

Proclamation No. ____/2020

A Proclamation to Provide for Agricultural Production Contracts

WHEREAS improvements in quality, efficiency, and competitiveness as well as development of agro-processing backward linkages to the agriculture sector is a key pillar to economic structural transformation;

WHEREAS creating sustainable market linkage between producers and value added industries and larger buyers is essential to commercialization of producers;

WHEREAS the existing laws are not adequately tailored to the particular nature of agricultural production contracts, it has become necessary to put in place a comprehensive legal framework that facilitates transfer of technology, knowledge and skills, and market linkage between a producer and a contractor to improve production and productivity;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE

GENERAL

1. Short Title

This Proclamation may be cited as the “Agricultural Production Contract Proclamation No. ____/2020”

2. Definitions

Unless the context requires otherwise, in this Proclamation:

1. “Agricultural Produce” means agriculture, feed, livestock, fishery or silk produce (including live animal) or seed, supplied in a raw form or/and processed without losing its natural form;
2. “Animal” means cattle, sheep, goat, draft animal, camel, chicken, honey, fish, silk worm, pig, rabbit or any other that might be domesticated in the future;
3. “Agricultural Production Contract” means a contractual agreement between a Contractor and a Producer for production and purchase of Agricultural Produce;

4. “Contractor” means any person who enters into contractual agreement with a Producer for production and purchase a specific Agricultural Produce;
5. “Producer” means any person who enters into contractual agreement with a Contractor for production and sale of a specific Agricultural Produce;
6. “Input” means any technology, technical assistance or finance necessary for enhancing production of Agricultural Produce including human labor;
7. “Technical assistance” means any knowledge or technical skills or training necessary for production of Agricultural Produce;
8. “Ministry” means the Ministry of Agriculture;
9. “Regional state” means any state referred to in Article 47(1) of the Constitution of the Federal Democratic Republic of Ethiopia and includes Sidama Region, Addis Ababa and Dire Dawa city administrations;
10. “Appropriate authority” means a federal or regional organ with powers and duties under the provisions of this Proclamation or regulations or directives issued for the implementation of the Proclamation.
11. “Person” means a natural or juridical person;
12. An expression in the masculine gender includes the feminine

3. Scope of Application

- 1) Without prejudice to sub-article 2 of this Article, the provisions of this Proclamation shall be applicable to contracts that are formed, signed, and registered in accordance with the provisions of this Proclamation.
- 2) A fundamental right of parties to a contract to bargain and create terms of their agreement as they desire shall be respected

PART TWO

FORMATION AND CONTENT

4. Initiation and Negotiation

- 1) The formation of an Agricultural Production Contract shall be initiated through an offer by either a Contractor or a Producer;
- 2) Notwithstanding the provisions of sub-article (1) of this Article, any government institution or non-state actor engaged in development activities may initiate and facilitate an offer to be made by the Contactor or the Producer;
- 3) The initial offer shall be in either writing or oral and provide information on the specifics of the offer, which shall include sufficiently definite material terms of subject matter, price, payment terms, quantity, quality, duration, and any other information necessary for the other party to make an informed decision;
- 4) The offeree shall have sufficient time to review the terms before acceptance;
- 5) The parties to the Agricultural Production Contract may be assisted by a third party during the negotiation process.

5. Form

- 1) An Agricultural Production Contract shall be made in writing using simple and standard language.
- 2) The parties may draw up their contract in one or more languages. Where the contract is drawn in more than one language, one of which is the working language of the Regional State, the working language of the Regional State version shall be the governing version in case of discrepancy.
- 3) The Contract shall be attested by at least two witnesses, one of whom shall be a representative of the appropriate authority.
- 4) The parties shall submit the duly signed copy of the Contract for registration with the appropriate documents authentication and registration authority.
- 5) Where the text of the Contract refers to documents and texts other than the provisions of the Contract, such documents shall be attached to the signed copy of the contract upon submission to the appropriate documents authentication and registration authority for registration.

