



Kingdom of Cambodia
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Manual for Contract Farming in Cambodia



Department of Agro-Industry in collaboration with
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MANUAL FOR CONTRACT FARMING IN CAMBODIA

A practical handbook for economic
stakeholders and support institutions

(FEBRUARY 2018)

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ABBREVIATIONS

AC	Agricultural Cooperative
ACMECS	Ayeyawady Chao Phraya Mekong Economic Cooperation Strategy
ADR	Alternative Dispute Resolution
AFD	<i>Agence Française de Développement</i> / French Agency for Development
AMIS	Agriculture Market Information System
AMO	Agriculture Marketing Office
CC	Commune Councils
CCC	Chamber of Commerce of Cambodia
CDRC	Commune Dispute Resolution Committee
CF	Contract Farming
CFCC	Contract Farming Coordination Committee
CSR	Corporate Social Responsibility
DACP	Department of Agricultural Cooperatives Promotion
DAE	Department of Agricultural Extension
DAI	Department of Agro-Industry
DAL	Department of Agriculture Legislation
DDM	Demand Driven Model
Dis.	District
DP	Development Partners
DPS	Department of Planning and Statistics (of MAFF)
FAO	Food and Agriculture Organization of the United Nations
FI	Financial Institution
FO	Farmer Organisations
FWUC	Farmer Water User Community
GDA	General Directorate of Agriculture
GI	Geographical Indication
ICS	Internal Control System
IPM	Integrated Pest Management
JBWC	Joint Bilateral Working Committee (between Thailand and Cambodia)
LMO	Living Modified Organisms
MAFF	Ministry of Agriculture, Forestry and Fisheries
MEF	Ministry of Economy and Finance
MFI	Micro-Finance Institution
MoC	Ministry of Commerce
MoJ	Ministry of Justice
MoWRaM	Ministry of Water Resources and Meteorology
M&E	Monitoring and Evaluation
NCAC	National Commercial Arbitration Center

NPACD	National Policy for Agricultural Cooperatives Development
PDAFF	Provincial Department of Agriculture, Forestry and Fisheries
RDB	Rural Development Bank
RGC	Royal Government of Cambodia
SCCRP	Support to the Commercialization of Cambodian Rice Project
SME	Small and Medium Enterprise
SNEC	Supreme National Economic Council
SPS	Sanitary and Phyto-Sanitary
UNDP	United Nations Development Program
UNIDROIT	International Institute for the Unification of Private Law
WIPO	World Intellectual Property Organization

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Several experts have contributed to draft this Manual, from the **Department of Agro-Industry of MAFF** and from partner organizations, namely:

- IRAM (Institute of Research and Application of development Methods): www.iram-fr.org
- AVSF (Agronomes et Vétérinaires Sans Frontières): www.avsf.org
- CIRD (Cambodian Institute for Research and Rural Development): www.cird.org.kh
- Henri Capitant Association in Cambodia: www.henricapitant-cambodia.org
- Aide au Développement Gembloux: www.ong-adg.be

The Manual has been developed based on the international experience and literature and best practices (See Bibliography in the end of the Manual), experts own experiences, pilot experiences of Contract Farming, notably the ones supported in the rice sector by the SCCRP project as well as other practitioners and private sector experiences in various value chains in Cambodia.

Last, the Manual has also taken into account valuable comments from international experts from FAO and Unidroit.

Content has been reviewed and improved and finally endorsed by the Taskforce on Contract Farming, chaired by H.E. Ty Sokhun, Secretary of State of the Ministry of Agriculture, Forestry and Fisheries.

INTRODUCTION: PURPOSE, SCOPE AND USE OF THIS MANUAL

FOR WHOM THIS MANUAL IS INTENDED?

This Manual is primarily destined for economic stakeholders in the agricultural sector who are considering the development of partnership based on contract farming relation. These stakeholders might be either on the production side (individual farmers or Farmer Organizations) or might be agro-industries or food industries which need to source agricultural products.

The secondary target audience for this Manual is the support organizations and people who are likely to play a role of capacity building of those economic stakeholders or a facilitation role to support the development of fair and fruitful contract farming agreements. Referred to Sub-decree 36 on the Contract Farming Ministry of Agriculture Forestry and Fisheries, Department of Agro-Industry is a leading department for facilitation, prepare contracts, technical support and solving problem when conflict resolution happen.


Other organizations can provide supporting services for Contract Farming. But if the parties in the contract wish to access MAFF/DAI services (notably preparation of contracts or conflict resolution...), then facilitators should be approved by DAI and should follow its procedures.,

GUIDELINES AND INFORMATION TO HELP DECISION MAKING

The Ministry of Agriculture Forestry and Fisheries acknowledge that Contract Farming agreements need to be customized by stakeholders in order to adapt to their specific objectives, constraints and situation. MAFF has established circular No. 196SRNS on Procedure to implement Contract Farming, dated 17 March 2017 which indicated procedure to implement CF and MAFF is focal institution supporting to match making, facilitate CF to party who wish to implement CF, DAI and PDAFF are focal institution for providing information to parties before making decision and facilitation the process. The organizations who wish to implement Contract Farming following Sub-Decree 36 need to file the application and provide the Contract sample to DAI as supporting document in order to make a decision. (see **Chapter 4** and **Annex 4**).

Beside above guideline of MAFF, In order to provide information and ideas to help stakeholders to make their own decisions, this Manual intends to describe possible solutions or options to answer the key questions of the contract, and to analyze advantages and disadvantages of the different options, regarding for instance possible price systems to use, indications of quantities to deliver, means of payments, possible mechanisms to arbitrate conflicts, etc. Whenever possible, we tried to summarize in comparative tables the advantages or disadvantages of different possible options to address these issues.

WHAT READERS WILL FIND IN THIS MANUAL?

The Objectives of this Manual are to illustrate procedures, mechanism to make it a practical tool and to provide different methods and key components in Contract Farming as a basic knowledge to relevant economic stakeholders and support institutions, as well as producers and buyers, whom wish to implement Contract Farming. Readers will be able to understand procedures and mechanism and conflicts resolution while implementing the Contract farming following MAFF procedures, moreover readers will gain more knowledge about different methods from other resources, for instance Cambodia cases. It is therefore developed in a pragmatic way and its structure follows a logical order, from the idea of Experienced Countries, the validation of the principle and the choice of partners, the negotiation of the contract, its implementation and its evaluation. Illustrations or case studies are highlighted in boxes, and practical tips are frequently enhanced with the  symbol.

Neophytes will find in **Section 1** a definition of Contract Farming and a description of different models, as well as elements regarding the potential benefits (and risks) of Contract Farming, and how it can benefits one's business.

Section 2 provides more specific background information for the case of Cambodia, in particular regarding the history of Contract Farming in the Kingdom, the legal background, and existing (or foreseen) policies and support measures. In the **Section 3**, readers can also identify who can support them to develop contract farming partnership, procedures to follow, as well as tips to select the right contracting partners.

The **Section 4** is focused on the contract itself, i.e. on the format of Contract Farming agreement recommended by DAI of MAFF. This does not consist in a standard model, as there is no "one-size-fit-all" model of contract. But **Section 4** lists proposed "chapters" or articles of the contracts and the questions that the Contract Farming agreements should address. For each question (such as quality, price, modalities of payments, etc...) it does not provide a standard response, but present possible options that stakeholders will have to discuss and to decide, case-by-case and based on a negotiation.

Not everything is fully set once the contract is signed. In agriculture maybe more than in other sectors, production faces hazards, and things does not always go as planned. Both parties need to keep a good level of communication during the implementation of the contract in order to face contingencies and prevent disputes. The **Section 5** provides advices to monitor the implementation, to prepare the collection of products, and also after completion of the contract to assess results and difficulties in order to improve the partnership if renewal of contract is considered.

The **Section 6** is dedicated to the resolution of conflicts in Contract Farming implementation and presents and compares the different mechanisms that parties involved in contract can use to address disputes. Here also there are several options and possible mechanisms, and the elements provided here are to help stakeholders to make an informed choice.

Last, the **Section 7** is more specifically dedicated to Farmer Organizations which engage in Contract Farming agreements. In most of the cases – at least in Cambodia – Agricultural Cooperatives or other Farmer Organizations are not producing by themselves, but may gather and sell the production of their members. Once they get engaged in a Contract Farming agreement, the Farmer Organization needs then to secure that it will actually be able to supply the products as agreed, in quantities and quality, which can be challenging. Tips and tools are proposed for FOs in order to help them to address this challenge.

SECTION 1: OVERVIEW OF CONTRACT FARMING

1.1. DEFINITION AND MODELS OF CONTRACT FARMING

1.1.1. DEFINITION OF CONTRACT FARMING

The literature on Contract Farming provides a profusion of definitions for Contract Farming¹ that we will not list and discuss in this Manual. We propose here a tentative definition for the purpose of this Manual, which covers a relatively broad understanding of Contract Farming. Comments on the terms are shown in the Box below the definition.

The article 4 of the Sub-Decree 36 (See Annex 1) proposes the following definition of Contract Farming: *“Contract-based Agricultural Production/Contract Farming” refers to an Agricultural Production that ensures the prices, quantity and quality of the products includes various agreed conditions prior to the production.*

We present below a more comprehensive definition, which is not in contradiction with the Definition of the Sub-Decree 36, but provides some additional precisions and clarifications:

Contract Farming is understood in this Manual as:

Abinding arrangement between **a contractor (the buyer** of an agricultural product, generally a company/firm) and an **individual producer** or a **producer organization** in the form of **a contract**, oral or written, **negotiated before the production starts** (or at an early stage of the production process), by which the producers commits to produce a specific agricultural product (possibly in a specific manner) and to sell this product to the contractor, exclusively or in priority or for a minimum agreed quantity, whereas **the contractor takes the commitment to buy this product** (whole production or minimum quantities agreed) at an **agreed price or at a price defined according to agreed modalities**, and usually to provide some kind of technical and/or material and/or financial support to the producer.

¹ Prowse (2012) presents several definitions and comments and propose his own definition.

