirty (30) consecutive days from the end of the contract period. If delivery under this clause is still prevented at the end of the first extension period, the party not invoking the clause shall have the option of cancellation of the contract or any unfulfilled part thereof or mutually agreeing to one further extension period (second extension) of not more than thirty (30) consecutive days. If at the conclusion of the second extension period delivery is still prevented, the contract or any unfulfilled part thereof shall be cancelled. Neither party shall have a claim against the other for delays or non fulfillment under this clause provided that the party invoking this clause shall have supplied, if so requested by the other, satisfactory evidence justifying the delay or non-fulfilment.
    - 13.2** Crop failure resulting from weather conditions of any nature or damage to or destruction of crops by any other means, will NOT be considered grounds for invoking Force Majeure under the terms of this clause, unless otherwise declared a national natural disaster.
    - 13.3** The Seller is advised that failure to execute the contract in part or in total by reason of shortage of the commodity herein described may render himself liable to a claim by the Buyer. (See 17)
  - 14. Default**
    - 14.1** In the event of the Seller failing to complete deliveries under the contract by the last day of the contract period, the quantity not delivered against the contract quantity shall be deemed in default. The Buyer may after prior written notice:
      - 14.1.1** Purchase against such default, the Seller to make good the loss, if any, on such purchase or
      - 14.1.2** Claim damages to be agreed mutually or settled by arbitration, such damages not to exceed the difference between the contract price and the market price on the date of the default
    - 14.2** In the event of the Buyer not accepting delivery by the last day of the contract period the Seller may at his option after having given prior written notice by recorded delivery to the Buyer:
      - 14.2.1** Sell the commodities at the market price, the Buyer being liable to compensate the Seller for any resultant loss suffered by the Seller.
      - 14.2.2** The date of default shall be the first business day following expiry of contract period. When an extension of collection/delivery has been either claimed as under Force Majeure clause or agreed otherwise, the date of default shall be the first business day following the expiry of the extension period.
    - 14.3** In all cases the claim for damages may include any proved additional reasonable expenses which arise directly and naturally in the ordinary course of events from the defaulting party's breach, but it shall not include any loss of profit on any sub-contract made by the claimant party, nor shall it include the cost of any management or staff time resulting from their involvement with matters arising directly or indirectly from the default.

- 15. Claims**
    - 15.1** When commodities are sold subject to a specification requiring analysis, the Buyer shall have the right to claim an allowance to be agreed or to reject the commodities on the basis of an analysis made by him or on the seller's behalf. When the Buyer exercises this right a representative sample shall be drawn, sealed and, if required by the Seller, shall be submitted to an agreed independent analyst for the justification of any claim or rejection. If required by the Seller this representative sealed sample shall be jointly or independently drawn whichever is agreed so far as practicable. Costs of independent sampling and analysis so incurred shall be for the Seller's account if the claim or rejection is upheld otherwise for the Buyer's account
  - 15.2** Claims based on defects of quantity, quality or condition which shall be apparent upon reasonable inspection must be advised by the Buyer as soon as possible and confirmed by fax, email or by letter sent by first class post within two business days from the arrival of the commodities at their ultimate destination.
  - 15.3** All claims other than those under (15.2) above must be notified so as to be received by the Seller within 90 days from the last day of the contract period.
- 16. Dispute Resolution**
    - 16.1** Mediation  
The parties concerned, if they mutually agree to do so, may appoint a mediator, acceptable to both parties, who shall endeavour to cause the parties to agree to the resolution of the dispute. Any agreement concluded between the parties pursuant to such resolution shall be binding on them. If at any time during arbitration the parties decide to submit their dispute to mediation, the arbitration proceedings shall be suspended and the provisions of this sub clause shall apply. Should the mediation not resolve the dispute within 20 business days from the parties agreement to involve mediation, the arbitration proceedings shall be resumed.
    - 16.2** Arbitration  
Unless the parties agree in writing, any dispute arising out of or under this contract shall be referred to arbitration, and the parties agree to be bound by these rules and are deemed to know them.
      - 16.2.1** If compelling reasons exist why the dispute should be referred to ordinary court litigation rather than to arbitration, either party before the time for commencing arbitration proceedings has lapsed, may in writing, request the other to consent to the arbitration proceedings being waived and for the dispute to be referred to ordinary litigation in the Courts. Should such consent be unreasonably withheld or no answer received within 28 days the party making the request shall be at liberty to commence Court proceedings, leaving it to the other party if the other party so wishes, to apply for a stay of proceedings invoking the arbitration clause. The Court will then decide whether arbitration or the Court proceedings should continue. Time for commencing arbitration proceedings shall not run for if started not continue to run) from the date of such request until the Court has given a final ruling. (this including any appeals) as to the proper venue for the dispute to be heard, providing court proceedings are commenced within 28 days of the receipt of any refusal or 56 days from the date of the request if no answer to it is received.
      - 17. Time Limits for Claiming Arbitration**
        - 17.1** Arbitration shall be claimed in relation to quantity, quality or condition within 28 consecutive days from the date of the arrival of the commodities at their ultimate destination. Arbitration shall be claimed in relation to other claims (including default of fulfillment of all or part of the contract) within 90 consecutive days from the last day of the period of delivery, if arbitration proceedings regarding any claims are not instituted within the time limit prescribed all causes of action relating to that claim whether by way of arbitration or in any Courts of Law are deemed time barred and waived.
      - 18. Statutory Changes**
        - 18.1** The price of the commodities is subject to alteration by reason of the imposition of or alteration by the Government in the rates and/or manner of collection of any tax, duty, levy or any other statutory charge upon commodities of this description, whether at the time of or if the change is retrospective at any time after the date of this contract provided that the change is applicable to the date of delivery.
      - 19. Domicile, Seller and Buyer agree that for the purpose of proceedings**
        - 19.1** This contract shall be deemed to have been made in Botswana, and to be performed there, any correspondence in reference to the offer, the acceptance, the place of payment, or otherwise, notwithstanding and
        - 19.2** Arbitrators appointed in Botswana (except for the purposes of enforcing any award made in pursuance of the Arbitration Clause hereof) shall have exclusive jurisdiction over all disputes which may arise under this contract. Such disputes shall be settled according to the laws of Botswana whatever the domicile, residence or place of business of the parties to this contract may be or become.
      - 20. Domicilium Clandi et Executandae**

Seller and Buyer choose domicilium clandi et executandae as follows:

**SELLER:**

Signature:..... Name:..... Date:.....

**BUYER:**

Signature:..... Name:..... Date:.....

Tel:..... Fax:.....

Email Address:..... Mobile:.....