6. Content

An Agricultural Production Contract shall as a minimum include the following:

- 1) The names and addresses of the Producer and the Contractor;
- 2) The purpose and objective of the Contract;
- 3) Size of production site or farm and its geographic location or number of herd or colony;
- 4) Rights and obligations of the Producer and the Contractor;
- 5) Agriculture Produce quality and quantity specifications;
- 6) Pricing mechanism of input and Agriculture Produce
- 7) Type of technical assistance to be provided by the Contractor
- 8) Provisions on intellectual property, if any;
- 9) Provisions specifying the events that can be considered as *force majeure*
- 10) Provisions on successors and assignment of rights;
- 11) The duration of the Contract as well as the conditions and procedures for the renewal, amendment or alteration or termination of the Contract;
- 12) Dispute resolution mechanisms; and
- 13) The date, place, and signatures of the parties to the Contract.

PART THREE

TYPES OF AGRICULTURAL PRODUCTION CONTRACT; RIGHTS AND OBLIGATION OF PARTIES

7. Types of Agricultural Production Contracts

For purposes of this Proclamation, there are two types of Agricultural Production Contracts:

- 1) Agricultural production and marketing contractual agreement between a Contractor, in particular a commercial farmer, and a Producer, in particular surrounding a commercial farmer, under which the Contractor is obligated to supply input to the Producer;

- 2) Agricultural marketing contractual agreement between a Producer and a Contractor, in particular agro industries, exporters, supermarkets, prisons, and hotels, under which the Contractor is obligated to supply input to the Producer only when agreed between the Parties in their Agricultural Production Contract.

8. General Rights and Obligations of the Contractor

The Contractor shall have the rights and obligations to:

- 1) Inspect the Agricultural Produce at delivery with agreed quality, quantity, place and time as agreed in the Contract;
- 2) Ensure the provision of input to the Producer as agreed in their Contract; and
- 3) Effect payment to the Producer at time agreed in the Agricultural Production Contract

9. General Rights and Obligations of the Producer

The Producer shall have the rights and obligations to:

- 1) Get input or payment from the Contractor as agreed in the Agricultural Production Contract;
- 2) Inspect quality and quantity of input provided by the Contractor at delivery and comply with the agreed application of the input;
- 3) Get and apply the technical assistance provided by the Contractor;
- 4) Comply with the agreed specifications and follow and apply the technical advice provided by the Contractor; and to take appropriate measures to enhance quality of the Agricultural Produce;
- 5) Ensure delivery of the Agricultural Produce at agreed place and time with quantity and quality specified in the Agricultural Production Contract.

10. Price, Mode, and Term of Payment for Agricultural Produce

- 1) The parties shall clearly state price for the Agricultural Produce in their Contract taking into account production and other related costs;
- 2) The parties shall clearly specify in their Contract either total price or unit price of the Agricultural Produce;

- 3) Without prejudice to sub-article 2 of this Article, the parties shall state the basis for price revision in the event where quality of the Agricultural Produce go either below or above from what has been agreed in the Contract;
- 4) The parties shall clearly specify method and time of payment for the Agricultural Produce;
- 5) The parties may agree to renegotiate price in the event where the price of the Agricultural Produce subject to the Contract go above the agreed price at time of delivery, taking into account equity and long term interest of both parties. Particulars shall be determined in a Directive to be issued by the Ministry;
- 6) The Contractor, after taking delivery of the Agricultural Produce as per the Contract and after deducting price of input if any and any other prior payment to the Producer from the total price of the Agricultural Produce, shall deposit the amount payable to the Producer to the nearest bank in an account opened in the name of the Producer.

11. Specification of Quantity of Agricultural Produce

- 1) The parties shall clearly specify average quantity and quantity measurement of the Agricultural Produce in their Contract;
- 2) The parties shall clearly specify circumstances that might cause quality of the Agricultural Produce to go either above or below from the agreed quantity and effects thereof on the performance of the Agricultural Production Contract. Particulars shall be determined in a Directive to be issued by the Ministry.
- 3) If parties fail to clearly specify quantity and quantity measurement of the Agricultural Produce in the Contract, they may re-negotiate to agree on its quantity and quantity measurement.