Comments on the terms used in the above definition of Contract Farming

“A **binding** ⁽¹⁾ arrangement between a contractor (the buyer of an agricultural product, generally a **company/firm** ⁽²⁾) and an **individual producer or a producer organization** ⁽³⁾ in the form of a **contract** ⁽⁴⁾, **oral or written** ⁽⁵⁾, **negotiated before the production starts** ⁽⁶⁾, by which the producers commits to produce a **specific** ⁽⁷⁾ **agricultural product** ⁽⁸⁾ (possibly in a **specific manner** ⁽⁹⁾) and to sell this product to the contractor, **exclusively or in priority or for a minimum agreed quantity** ⁽¹⁰⁾, whereas the contractor takes the commitment to buy this product (**whole production or minimum quantities agreed** ⁽¹¹⁾, and usually to **provide some kind of technical and/or material and/or financial support to the producer** ⁽¹²⁾.”

Comments on terms used:

⁽¹⁾ **binding:** the contract formally engage both parties. It is legally binding and it can be made enforceable by a Justice decision in case an engagement of one party is not respected.

⁽²⁾ **a company/firm:** generally the buyer is a legally established company. Yet it would be theoretically possible that the contractor is an individual person with the same principles as described in this manual applying.

⁽³⁾ **an individual producer or a producer organization:** we include here contracts with Producer Organizations, even if Producer Organizations are not directly producing the agricultural product. Producers Organizations are likely to be a party signatory of the contract and engage their farmer members under the name of the Organization. Yet it has to be underlined that since we speak about a legally enforceable contract, the signatory must have a legal existence: either a natural person or a legally registered Farmer Organization. An informal group of farmers would be disputable as a signatory of a contract farming agreement.

⁽⁴⁾ **a contract:** the use of the word “contract”, in itself, creates legal binding obligations between the two parties.

⁽⁵⁾ **oral or written:** Definitions of contract farming found in the literature frequently include verbal agreements in the scope of contract farming. Whereas it is acknowledge that a practice of verbal agreement exists, considering the Contract Farming shall be legally binding and enforceable, we will always recommend in this Manual a formalization of written agreements. Note that the Sub-Decree No 36 on Contract Farming explicitly states that contracts shall be in written format.

⁽⁶⁾ **negotiated and signed before the production starts :** in principle, Contract Farming agreements are supposed to be signed before the beginning of the production process. Nevertheless it happens that agreements that can still be considered in the scope of Contract Farming are signed at an early stage of the production process, but after it actually started.

⁽⁷⁾ **specific:** a specific agricultural product means that not only the nature of the product might be defined in the contract, but also technical specifications that precise expected quality requirements that the product shall comply with.

⁽⁸⁾ **agricultural product:** shall be understood broadly. It might include product from cropping, livestock products, fishery or forestry products.

⁽⁹⁾ **specific manner:** the contract may not impose only quality specification on the product to be deliver, but may also impose (or prohibit) certain production method or the use of certain inputs for instance.

⁽¹⁰⁾ **exclusively or in priority or for a minimum agreed quantity:** in narrower definitions of Contract Farming, the contractor would have an exclusive right on the production under contract, whatever the volumes of outputs are. Nevertheless, in some cases, producers commit to supply a minimum quantity, but if the production is above this minimum producers are free to sell the surplus to other buyers. Less frequently, the contractor would guarantee to buy the product at the highest local market price, but would free the producers to sell exclusively to him if producers are able to find a buyer offering a price that the contractor is not ready to follow.

⁽¹¹⁾ **whole production or minimum quantities agreed:** reciprocally to the point above, the contractor may either take a commitment to buy all the production or to buy at least a certain quantity (normally corresponding to a reasonable expectation of yield / product volume based on production factors engaged).

⁽¹²⁾ **provide some kind of technical and/or material and/or financial support to the producer:** in principle a Contract Farming agreement implies that the contractor provides at least technical advice and/or support and/or material support (most often supply of inputs such as seeds/seedlings or fertilizer, or initial livestock and feed in the case of animal production) and/or pre-financing (loans) to cover part of the production costs.

About terms used in the present Manual

The producers involved in the contract will be referred to in this document as “**the producer(s)**” or “**the farmer(s)**”. The term in this Manual might encompass Producer Organizations (such as Agricultural Cooperatives or other legalized Farmer Organizations) to define the party in the contract responsible for the production and supply of the products.

The company buying the products will be referred to as “**the buyer**” or “**the company**”. One can note that in some other publication they are sometime also named the “off-taker” or “the sponsor”. But we will not use these terms in the present Manual.

The agreement between them will be referred to as “**Contract Farming**”.

In a Contract, the obligation is the core notion. According the Civil Code, **an obligation** is “*a legal relationship that joins a particular person with another specified person through the former person assuming a certain obligation with respect to the latter specified person*”.

The Obligor is the obligated party (also called debtor) who has an obligation to repay a debt, make a payment, do something, or to refrain from doing something, under the terms of an agreement.

The Obligee is the obliging party (also called creditor) whom an obligor owes an obligation under the terms of an agreement.

1.1.2. DIFFERENT MODELS OF CONTRACT FARMING

ELEMENTS OF AGREEMENTS BETWEEN PRODUCERS AND BUYER THAT CAN DIFFERENTIATE CONTRACT FARMING MODELS

Models of Contract Farming can be differentiated on a large number of criteria or characteristics of the terms of agreement between the contractor and the producer. For instance:

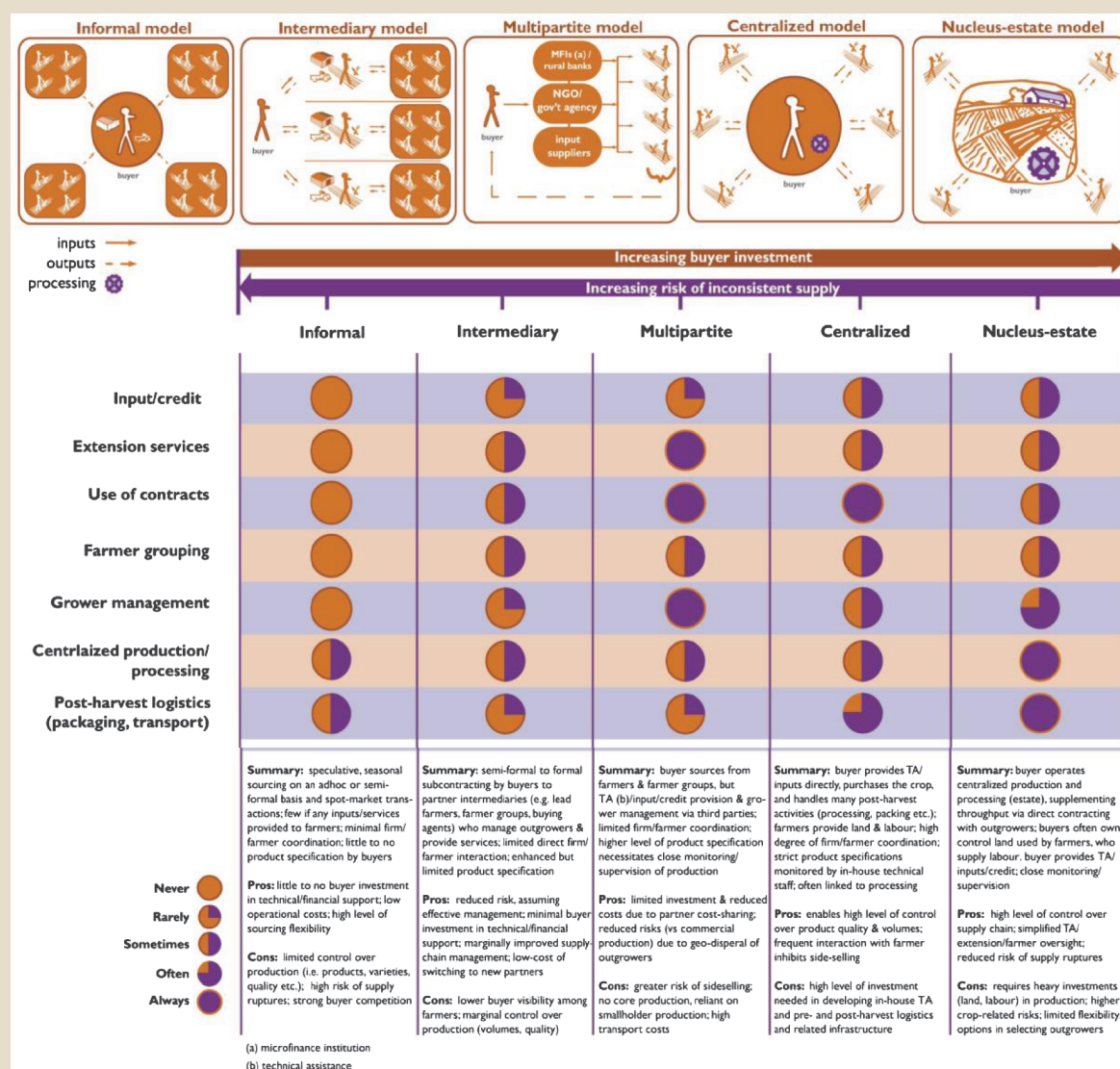
- The provision of inputs by the contractor (no inputs / part of the inputs / all inputs...)
- The provision of credit by the contractor
- The provision of technical advices or extension services or not
- The provision of other services by the contractor (soil preparation, pest control, transportation, quality control...)
- The form of the contract (oral, written)
- The contracting of individual producers or of groups / organizations of producers
- The involvement of other parties in the contract (financial institutions such as banks or MFIs, technical service providers such as quality control services or extension services...)
- Toughness of the quality requirements / specification on the products
- Imposition or not of production methods, and level of involvement of the contractor in the supervision or even the management of the production
- Risk sharing or not
- Exclusive right of the contractor on the production (or commitment of producer to supply a certain volume but not mandatorily the surplus over this agreed volume)
- Pricing method
- Centralized processing or on-farm processing
- Etc.

IFAD TYPOLOGY OF OUT-GROWER MODELS

There are countless possible combinations among all the criteria listed above, and thereof there is no standard model of contract farming. This leaves the opportunity for both parties (producer and buyer) to negotiate and tailor the model that suits them best.

Nevertheless, the literature presents different typologies based on typical models. We present in the box below a classification in five types of contract farming models as developed by TechnoServe and IFAD (with some comments below).

Typology of outgrower models (by TechnoServe and IFAD)



Source: Technoserve and IFAD (2011): “Outgrower schemes: Enhancing profitability”, Technical Brief, IFAD, Rome (Italy), September 2011. (<http://www.ifad.org/ruralfinance/pub/technoserve.pdf>).

INFORMAL MODEL

As described in the above typology by Techno Serve and IFAD, the “Informal Model” can actually hardly be considered as a model of contract farming. It is rather, for a Company, a model of sourcing products from producers possibly with prior discussion on the possibility to buy the product at harvest, but no formal commitment (even not oral) to actually purchase, and no contribution of the company to the producer, neither in term of input supply or credit, nor on provision of technology.

INTERMEDIARY MODEL

In the intermediary model, the buyer (the Company) is contracting an intermediary who will then be in charge to collect the production from the individual farmers. The intermediary may also make an agreement with the producers (in a more or less formal way) to ensure the supply of the products. Contracts with Farmer Organizations can somehow be considered as a particular case of the Intermediary model, in which the Farmer Organization (for instance and Agricultural Cooperative) play the role of collector and possibly convey technical advices and/or ease the supply with inputs and/or check the quality of products.

MULTIPARTITE MODEL

The “multipartite” model corresponds to cases of Contract Farming schemes which involve not only the producer on one side and the buyer on the other side, but involve additional parties with dedicated functions in the contract farming scheme.

For instance the system can involve an input supplier who will be contracted to supply the inputs to the producers, or a financial institution (bank or MFI) providing embedded credit services, or a service provider (sometime an NGO) to coordinate the implementation and manage the production or provide technical advices / extension services...

It has to be noted that Intermediary and Multipartite models can be combined, for example in a system in which the buyer contract middlemen (or cooperatives to act as collector) and involve another partner to provide complementary services such as agriculture extension or inputs distribution or credit.

CENTRALIZED MODEL

The centralized model is a formal model of contract farming with greater integration of the production process by the buyer. Formal contracts are signed with producers, and the level of engagement of the Company in the supervision of the production is important. In most of the cases the company will provide at least part of the inputs to be used and will provide (with its own staff) close advisory services and monitoring of the production. It is often mandatory for the producer to strictly follow the technical recommendations. This model ensures a higher level of control of the company over the product quality. But it represents a high investment for the buyer.

NUCLEUS ESTATE MODEL

The nucleus estate model is relatively similar to the centralized model, the difference being that the company (the buyer) source a large part of the products it will process and market from its own large scale farm or plantation (estate/ economic land concession...) and will source only a part of the raw agricultural products from contract with smallholder farmers. It is actually a quite different strategy for the company, but from the point of view of the contracted farmers the model is not very different from the Centralized Model described above.

One advantage of the nucleus model for a company investing in a costly processing unit is to ensure (from its own estate) a minimum volume of products to feed the processing unit (and thus ensure that the investment will be used), whereas there would be more risks for the investor to invest in a costly processing plant depending only on smallholder farmer supply, knowing that these smallholder farmers could decide to switch from one production to another depending on the evolution of relative prices of agricultural products.

A SIMPLIFIED TYPOLOGY BASED ON RESOURCES PROVIDED BY EACH PARTY

A simplified categorization of Contract Farming models is also frequently used, based on indicating who (from the buyer or the producer) is providing the 5 key following resources: land, labor, capital, technology and market.

Table 1.1.A.: Models of others condition in Contract Farming

Model	Farmers provide...	Buyer (/Company) provides...
2+3	Land and Labor	Market, Capital, Technology
3+2	Land, Labor and Capital	Market and Technology
4+1	Land, Labor, Capital and Technology	Market
1+4	Land	Labor, Capital, Technology and Market

Source: NAFES (2012): “Guidelines for Facilitating Fair Contract Farming”.

This typology is simplified, and intermediary models are possible (in particular it is likely that each party will provide part of the technology and part of the capital required for the production). Yet it is a good tool for a preliminary analysis of contracts, and to quickly identify key features of the agreement in the early stage of the negotiation process.

1.2. OPPORTUNITIES AND RISKS OF CONTRACT FARMING FOR DEVELOPMENT AND SMALLHOLDER FARMERS’ LIVELIHOOD

1.2.1. POTENTIAL BENEFITS OF CONTRACT FARMING FOR SMALLHOLDER FARMERS

There is a wide range of potential benefits for Smallholder Farmers to engage in Contract Farming. Depending on the cases, benefit can possibly include:

- Access to technology and quality inputs that can lead to improvement of productivity and/or quality of their products.
- Access to embedded credit to finance production costs (directly by the contractor or by an associated financial institution).
- Guaranteed access to market, and possibly to higher value market.
- Higher farm gate prices due to direct linkage with large buyers / exporters and/or due to an improved quality or improved valuation of the quality.
- More stable prices (depending on the type of price setting arrangement established in the contract – See § 4.7. “Price and price references”).
- Possibly an opportunity to develop new production and diversify the on-farm activities and incomes.
- In some case, if a risk sharing component is included in the contract, a reduced vulnerability to hazards.

Case Illustration 1.2.A.

Higher remuneration is not always the main motivation for farmers: access to technology/knowledge can also be a driver: case of a contract for rice seeds production

In 2013, an Agricultural Cooperative of Battambang province has accepted a contract with a rice miller for seeds multiplication. The contract validity was for one season only, and the key terms of the contract was that the rice miller would provide capacity building on the technology to produce seeds, would provide the foundation seeds at the price of consumption paddy, and would purchase at the harvest half of the seeds produced at the price of consumption paddy, the remaining half remaining the property of the cooperative to supply to its members for the following year.

In this case the terms of the contract regarding pricing are not favorable to the producers, since quality seeds produced are bought at the price of consumption paddy. Yet the cooperative has accepted the deal because the surface of land committed was very limited (about 2 hectares) and the benefit the cooperative was expecting was not the remuneration for the seeds produced and delivered, but the development of their knowledge and technical capacities to produce quality seeds: a know-how that they could further value in the long term, in the following seasons.

1.2.2. POSSIBLE RISKS TO CONSIDER FOR SMALLHOLDER FARMERS

On the other hand, engaging in contract farming can also present some risks for smallholder farmers:

- Imposed production methods can sometime fail to demonstrate higher productivity, either because they are exogenous and not well adapted to the local conditions, or because they are new to the producers and not fully mastered by them.
- Possibly the production methods imposed or recommended can signify higher investments / higher production costs, which means higher risk of losses in case of natural disaster or pest/disease affecting the production, and possibly a risk of increasing farmers' indebtedness.
- Production methods imposed or recommended can also have a different impact on the natural capital of the farm, notably on soil fertility. This has to be considered in the balance of pro and cons. Higher incomes today may not balance a longer term reduction of fertility.
- Last aspect regarding technical production methods imposed or recommended: the model can be proposed in a standardized way for several producers who do not all have the same assets in terms of production factors (land, labor, capital). Case by case adaptation to each farmer situation is not always possible or not always done, and efforts to select farmers² that have the more abilities to adapt to the proposed farming model are not always made.
- Prices obtained are not always higher, depending on the conditions to set the prices and on price references used.
- Engagement in Contract Farming may also mean more specialization for the farmers: allocation of more production factors (land, primarily) to the same production (same crop, same variety) with a reduced diversification, and thereof a higher vulnerability to risks (or a lower resilience).

² See notably the publication of Wageningen University: Ton G.; Mheen-Sluijer; J. van der (2009): "Contract farming checklist: a tool for reflection on critical issues in contract farming arrangements in developing countries".

- Limited capacities to complain or defend their rights in case of default of the contractor.
- Reduction of autonomy in decision making over the farm management.

1.2.3. OVERALL SOME CONDITIONS TO CONSIDER FOR CONTRACT FARMING TO BENEFIT SMALLHOLDERS

Overall, Contract Farming agreements can offer an opportunity for farmers to generate more incomes from their farming activities. But Contract Farming does not automatically generate benefits for farmers and the actual impact on livelihood really depends on the terms of the contract negotiated.

Involvement of Farmer Organizations rather than individual farmers is desirable since it can improve the bargaining power of farmers and the capacity to negotiate the contract. Support organization (public administration, NGOs, Federations of Farmer Organizations, projects, etc.) can also provide a support to analyze the terms of the contracts and evaluate benefits and risks and make sure the terms of the agreement are well understood.

As far as possible, it is favorable if the contract can guarantee minimum prices, covering production costs and leaving a fair remuneration for farmers' work. It is also desirable to maintain a certain level of diversification of production activities on the farm in order to reduce the exposure to risks.

1.3. CONTRACT FARMING FOR WHICH BUSINESS MODEL?

Contract Farming can be seen as a particularly relevant tool in the following situations:

1. To introduce in a region a production that is new to farmers, and thereof with no pre-existence of a network of local collectors. In that case the Contract Farming brings the market security that farmers need to start a new production, for which there would not be other market opportunities.
2. To introduce changes in production methods compared to farmer current practices (e.g. varieties, specific type of inputs, cropping or animal raising practices, etc.) and that will lead to a different quality of product, with more value added. Contract Farming is in such case particularly relevant if the support of the contractor help farmers to access inputs and techniques that they would not be able to access otherwise, and if the changes in practices and in the quality of outputs is rewarded by a higher price (or by an increase productivity).
3. To ensure a level of traceability or information on the production method that are required for the buyer to reach certain standards or certification, and that can further be valued on the market. Contract farming in such a case can also be successful, provided that a part of the added value generated by the certification obtained is shared with producers.

Note that for the situation 1 above, a fixed price contract is likely to be relevant, whereas for the situations 2 and 3 a model "market price + premium" is most of the time more suitable (See § 4.7. in the present Guidelines).

Case Illustration 1.3.A

Contract Farming for turmeric production by AKAY company in Battambang

AKAY is an Indian company which has started to develop contract farming with farmers in Battambang province for the production of turmeric.

For AKAY, Contract Farming is a way to source large volume of production of good quality turmeric from Cambodia (high curcumin content) with limited investment on land. For farmers, turmeric production represent an opportunity for crop (and income) diversification, which is made possible at a significant scale



only with this partnership with the company, as the market is otherwise limited (no export value chain for turmeric in Cambodia before AKAY investment).

Market risk is secured for farmers as contracts are established on a fixed price basis. Besides, the technical support of the company (including support to invest on drip irrigation for instance) provides a reasonable security on production. Also risk is limited as turmeric generally remains a secondary crop for farmers and contributes to a strategy of diversification.