12. Specification of Quality

- 1) The parties shall clearly specify quality and quality verification mechanisms of Agricultural Produce in their Contract.
- 2) Without prejudice to the sub-article (1) of this Article, the parties shall clearly specify circumstances that might cause quality of the Agricultural Produce to vary from the agreed quality and effects thereof on the performance of the Agricultural Production Contract. Particulars shall be determined in a Directive to be issued by the Ministry.
- 3) The parties shall clearly specify packaging and or labelling requirements, if any, including the party that shall bear the cost of packaging and/or labelling.

13. Input Supply and Payment

- 1) The parties shall clearly specify the type, quality, quantity, time, mode of transportation, and price of input to be provided by the Contractor.
- 2) Notwithstanding the provisions of sub-article (1) of this Article, the price of the input to be provided by the Contractor shall not be higher than the prevailing local market price of same or similar input at time of delivery.
- 3) The Contractor may advance cash to the Producer for input purchase or other expenses. Such cash payment, however, shall not be higher than the agreed total price of the Agricultural Produce.

14. Delivery of Agricultural Produce

The parties shall specify place and time of delivery, mode of transportation, and the party that covers the cost of delivery of the Agricultural Produce in their Contract.

15. Transfer of Rights and Obligations

Without prejudice to provisions of the Agricultural Production Contract, parties to the contract:

- 1) May freely transfer their rights under the Contract, subject to the Contract's terms;
- 2) May only transfer their obligations under the Contract upon obtaining the consent of the other party.

PART FOUR

NON-PERFORMANCE AND INSURANCE

16. Force Majeure

- 1) The following events shall be considered to constitute *force majeure* where such events prevent a Producer to the Agricultural Production Contract from undertaking his obligations; serious illness, extreme high or low rainfall; extreme low or high temperature; flood; fire accident; landside; earthquake or extreme animal or crop disease or pest outbreaks; and the occurrence of an event that constitutes *force majeure* is either agreed between the parties or verified by the appropriate authority.

- 2) Notwithstanding the provisions of sub-article (1) of this Article, parties to the Agricultural Production Contract may specify the events that can be considered as *force majeure* and the effects thereof.
- 3) In the event of an occurrence of *force majeure* under sub article (1) or (2) of this Article that is beyond the control of the parties with potential or actual adverse impacts on the fulfillment of their obligations, the party shall forthwith notify the other party and take reasonable measures to mitigate the adverse impact.
- 4) In the event of an occurrence of *force majeure* under sub article (1) or (2) of this Article that is beyond the control of the parties with potential or actual adverse impacts on the fulfillment of their obligation, the parties may specify in the Agricultural Production Contract the party that bears the cost of input and/or other expenses.

17. Insurance

Parties to Agricultural Production Contract may

- (1) agree to obtain insurance against *force majeure* that prevent a party or the parties to the Agricultural Production Contract from undertaking his/their obligations.
- (2) Where the parties to the Contract agree to obtain insurance, the Agricultural Production Contract shall specify the party liable for payment of the premium.
- (3) Notwithstanding the provisions of sub-article (2) of this Article, the parties to the Contract may agree a third party, including a government agency or a non-governmental organization, pays the insurance premium.

PART FIVE

DURATION, RENEWAL OR ALTERATION; AND TERMINATION

18. Duration of the Agricultural Production Contract

- 1) Parties shall expressly state the duration of the Contract taking into account nature and production method of the Agricultural Produce covered in the Contract.
- 2) Notwithstanding the provisions of sub-article (1) of this Article, the Ministry may determine by a Directive duration of Agricultural Production Contract due to specific nature of agricultural produces.