◁ *Turmeric plantation under Contract Farming in Battambang*
(Photo: Akay)

In an environment where producers are in contact with several potential buyers for their products, Contract Farming to produce the same product as usual, and buy it at the same price as usual is useless. The process of negotiation of contract farming agreement and the coordination of its implementation often come at a cost that might be higher for the company than to get supply directly by a network of existing collectors. In the case of a dynamic local production and local market for the products, and if the purpose is to get the same product quality as what is already offered by producer, at the market price, then Contract Farming is not necessary and is likely to be more costly than the traditional supply chain for the buyer.

SECTION 2: CONTEXT OF CONTRACT FARMING IN CAMBODIA

2.1. HISTORY OF PRACTICES OF CONTRACT FARMING IN CAMBODIA

2.1.1. KEY FEATURES OF RECENT DEVELOPMENTS IN CAMBODIAN AGRICULTURE SECTOR

Agriculture plays a vital role in Cambodia's economy, accounting for about 26.3 percent of GDP in 2016 included 62.39% for vegetable, 11.96% livestock, 24.26% fisheries and 7.19% forest (Source: MAFF Report 2016). Over 90 percent of the poor live in rural areas and rely on agriculture for their primary sources of livelihood. The sector is characterized by small-scale farming: about 40 percent of farmers own less than one hectare of agricultural land.

Since one to two decades, Cambodian agriculture is also diversifying, with a significant development of production in the up-lands. Crops for industrial processing are extending in these areas, with notably significant developments of rubber, cassava and sugar cane productions. A development of more intensified livestock production is also an emerging trend of this same period.

Last, a recent feature of the development of Cambodian agriculture is a growing orientation toward export markets in few sub sectors (such as rice, cassava, spices, rubber...) which brings changes regarding the attention paid to quality and standards. This is a significant change, whereas in the previous decade, nearly all production was primarily focused on domestic market. Contract farming can be a way to connect producers to export markets, but also for exporters to accompany the evolution of the production and the necessary switches to improve quality, compliance with standards and traceability.

To improve agricultural productivity and market access for agricultural products, the government has been promoting Contract Farming at community level as a means of removing some constraints on agricultural growth and linkages to input and output markets. Key challenges include costly and difficult-to-access production inputs, often due to supply shortages and high prices; unreliable and poor fertilizer quality, leading to reduced yields; high interest rates on credit and debt; and lack of technical assistance. Contract Farming may also give small scale farmers the chance to join an established trading platform rooted in sound institutional frameworks that offer fairer prices and more stable demand.

Contract Farming is increasingly seen as an effective mechanism to maximize the inclusion of and benefits for small-scale farmers³, while giving some control over production to agribusinesses without requiring land ownership. In Cambodia, Contract Farming takes many forms and involves food and industrial crops. So far, there has been limited supportive action from government: most of the Contract Farming schemes are run by support agencies and contractors, with contract documents

³ Opportunities and risks for smallholder farmers are developed in Section 1.2.

(formula and format) drawn up by contractors without recourse to the coordination mechanism. Taking into account trend and the potential for the development of contract farming, but also the risks and the cases of failures that happened in the past, the Royal Government of Cambodia has issued the sub-decree No 36 on Contract Farming, signed by the Prime Minister on 24 February 2011 (See in Annex 1). In sub-decree, Ministry of Agriculture, Forestry and Fisheries is a main organization in communicating, coordinating, providing services under its competency to enable the development of contract farming, and also established a Contract Farming Coordination Committee (CFCC) who has the roles to prepare strategic planning policy to promote the contract farming, strengthen harmonization among the contracted parties, and intervene or solve conflicts arising from contract farming.

The Ministry of Agriculture, Forestry and Fisheries is expecting that with this framework, the promotion of Contract Farming to improve agricultural productivity and rural incomes will be more effective than in the past. However, there is much more to be done and improved in Contract Farming schemes. After the establishment of Sub-decree 36, MAFF in cooperation with private companies and development partners is conducting pilot actions on Contract Farming and aims to seek the best Contract Farming models that might maximize benefits for both small scale farmers and contractors. Currently MAFF has established circular 196 SRNN about the procedure on the implementation of Contract farming date 17th March 2017, which shown process of Contract Farming and Focal institutions in finding partners and facilitate CF to parties who wish to implement CF and also proposes a model of contract farming form (See Annex 4 and Chapter 4 of this Manual), and intends to develop additional support mechanisms and policy for Contract Farming development.

2.1.2. RECENT EXPERIENCES OF CONTRACT FARMING IN CAMBODIA

Contract Farming practices are still not widespread in Cambodia. Yet, in the last ten to fifteen years, there have been a few emblematic cases (quite successful) of contract farming partnerships between Companies involved in the processing and trading of agricultural products and farmers. Among the most famous ones are the development of tobacco production under Contract Farming schemes implemented by *British American Tobacco (BAT)* – See Case Illustration 2.1.A. below –, the development of fragrant rice production under contract farming agreements by *Angkor Kasekam Roong Roeung Company (AKR)* – See Case Illustration 2.1.B. next page –, or the development of livestock production with integrated models promoted by CP Group.

We can also mention the paddy production and purchase scheme developed by CEDAC for *organic Phka Rumduol* rice: this is an informal case of contract farming (only verbal commitment), but that has been extended at a relatively large scale (up-to 2,350 households involved).

Case Illustration 2.1.A

Contract Farming Scheme by British American Tobacco (BAT) in Kampong Cham⁴

BAT has developed production and sourcing of tobacco dried leaves through a contract farming scheme with individual producers. At its height, in 2010, this scheme has gathered up to 1,000 farmers (but nowadays reduced to only 350 tobacco growers due to lower demand). The supply has reached up to 2,000 tons of dried leaves.

This contract farming scheme can be considered as a centralized model (even if some other parties are involved but mainly as service providers contracted by BAT, such as PDAFF to provide IPM training to farmers, or CEDAC contracted to provide training on safe use of pesticide).

Besides outsourced trainings, BAT field staff provides the training on technical production that starting at beginning of planting until harvest and postharvest (drying). The technical support to farmers is quite intensive, one field staff being responsible for 20 tobacco growers.

Farmers are selected in an area close enough to BAT factory, and based on different factors, including their motivations. In addition to the technical support, the company provides seeds (imported hybrids) to farmers, on credit, and provides also credit for costs of other inputs for an amount of 10 % of the estimated value of the crop. Production costs are taken into account in setting the price.

More recently new initiatives of contract farming have started to blossom. Formal contracts have been experienced in the rice sector (notably with support from the *Support to the Commercialization of Cambodian Rice Project*), with quite successful cases (for instance in contracts established by AMRU Rice and Golden Rice companies with Farmer Organizations). Also in the very recent year, innovative models have started to be piloted by local or international companies, such as Cambodia Cassava Company (for cassava) or the Indian company Akay for turmeric production (See Case Illustration 1.3.A in previous section). These ones could be classified as “Centralized model” of Contract Farming, based on the typology developed in § 1.1.2. DIFFERENT MODELS OF CONTRACT FARMING. As for BAT or AKR companies, Contract Farming model is central in the business models of these companies, and it appears to be a growing trend for agro-processing industries focused on export markets.

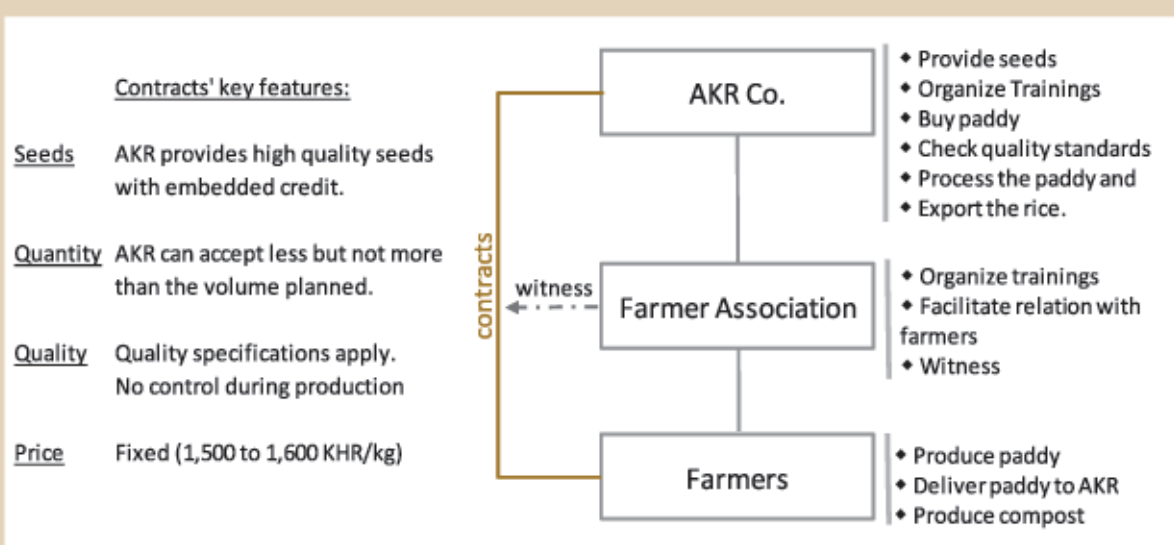
Besides these prominent cases, there are a number of informal agreements between small companies or middlemen that are experienced on the own initiative of these economic stakeholders. These deals are often verbal and are based on very limited investments by the buyer side (few - if any - inputs/services provided to farmers by the contractor and little to no product specification).

⁴ Based on study implemented by DAI and SCCRP project national consultant..

Case Illustration 2.1.B

Contract Farming Scheme by Angkor Kasekam Roong Roeung Co.⁵ with individual farmers

Angkor Kasekam Roong Roeung Co. has implemented a Contract Farming model (which could be qualified as a “centralized model” as per the classification presented in § 1.1.2. DIFFERENT MODELS OF CONTRACT FARMING. In 1999, AKR has started to work with approximately 2,000 households of smallholder farmers (average around 2 ha) for paddy production, and has progressively reached more than 30,000 households in four provinces (Kampong Speu, Kandal, Takeo and Kampot) at the height of the model development. This is to date one of the largest Contract Farming scheme ever developed in Cambodia. In AKR model, the company is providing technical assistance and inputs (seeds) directly to farmers and is then purchasing paddy with strict product specifications. Farmers are providing land and labors Production and quality of products is monitored by in-house technical staffs.



The contracts have very significantly contributed to promote and extend the cropping of fragrant rice varieties (commercialized by AKR under the name “*NeangMalis*”), as a substitute to low value traditional varieties grown by farmers. Even if the scale of this contract farming scheme has been reduced in the recent years, part of the changes that the contract farming have brought in paddy production are still sustained, in particular in term of improvement of the quality of paddy produced by farmers who have been involved in the scheme. Thus this contract farming had an impact on the rice sector as a whole and not only benefited to the sole company who has implemented it.

⁵ Based on the following study: Dani, Selvie (2014): “Étude sur les Pratiques de l’Agriculture Contractuelle pour la Culture du Riz au Cambodge”.

Case Illustration 2.1.C

Contract Farming Scheme by AMRU Rice (Cambodia) Co. Ltd. and Agricultural Cooperatives in Preah Vihear province for organic paddy supply

AMRU Rice (Cambodia) Co. Ltd. has developed a supply chain for organic paddy through a Contract Farming scheme involving several Agricultural Cooperatives in Preah Vihear province. This Contract Farming scheme can be considered as an “intermediary model”, the cooperatives playing a role of interface between their members and the company.

In 2016, more than 1,600 farmers (from 12 cooperatives) were involved in this Contract Farming scheme, and 8,000 tons of organic (based on EU and USA organic standards) paddy have been supplied to AMRU Rice.

When it comes to certified organic paddy, there is an absolute necessity for both party to secure their commercial link long time in advance before the harvest: For the Cooperatives, which are investing in an internal control system to ensure the certification, it is necessary to make sure that they will sell to one of the very few potential buyer ready to pay a premium for organic paddy. From the exporter point of view, because he started to prepare deals with clients to deliver organic rice, it is also crucial to make sure he will catch this supply from the very few producers who have the internal control system in place and can supply organic paddy. Contract farming is therefore a necessity for both parties, and is thereof very relevant in this case.

The company provides bags, and a technical training to cooperatives leaders on paddy quality assessment. The company is also responsible to transport the product from agreed collection points in the villages to the rice mill. Cooperatives are in charge of internal control and of the paddy collection (from farmer to collection point) and quality control. Moreover, the Cooperatives have set up a Union of Cooperatives (the first one registered in Cambodia) through which they mutualize the resources to mobilize permanent professional staff who are playing a vital role to supervise internal control inspectors, compile data from internal control and liaise with the Certification Body.

Contract Farming agreements cover different types of varieties (jasmine, white rice...), define different quality grades and set a pricing system based on a reference price + a premium. The premium varies according to the quality grade. The reference price is based on mill-gate price in the neighboring province of Kampong Thom (reference price is thereof already above the farm gate price locally offered by collectors in Preah Vihear), and the premium for organic is added on top of it.

For instance, for dry jasmine paddy (2016 harvest), the price paid by AMRU for organic paddy can be approximately from 26% to 40% (depending on the grade of quality) above the price offered by local collectors for the same conventional paddy. A part of this added value covers the management costs of cooperatives and Union, but most of it is captured by the farmers.

Case Illustration 2.1.D

Swine Raising Contract Farming Scheme by CP Cambodia Co.Ltd

CP Cambodia Co.Ltd is one of the biggest private company leading contract farming with small-scale farmers on broiler production farm and swine raising farm. The company is own by Thai investor and located in AngkSnuol district, Kandal province. There are approximately 800 swine houses contracted in the country in 2015-2016. CP agrees to hire the contract farmer to raise 550 to 600 piglets per batch. CP is responsible for providing the piglets weighing 15-20 kg, animal feed, drugs, vaccines and necessary materials needed for swine raising to the contract farmers, advice on the procedures to raise swine, including feeding, drug administration, vaccination and housing design and agrees to provide the compensation to the contract farmer. Whereas contract farmers are responsible to provide swine housing to raise the piglets till maturity. The swine house shall be built in accordance with the specifications provided by the CP. The farmer shall carefully inspect all the items provided and acknowledge the receipt. The farmer is required to keep the record of swine raising as well as the inventory of animal feed, drugs, vaccines and other materials in the forms approved by the CP. The farmer shall provide efficient laborers for raising swine and cleaning swine housing and assist the CP in the delivery of mature swine. The farmer shall receive a monetary incentive according to the Feed Conversion Ratio (FCR). If the fattened swine is sick or unhealthy or its body weight is less than 70 kg, CP will discard such swine. Contracts includes a provision for fines in case the contract farmer violates the terms of the contract, CP has the right to terminate the contract without giving any advance notice. CP may ask the contract farmer to pay the fines. The contract is made only between both parties who undersigned to attest they thoroughly understand the terms of this contract in front of the witnesses.

Case Illustration 2.1.E

Contract Farming Arrangement by Kampong Speu Palm Tree Agricultural Cooperative (KAMPATRACO)

Kampong Speu Palm Tree Agricultural Cooperative (KAMPATRACO) has been established in 2011 and located at TrapeangAntong village, Chan Sen commune, Oudong district, Kampong Speu province and there are 102 small-holders palm sugar producers who are producing and selling Kampong Speu palm sugar to KAMPATRACO, which sell that palm sugar to some members of KSPA (Kampong Speu Palm Sugar Promotion Association) and also non-members of the association such as Signature of Asia Co., Ltd. (SoA). Approximately 120 tons were sold by Kampatraco in 2016 to those buyers, who then retail the palm sugar domestic or export it abroad.

Kampong Speu palm sugar being a protected Geographical Indication (GI), KAMPATRACO, its members and its clients (if they repackage the product and use the name of Kampong Speu palm sugar) are all bound to be member of the association in charge of managing the GI, namely Kampong Speu Palm Sugar Promotion Association, and to comply with the specifications for the production of Kampong Speu Palm Sugar.

In 2016, KAMPATRACO made a contract arrangement with SoA for producing and supplying a big amount of palm sugar (200 tons) between January and December 2016.

Below are main agreements of the two parties based on the contract signed:

- The price of palm sugar is fixed (1,350 USD/ton including operational cost of KAMPATRACO);
- The quality of palm sugar is based on the book of specification of Kampong Speu palm sugar;
- SoA had to deposit 39,000 USD to KAMPATRACO after signing the contract;
- The payment of SoA to KAMPATRACO had to be done in 30 days after delivery of palm sugar;
- The payment is done by bank transfer and the transfer fee is paid by Signature of Asia;
- KAMPATRACO had to pay between 4,400-4,600 KHR/kg of palm sugar to the member of the cooperative, keep 100 KHR/kg as supported of the cooperative and pay to KSPA 100 KHR/kg.

Some direct supports were provided by KAMPATRACO to the farmers such as technical training following the book of specification of Kampong Speu palm sugar, credit support (200,000 KHR/household) ...etc.

Under this contract, KAMPATRACO could supply only around 106 tons of palm sugar (53% of total amount contracted) but even though the quantity could not be reached, there was not disputes between the two parties as they have met and discussed to solve all the issues.

In this case, the cooperatives play a role of intermediary between individual producers and company which are buying and marketing palm sugar, securing market outlet for producers and strengthening smallholder producers bargaining power.

Case Illustration 2.1.F

A case of intermediary Contract Farming arrangement for a GI Product by Kampot Pepper Agricultural Cooperative (KAMPACO)

Kampot Pepper Agricultural Cooperative (KAMPACO) has been established in 2009 and is located in Kampong Trach district, Kampot province. Currently, there are 185 small-holders pepper producers who are producing and selling Kampot pepper to KAMPACO, which then sell that pepper to 16 private companies as buyers. Approximately, 50 t to 60 t of Kampot pepper were sold by KAMPACO in 2015 and 2016 to those buyers, who then retail the pepper on domestic market or export it to the world market.

Kampot Pepper being a protected Geographical Indication (GI), KAMPACO, its members and its clients (if they repackage the product) are all bound to be member of the association in charge of managing the GI, namely Kampot Pepper Promotion Association, and to comply with the specifications for the production of Kampot pepper.

Operationally, KAMPACO makes contract arrangement with its individual member based on the following features: KAMPACO provides credit, training on product quality (based on book of specifications for Kampot pepper GI). Pepper is bought from farmer members by the cooperative (KAMPACO) based on a fixed price (currently set until 2018 at: 15 USD/kg for black pepper, 25 USD/kg for red pepper and 28 USD/kg for white pepper). Each contracted member is responsible to comply with the product quality requirements as set in the book of specification of Kampot Pepper Promotion Association (i.e. the requirements for the protected Geographical Indication).

On the selling side, KAMPACO has on-going contracts with 16 companies (buyers), which implies the following conditions:

- Pre-setting fixed price until 2018 (black pepper is 15 USD/kg, Red pepper is 25 USD/kg, white pepper is 28 USD/kg). The price is similar to the farm gate price.
- The above mentioned prices are inclusive of the service fee that are due to be paid by all producers of Kampot pepper to Kampot Pepper Promotion Association for using the name of Kampot Pepper (fees used cover GI certification costs, promotion and protection actions). The transportation costs for each delivery shall pay by the buying company.
- KAMPACO is responsible on product quality based on book of specification of Kampot pepper Promotion Association.
- Company has to pay a deposit of 20 % of total price to KAMPACO.

In this case, the cooperatives play a role of intermediary between individual producers and companies which are buying and marketing Kampot pepper, securing market outlet for producers and strengthening smallholder producers bargaining power. In this case, due to the reputation of Kampot pepper, the high demand for it and the protection provided by its GI status, the producers are in a relatively strong position to negotiate prices.

The practice of verbal agreement for production and selling of agricultural products exist in Cambodia but is very informal and not well documented. In many case, it rather fall under a widespread practice of money-lending, the pre-financing being the main driver for farmers and the delivery of product (with limited quality specification required) being seen as an in-kind reimbursement. On the other hand, the number of formal, large and successful cases of Contract Farming in Cambodia is still quite limited. But there is a growing interest for the model and a number of new initiatives are blossoming at present for various crops.