19. Renewal or alteration of the Agricultural Production Contract

Parties to the Agricultural Production Contract may agree to renew or alter their contract:

- 1) When either input price or Agricultural Produce price is beyond what parties had anticipated at the time of concluding the Contract and this fact is verified by the appropriate authority or
- 2) When parties to the contract agree to change the Agricultural Produce to be covered and its quantity in their Contract or
- 3) Where the parties to the Contract agree to renew or alter their Contract, all formal requirements for the formation of the Contract under this Proclamation shall apply to the renewal or alteration of the Contract

20. Termination of the Contract

- 1) Parties to the Contract may stipulate the specific situations under which each party is entitled to terminate the Contract.
- 2) Notwithstanding the provisions of sub-article (1) of this Article, a party to the Agricultural Production Contract that decides to terminate the Contract shall compensate the other party for the damage arising from the termination of the Contract.
- 3) Calculation of compensation to be paid by a party to the other party for the damage arising from the termination of a contract shall be set out in a Directive to be issued by the Ministry.

PART SIX

DISPUTE RESOLUTION

21. Dispute resolution between parties to Agricultural Production Contract

Parties to Agricultural Production Contract may resolve dispute through the following dispute resolution mechanism:

- 1) When dispute arises from or in connection to an Agricultural Production Contract, the parties to the Contract shall first try to negotiate and settle their dispute amicably between themselves within a reasonable period of time.
- 2) Where the parties to the Contract fail to reach an amicable settlement by themselves through negotiations, they may resort to mediation by a third party or settle the matter by arbitration. The

mediator or arbitrator may be a representative of the appropriate authority or any independent person to be mutually chosen by the parties.

3) Where the parties to an Agricultural Production Contract fail to resolve the dispute through mediation or arbitration, they may lodge a complaint to a court of law with appropriate jurisdiction.

PART SEVEN

PROMOTION, FACILITATION AND COORDINATION OF AGRICULTURAL PRODUCTION CONTRACTS

22. Powers and Duties of the Ministry

1. The Ministry of Agriculture, as appropriate agency accountable to the Ministry, shall have the following powers and duties regarding Agricultural Production Contracts at the national level:
 - a) Promote, facilitate, and coordinate Agricultural Production Contracts;
 - b) Create linkages among agricultural producers and contractors;
 - c) Provide advisory services to producers, contractors and other interested parties;
 - d) Facilitate the resolution of disputes arising from agricultural production contracts in accordance with the relevant provisions of this Proclamation;
 - e) Develop and disseminate appropriate guidelines and model contracts for Agricultural Production Contracts; and
 - f) Register Agricultural Production Contracts and keep relevant records and documentation;
2. In discharging its powers and duties under sub-article (1) of this Article, the Ministry shall cooperate and coordinate with other relevant federal and regional government agencies.
3. The Ministry may, as appropriate, delegate its powers and duties to relevant federal and regional bodies.

4. In addition to the duties provided under sub-article (1) of this Article, the body responsible for agriculture development at the regional level may undertake, by law, additional duties regarding Agricultural Production Contracts within the respective regional state.
5. Each Regional State may designate an appropriate regional body to promote, facilitate and coordinate activities pertinent to Agricultural Production Contracts within the respective regional state.

PART VIII

MISCELLANEOUS PROVISIONS

23. Applicable Law

Provisions of the Civil Code shall be applicable to matters not provided for in the provisions of this Proclamation.

24. Inapplicable Laws

No law or customary practices shall, in so far as they are inconsistent with this Proclamation, have effect on matters provided for by this Proclamation.

25. Power to Issue Regulations and Directives

1. The Council of Ministers may issue regulations necessary for the implementation of this Proclamation.
2. The Ministry may issue directives necessary for the implementation of this Proclamation or Regulations issued pursuant of sub-article (1) of this Article.

26. Effective Date

This Proclamation shall enter into force upon the date of publication in the Federal Negarit Gazette.

Done at Addis Abeba, this- day of -, 2020

Sahlework Zewde

President of the Federal Democratic Republic of Ethiopia