2.2. LEGAL BACKGROUND FOR CONTRACT FARMING IN CAMBODIA

It has to be noted that UNIDROIT / FAO / IFAD have co-published recently in 2015 a Legal Guide on Contract Farming. Much more than an instrument of policy guidance, it is a soft-law instrument (non-binding law), a reference instrument for the promotion of good practices, aligned with international criteria. Reference and internet link to this document are provided in the Bibliography section of the present Manual. This Legal Guide is also a highly recommended reference.

In contract farming, the legal sources governing the relationship between producers and buyers are led, first by the general principles of contract defined in the Civil Code and by customary rules and usage (See section 2.2.1. below) and second, by special legislations related to agriculture (See section 2.2.2. from page 24).

2.2.1. CORE LEGISLATIONS

THE CIVIL CODE

A Contract Farming agreement is first of all a contract. The Civil Code defines the legal ground of private law including the legal foundation of a contract: general principles (book 1), obligations (book 4) and particular types of contracts (book 5).

The general principles include: the principle of good faith, the principle of reasonableness, the preference for preserving the contract and its effectiveness, loyalty and fair dealing. It is worth noting that the parties may wish to refer to general principles in their contract, or to apply these principles to their relationship in general or for certain aspects.

The Civil Code mentions different general principles as:

- The prohibition of “abuse of rights” or the “principle of good faith” as in most developing countries, contract farming tends to be unequal to the detriment of smallholders with lacks of information and in weak economic position vis-à-vis buyers in stronger situation firms who may want to impose their provisions as they are almost in monopsony position.
- The principle of freedom of choice also called “principle of the autonomy of the will” or “principle of party autonomy” is susceptible to become a legal issue in the situation where the buyer/trader establishes and supports the farmer's organization. For a fair relationship between parties, the Civil Code prevents the stronger party to receiving excessive benefits from the weak party, pushed to accept all conditions: “Should a party enter into a contract while taking advantage of the other party's economic difficulties, ignorance or inexperience, and receive excessive benefits from said contract, the counter- party may rescind the contract on the grounds of defect in the declaration of intent”.
- The principle of public order and good morals: The Cambodian legislation is no exception regarding the supremacy of public order and moral which limits the principle of party autonomy. A provision of contract which contravene “law or public order and good morals” shall be deemed as void. Moreover, if the producer uses employees, he shall comply with the labor law and human rights principles as set out in the preamble of the Cambodian Constitution. Even to increase his productivity, the producer shall not harm the environment.

The obligation is the core notion of a contract. According the Civil Code, an obligation is “a legal relationship that joins a particular person with another specified person through the former person assuming a certain obligation with respect to the latter specified person”. Through the obligation, the book 4 defines the basis of a contract and its core legal issues, from its formation to the resolution of conflicts, including its content and object, its effects, its performance or non-performance and remedies. The Civil Code defines a contract as “the matching of intentions held by two or more parties for the purpose of creating, amending or extinguishing an obligation”.

In order to achieve successfully the complex economic operation of contract farming, not only it requires a contract between the buyer and the farmer, but also it shall take into consideration the other surrounding relationships between the farmer and the other third-parties requiring contracts such as: contracts of employments between the farmer and its staff, may be a contract of crops insurance between the farmer and or a loan contract between the farmer and the bank, etc...

Moreover the contract between the buyer and the farmer is itself also a composition of contracts, since it is simultaneously a contract of work (the buyer pays the farmer to produce the product) and a sale contract (the farmer sells its products to the buyer): a contract of work is “a contract whereby one party (the contractor) assumes the obligation to complete the agreed upon work and the other party (the principal) assumes the obligation to pay remuneration for the results of such work”; a sale is “a contract whereby one party, referred to as the seller, is obligated to transfer ownership or other property rights to the counter-party, referred to as the Buyer, and the Buyer is obligated to pay a purchase price to the seller”.

CUSTOMARY RULES AND USAGE

Cambodia is rich in tradition, custom, and culture across the country. The current legal system is a hybrid legal system, which is an amalgamation of Cambodian customs, the French based legal system (an influence from French colonization), and the common law system, which is an influence arising from foreign aid assistance to legal and judicial reform in Cambodia.

Therefore, customary rules and practices are considering as secondary sources: the Decree No 38D referring to contract and other liabilities dated October 28, 1988 stated that “the following contracts shall be deemed void when it is illegal, and not consistent with public order or good customs” and if the contract is not clear in meaning, that contract shall be interpreted according to common practices or customs of the place where the contract has been made, but the interpretation shall not conflict with the provisions of this law. If there is any ambiguity, the contract shall be interpreted in favor of the obligor party”.

However this regulation, in theory, shall not be enforceable anymore since the new Civil Code enters into force in 2011, replacing it and does not contain any reference to customary law as the previous decree. But, in practice, because of the new Civil Code’s under-standing and implementation difficulties, parties, third parties, judges, lawyers and other practitioners still consider customary rules and practices as legal bases in contract issues, including in contract farming relationship. Indeed, Cambodian customs are still used by contractual parties and have a core value and an important role in the implementation of law in case of the silence of the written texts. The lack of law provisions is overcome by non-uniform practices specific to each village.

Hereby some example of invocation of customary rules:

- The contract can be negotiated verbal and then drawn up and signed according to local custom;

- Concerning the ownership of land by an indigenous community in which rights of the community members and the community as a whole are recognized by law and ownership is subject to the responsibility of the traditional authorities and the customary decision-making mechanisms of the community as well as to the governing laws.

- According to tradition, a dispute resolution is settled by the elder in the village, outside the judicial tribunal.

2.2.2. SPECIAL LEGISLATIONS RELATED TO CONTRACT FARMING

RELATED TO AGRICULTURE CONTEXT

Cambodia has not a code of agriculture yet. The development of legal and regulatory framework related to agriculture is only at its beginning. But mindful of the importance to enhance the agriculture sector, the Ministry of Agriculture, Forestry and Fisheries (MAFF) has started to draft and set up some key laws and regulations related to agriculture. For the relationship issues between producer and buyer in contract farming topic, we will focus only on the last legal texts which are the most recent and relevant. The special legislation related to agriculture impacting contract farming is expressed by the:

- Royal Decree on the Establishment and Functioning of Agricultural Cooperatives, Union of the Agricultural Cooperatives and the Pre-Agricultural Co-operatives adopted in July 2001 but effective since June 2013. It allows a group of farmers to establish a farming based enterprise that they can own together, manage, and monitor through collective shareholding or business and gain bene-fits.

- Law on Establishment of Agricultural Cooperative adopted in May 2013 and promulgated in June 2013: the Royal Government of Cambodia “encourages the formation of associations, agricultural communities, or agricultural organizations as the bases to develop contact-based agriculture”. Following this policy, the Law on Establishment Agricultural Communities allows farmers to organize themselves in legal cooperatives, and establishes agricultural cooperatives, unions of agricultural cooperatives, and the alliance of agricultural cooperatives. This law defines an agricultural cooperative as a private legal entity functioning as an establishment for agricultural economy.

RELATED TO AGRICULTURAL MATERIALS

At present, seed production and trade are primarily governed by the following law and regulations:

- Sub-decree No. 69 on Standards and Management of Agricultural Materials adopted in October 1998 is identified as the legal Framework for Agricultural Materials and Products in Trade. It aims to ensure high quality agricultural material inputs such as fertilizers, seeds, pesticides, feedstuff to enhance agricultural productivity. The Sub-Decree stipulates that all agricultural materials produced or imported must be registered with the Ministry of Agriculture, Forestry and Fisheries (MAFF). Furthermore, any individual who intends to manufacture, import or export these materials shall obtain a permit from the MAFF and shall conform to the quality standards prescribed by the MAFF.

- Sub-Decree No. 15 on Phytosanitary Inspection adopted in March 2003. It is identified as a legal framework for phytosanitary inspection and aims to prevent the introduction of quarantine and dangerous pest into the country through plants plant products, seed and seed materials.

- Law on Seed Management and Plant Breeder’s Right adopted in June 2008 regulates the production and trade of seeds and protect breeders’ rights.

The MAFF is leading efforts to draft laws and regulations to supplement the existing legal framework governing the seed sector in order to implement standard and certification for seed, these new laws include:

- Draft Standards on National Seed sets minimum standards required for the certification of seeds for genetic purity and identity of the variety with a focus on standards of rice, maize, mungbean, soybean, pumpkin seeds. This document will cover the requirements, conditions and procedures of seed production and seed certification.
- Draft Prakas on Procedure for Providing Seed Quality Certification aims to provide the procedure for granting certification of seed quality for any varieties, including existing and new varieties of crops that are subject to quality control for the purpose of management and marketing of seed production in order to protect agricultural production and increase agricultural productivity.

RELATED TO ENVIRONMENT PROTECTION

Cambodia has a law on bio-safety adopted in February 2008. The main purpose of the law is to take and implement the precautionary approach on biosafety, notably to:

- Prevent adverse impact on the conservation of biodiversity and natural resources in the Kingdom of Cambodia caused by the transboundary movement, development, handling, transfer, use, storage, and release of living modified organisms resulting from modern biotechnology.
- Ensure effective conservation of biodiversity and sustainable use of biological resources, taking also into account risks to human health.

Additionally, a Sub-Decree on Mechanisms and Procedures for implementing the Law on Bio-safety has been issued, which addresses detailed requirement to control the Living Modified Organisms (LMOs) movement and their risks. The aims of this Sub-Decree are: (i) to prevent a negative impact on conservation of biological diversity, environment and human health; (ii) to ensure effectiveness of conservation and usage of biodiversity in a sustainable manner; (iii) to promote an awareness of modern bio-technology and to hinder and prevent risks to modified living organisms; and (iv) to protect the environment and human health.

These law and sub-decree, under the Ministry of Environment, regulate import and export of Living Modified Organisms (LMOs). The process of import LMO into the Kingdom of Cambodia requires two levels of control: (i) the National Steering Committee for LMO and (ii) the Technical Working Group for Risk Assessment, chaired by the Ministry of Agriculture Forestry and Fishery and which involves other relevant Ministries. The Steering Committee submits the result of risk assessment to the Ministry of Environment which issues the final decision to allow or not the import of LMO based on risk assessment results.

RELATED TO CONTRACT FARMING

The Sub-Decree 36 on Contract Farming (see Annex 1) adopted in February 2011 defines the implementation framework for contract-based agricultural production in Cambodia and sets out four objectives as follows:

- Strengthening the responsibility and trust between producing and purchasing parties based upon the principles of equality and justice;

- Ensuring the accuracy of the prices, purchases, and supply of agricultural crops, both on quantity and quality;
- Increase purchasing, processing and exporting of agricultural crops;
- Contribute to national economic development and people's poverty reduction pursuant to the policies of the Royal Government.

The Sub-Decree provides provisions relating to the implementation framework of the contract farming, called "contract-based agricultural production", the roles and responsibilities of the State ("bridge between investors and farmers, producers, processors in the framework of contract-based Agricultural Production"), the obligations of producers, the obligations of purchasers, and also the resolution of conflicts.

Whereas the Civil Code states the freedom of choice as an essential principle by all forms of contract – "[a] contract is the matching of intentions held by two or more parties to create, change or extinguish an obligation"; "a contract comes into effect when an offer and an acceptance thereof conform to each other" –, the Sub-Decree, considering the contract of contract-based agricultural production as a sale contract, sets out that "the Contract Farming agreement shall be in written format and be authentic letter". Indeed according to the article 516 of Civil Code, "A sales contract shall be formed based solely on an agreement between the parties thereto unless otherwise provided by law. The parties may require the execution of a notarized document or a written document signed by the parties in their individual capacities as a condition for the formation of such contract."

Regarding the obligations of the producers and the buyers, both parties have the obligations to comply with conditions as inscribed in the contract:

The buyer shall clearly specify the commodity items such as quantity, quality, place, and date of delivery and acceptance of the commodities; provide agricultural materials and/or technical services and/or other supports as agreed to achieve desired results; and/or provide credit advance. In counterpart the producer shall proceed production activities based on seasonal and required timeframe; supply on time, in term of grade, quantity, and quality and due timeline; accept the payment of product value as set in agreement. The fact that the determination of price and quantity is not set clearly yet, could weaken the farmer who expects to maintain a minimum of price and quantity because of its obligation to pay the credit he contracted in this operation.

The significant role for the state in supporting contract farming arrangements:

- Bridge investors and farmers, producers, processors;
- Promote and encourage the formation of associations, agricultural cooperatives, or agricultural organizations as the bases to develop contract-based agriculture;
- Enhance the standard, classification and quality of agricultural products to conform with the markets demands and international norms;
- Involve in addressing conflicts and problems pertaining to the implementation of Contract-based Agricultural Production on the basis of existing laws and interests of parties of the contract;
- Facilitate access on land legal right to producing and farming parties and adequate financing to conduct agri-business and agro-industry;

- Provide access to technical supports, good quality crop seeds, aquatic animal species, vegetation species, animal breeds, means of production, high quality of fertilizers, pesticides;
- Enhance intensive production and agricultural diversification and competitiveness of produce and transform low to high-priced products to serve domestic market and exportation;
- Facilitate agri-business, agro-industry, and exportation;
- Strengthen and expand the capacity and facilitate sanitary and phytosanitary inspection.

The dispute resolution mechanism: additionally, the sub-decree specifies an “Institution and Coordinating Mechanism”, dedicated to the roles and responsibilities of the State. It also defines a coordinating committee called “Contract Farming Coordination Committee”.

The sub-decree sets out the dispute resolution mechanism by indicating that any dispute relating to the implementation of the contract farming shall be resolved amicably in accordance with the conditions provided in the contract. In case of failure of amicable resolution or of resolution by specialized institution, the dispute could be resolved at the will of parties by pursuing the mechanism stated in the sub-decree. Therefore, the parties could agree for any resolution (negotiation, meditation, judicial system or arbitration) without appealing the coordinating committee.

2.3. POLICY AND SUPPORT MEASURES FOR CONTRACT FARMING IN CAMBODIA

2.3.1. CONTRACT FARMING IN GOVERNMENT POLICIES AND STRATEGIES

Contract Farming is explicitly mentioned in various policy or strategy documents of the Royal Government of Cambodia as a potential tool to improve the commercialization of agricultural products and to support some policies under the Promotion of Agricultural Sector. To promote agriculture sector RGC will continue to push commercial orientation of agriculture and development of the Agro-Industry sector, which result in value added of agriculture products, as a result increase farmer's income, RGC has produced the Policy Paper on the Promotion of Paddy Production and Rice Export (2010) that encourage smallholders farmer to gather as a legal organization (FOs) acts as the producers and supplier to collector company via Contract Farming practices. Similarly the National Strategic Development Plan (NSDP) 2014-2018 stresses the need for an "enhanced partnership between farmers, traders and paddy processing industries" and evokes Contract Farming as a possible way to achieve this (See RGC's National Strategic Development Plan 2014, page 95-96 in English version, paragraph 3.50).

The Industrial Development Policy of Cambodia 2015-2025 (which includes agro-industrial development as part of its scope) also underlines the challenges of building reliable and timely supply chain for the agro-processing industry (page 10 in English version).

Therefore, the Sub-Decree No36 on Contract Farming demonstrates the Government's willingness to respond to above policy, especially the linkage between smaller farmers holders with collector companies or large scale processing companies to purchase agriculture products with guarantee quality, quantity and time, answer to market demand, moreover it will contribute to risk reduction to small farmer holders by having production plans and market. However, to put Contract Farming to work effectively, immediate attention needs to be paid to develop and implement specific policies, strategies and action plans. And last, it shall be underlined that Contract Farming is not an objective in itself, but a tool that can be enhanced and promoted whenever it is relevant (See notably § 1.3. Contract Farming for which business model?).

2.3.2. PUBLIC SUPPORT MEASURES TO THE DEVELOPMENT OF CONTRACT FARMING

POSSIBLE INVOLVEMENT AND SUPPORT OF MAFF SERVICES IN DEVELOPMENT OF PARTNERSHIP, IN CONTRACT FARMING NEGOTIATIONS AND IN CONFLICT RESOLUTION

Based on the Sub-Decree 36, MAFF services (the Department of Agro-Industry and the Provincial Departments of Agriculture Forestry and Fisheries) circular 196 SRNN about the procedure on the implementation of Contract farming date 17th March 2017 can propose some supports in order to:

- Identify potential partners (for agro-industry willing to develop Contract Farming with smallholder farmers, or for small-holder farmers or Agricultural Cooperatives / Farmer Organizations willing to identify potential contractors).
- Take part in the negotiation of the terms of the contract (if parties wish to) and provide advice in this process.

- Witness or endorse the signature of the contracts.
- Play a facilitation or mediation role in Conflict resolution, if signatories of the contracts (both parties) agree to use MAFF services (or the National Coordination Committee for Contract Farming?) as facilitator[See Section 4.13 and 6.2.2. in this Manual].

OTHER NATIONWIDE AND PERMANENT SUPPORT MEASURES

At present, beyond the possible support in Contract Farming negotiation and implementation mentioned above, there is no additional nationwide and permanent support measure to contract farming development. But such measures could be decided in the future and up-dates on possible support that economic stakeholders can receive for the development of Contract Farming scheme can be received by contacting the Department of Agro-Industry of MAFF, which is the focal point for Contract Farming development.

Box 2.3.A: Possible support from Government project on Linking Small Farmers to the Market through contract farming operation

Background: from 2016, Department of Agro-industry has got budget from Cambodian Government amount 100 million riels per year to support matching forum for private companies and small farmers for selling and buying of agricultural products through contract farming operation. However, the budget is still very limited for providing these services throughout the country.

Geographical coverage: Nationwide (25 provinces).

Period of implementation: starting from 2016.

Possible eligible support related to Contract Farming: DAI can provide support in 5 steps as follows:

(1) Identify potential area and potential commodities; (2) Linking small farmers and private companies through CF forum; (3) Facilitate negotiation, (4) Assist to develop draft of contract agreement, and (5) Endorsement of contract farming agreement.

Modalities and contact: Applicants who are interested in contract farming operation will apply to DAI or PDAFF (office for Agro-industry).

PROJECT-BASED SUPPORT MEASURES

In some cases, economic stakeholders (buyers and/or smallholder producers or agricultural cooperatives) willing to develop contract farming might be able to gather supports from governmental development projects, frequently implemented with the financial support of development partners. In these cases, the proposed supports may not be available nationwide but only in the geographical area covered by the given project. They also may not be available permanently but only within the project duration, and they may be proposed for specific value-chains depending on the scope of projects.

It is therefore impossible to provide in this manual an exhaustive and permanent list of possible supports that stakeholders can access, and it is recommended to contact MAFF, the Department of Agro-Industry or locally PDAFFs to get up-to-date information.

2.3.3. CROSS-BORDER CONTRACT FARMING: POSSIBLE SUPPORT FROM CAMBODIAN GOVERNMENT ON COOPERATION IN THE PROMOTION OF CONTRACT FARMING UNDER ACMECS

A Memorandum of Understanding has been signed on 11 June 2013 between The Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand to enhance cooperation in the promotion of cross-border Contract Farming under the “Ayeyawady Chao Phraya Mekong Economic Cooperation Strategy” (ACMECS). According to this MoU, the Government of the Kingdom of Cambodia shall permit and facilitate the importation by authorized companies from Thailand of seeds, seedlings, fertilizers, equipment and machineries, and other supplies necessary for their contract farming activities under the scheme into the Kingdom of Cambodia according to regulations and laws of the Government of the Kingdom of Cambodia. The Government of the Kingdom of Cambodia shall be responsible for granting privilege tax incentives, including duties, levies or other types of fees for the importation of machineries, equipment, seeds, seedling, fertilizers and materials to be used by the Thai companies to carry out contract farming activities into the Kingdom of Cambodia.

The geographical coverage of this MoU corresponds to the 7 provinces located along the border between Thailand and Cambodia, namely: Koh Kong, Pailin, Battambang, Banteay Meanchey, Otdar Meanchey, Pursat, and Preah Vihear.

The period of implementation of this MoU starts from the date of its signature, for an initial period of 5 (five) years and it can be extended as agreed upon by the contracting parties.

Both parties have already set up a Joint Bilateral Working Committee (JBWC) which shall play a role in assisting the implementation of Contract Farming (See Annex 6). Currently list of potential agricultural products, CF application form and CF standard form are being discussed.

More information on modalities can be provided by the Department of Agro-industry of the Ministry of Agriculture, Forestry and Fisheries, as the secretariat agency for the JBWC.

SECTION 3: PROCEDURES FOR FACILITATION OF CONTRACT FARMING NEGOTIATION AND REGISTRATION OF CONTRACTS

3.1. WHO CAN PROVIDE SUPPORT FOR THE DEVELOPMENT OF CONTRACT FARMING AGREEMENTS

3.1.1. MAFF'S SERVICES SUPPORT PROPOSED TO ECONOMIC STAKEHOLDERS WILLING TO DEVELOP CONTRACT FARMING

DEPARTMENT OF AGRO-INDUSTRY AS THE FOCAL POINT FOR MAFF SERVICES RELATED TO CONTRACT FARMING

With reference to the Sub-Decree No 36 on Contract Farming, dated February 2011 (Article 10) and circular 196 SRNN about the procedure on the implementation of Contract farming date 17th March 2017, the Department of Agro-Industry (DAI) is acting as the focal point on behalf of MAFF and the secretary of the Contract Farming Coordination Committee - CFCC).

For the government / public sector side, DAI is thereof the lead body in communicating, coordinating, providing services under its competency to enable the development of contract-based agricultural production.

In practice, the Department of Agro-Industry (directly or via the mobilization of the Offices of Agro-Industry of the Provincial Departments of Agriculture, Forestry and Fisheries) can provide the following support to stakeholders (producer side or buyer side) who intend to develop partnerships based on contract farming agreement:

- Help stakeholders to identify partners;
- Provide Contract Farming Application Form, and CF standard form and take part in the facilitation of discussion of the terms of the contract, ensuring that all key questions are discussed and answered (see Section 4 of this Manual on the format of application form, CF standard form – Annex 4 – , and the questions the contract should answer and on possible ways to answer them);
- Take part in facilitation / mediation in case of dispute during the implementation of the contract.

PROCEDURE TO MOBILIZE MAFF SUPPORT

In order to mobilize MAFF support economic stakeholders interested to develop partnerships based on Contract Farming should follow the following procedure:

- The applicant (who can be producer party or buyer party) has to contact the Department of Agro-Industry directly in Phnom Penh at the contact address indicated below or at provincial level through the Agro-Industry Office of the Provincial Department of Agriculture, Forestry and Fisheries (PDAFF).
- The applicant will be advised to use the CF application form (See Annexes 2 and 3 in this Manual) and CF standard form (See Annex 4) to request support for Contract Farming Development and to

assess the stage of development of the Contract Farming project and to ease access to supports or incentives from the Government, if any. Furthermore, the applicant (for instance a company willing to source raw agricultural products) may contact DAI at an early stage to request general information on Contract Farming in Cambodia, on potential agriculture production area, potential producers and supplying capacities.

- After that, officers from DAI and PDAFF (Office for Agro-industry) will meet the applicant to provide information and intervene in the following steps:

1. Meet the applicant to get information on his motivations and his project, and provide him information on Contract Farming in Cambodian context CF application form, and CF standard form;
2. Check capacities of parties that proposed to implement contracts (See notably §3.2. in the following pages);
3. Help to identify potential partners if needed;
4. Provide information on other possible supports from MAFF, from project or from other governmental agencies that could be accessed by the applicant;
5. Facilitate negotiation between the two parties in order to determine full conditions of the contracts and make sure all the relevant questions are addressed in the contract (see Section 4 of the Manual);
6. Issue an acknowledgement letter of the Contract Farming agreement after both parties have signed following DAI and PDAFF's guidelines.



DAI CONTACT:

DEPARTMENT OF AGRO-INDUSTRY

No 242, PREAH NORODOM BOULEVARD KHAN CHAMCAR MORN

PHNOM PENH

PHONE: +855 (0)23 213 145, +855(0) 12 38 63 97, +855(0)17 59 69 16, +855(0)12 41 05 08

E-MAIL CONTACT: dai-maff@camnet.com.kh, pheachkong@gmail.com,
yihak77@gmail.com, omsovannak@gmail.com

3.1.2. OTHER ENTITIES ABLE TO PROVIDE SUPPORT AND ADVICES

It is obvious that the Ministry of Agriculture, Forestry and Fishery has no monopoly on providing advisory services to businesses or Farmer Organizations willing to develop commercial partnership / supply chains based on Contract Farming agreements. Other entities can also be mobilized by economic stakeholders to support the development of contract farming partnership in ways that can be complementary to MAFF services. For instance:

- Projects, National or International NGOs can possibly provide expertise (often based on international experiences) and in some cases additional support (material or in term of capacity building);
- Federations of Farmer Organizations may develop services to support their members in developing their managerial capacities and linking with potential partners.
- Business organizations, in particular when focused on specific value chains, such as Cambodian Rice Federation for instance (or equivalent organizations for other value chains), can offer platforms to help producers and buyers to get in touch and identify relevant commercial partners. In some case they can also develop “code of conducts” to standardize practices and ensure fair commercial relationships.
- Of course lawyers or consulting firms can also be mobilized by economic stakeholders to advice on contracts’ development.

At the stage of implementation of contracts, other entities can also play specific roles and can be referred to in the contracts, for instance:

- Price monitoring / market information entities can serve as reference for price (if the contracts are not based on fixed price but use an agreed price reference – See § 4.7. in this Manual).
- Laboratories, Inspection bodies or certification bodies can help to define criteria and methods to assess quality of product or can serve as a referee in case of dispute on the evaluation of the quality of products delivered.

3.2. SELECTION OF A PARTNER⁶ (BUYER/PRODUCER)

Both parties involved in the project of Contract Farming partnership need to get information on each other, and each party has to make its decision to enter in contract with this proposed partner.

As part of the support to Contract Farming, MAFF services (DAI and PDaffs) can help to screen the potential partners (both producers and buyers) and can provide an opinion to each stakeholder on the other party. Since, for producers in particular, it is not easy to assess the reliability of the company which proposes the contract, producers (via their cooperative or producer organization if any, or possibly via local authorities if they are contacted by a company as individual producers) are strongly encouraged to request this help from MAFF services to verify the reliability of their partner.

The two sections below are listing some criteria that can be considered in assessing the reliability of both parties.

⁶ Some elements in this section have been inspired by the very good “Guide for Facilitating Fair Contract Farming” published by National Agriculture and Forestry Extension Services (NAFES) and the Laos Extension Agriculture Project (LEAP) in Lao PDR in June 2012.

3.2.1. ASSESSING THE RELIABILITY OF THE BUYER

The table below proposes a check-list of possible criteria that can be considered and assessed by producers (or by MAFF services, to help them to make their decision) before they get engaged in a Contract Farming agreement with a company.

Table 3.2.A.: Basic Check-list of criteria to consider while assessing the reliability of the buyer side (agro-industry company)

No	Criteria	Source of verification	Answer			Remarks / Comments
			Yes	No	Not sure /?	
1. Company institutional identity and registration						
1.1.	Name and address of the company is known	Registration document				
1.2.	Company is registered in Cambodia	MOC registration / Patent				If no, see specific procedure for cross-border CF (?)
1.3.	Authorized representative is identified	Power of attorney				
1.4.	Relevant licenses /permits	Check with Company.				
2. Company reputation						
2.1.	Company is well known					
2.2.	Company reputation is good					
2.3.	Company already implement business in other countries					
2.4.	Company already implement business in other provinces					
2.5.	CSR certification	Check with Company				
3. Financial reliability						
3.1.	Company own capital					
3.2.	Company turn-over					
3.3.	Immovable assets in the country (land/plant...)					
3.4.	Know experience of insolvability or late payment of suppliers					
3.5.	Bad debts reported?	Banks? / Credit bureau?				
3.6.	Proposed financing arrangement? Is the company self-funding or expect a loan?					
4. Commercial / business reliability						
4.1.	Company has a proven and reliable market for the products	Possibly check contracts with Clients				
4.2.	Company has clearly verified the yields and profitability of the product in a smallholder context in Cambodia.	Company feasibility study for the project.				

3.2.2. IDENTIFICATION OF POTENTIAL AREA AND PRODUCERS

At an initial stage, the investor / company will start with a preliminary identification of potential area for the crop/livestock production they wish to be supplied with. DAI or other MAFF services can help the company to find agricultural zoning information. Then the identification process is pursued at provincial or district level in areas pre-identified as suitable.

The support of PDAFF services is likely to be useful at this stage in order to enhance their knowledge of agricultural situation, not only from a purely technical point of view, but also taking into consideration existence of organized Farmer Organizations or Cooperatives, for instance, or also socio-economic constraints (land availability, labor, capital, temporary migrations, etc...).

Farmers themselves (or farmer representatives) shall be associated and proceed with a self-assessment of their capacities to fulfill the requirements of the considered crop/livestock production and at the scale it is envisaged to be implemented.

The table below proposes a basic checklist of criteria that can be considered in the assessment of producers / producer organizations.

Table 3.2.B.: Basic Check-list of criteria to consider while assessing the suitability of producers

No	Criteria	Answer			Remarks / Comments
		Yes	No	Not sure /?	
1. Agro-ecological conditions					
1.1.	Land availability?				
	↳ Land surface and current status (unused land? Used for other crops? Already used for the same crop → just change in market destination)...				
	↳ Soil quality.				
1.2.	Climatic suitability?				
1.3.	Availability of irrigation?				(if relevant for the crop)
1.4.	Potential risks (pests/disease... presence of other crops or animals nearby which could carry diseases...)				
1.5.	If required: eligibility for specific certification (e.g. organic certification...)				
2. Technical capacities					
2.1.	Familiarity of farmers with the proposed crop or production (or with similar crops or productions)?				
2.2.	Possible access to technical services / extension services.				
3. Socio-economic conditions					
3.1.	Labor and time availability (take into account seasonal activities, possible migrations, other on-farm and off-farm activities).				
3.2.	Availability of equipment required or capital? Access to credit?				
3.3.	Expected incomes generated and opportunity-cost.				
3.4.	Impact on other farm activities or sources of incomes.				
4. Farmer Organization (if contract is foreseen to be signed with a Farmer Organization / Cooperative).					
4.1.	Existence of a Farmer Group / Cooperatives?				
4.2.	FO officially registered (legal entity: can sign contract)?				
4.3.	Experience of the FO in providing technical services to members.				
4.4.	Planning capacities and experience of product collection and commercialization of the FO.				
4.5.	Existence and quality of the management / financial accounting, etc.				
4.6.	Trust of members in their Farmer Organization.				

3.3. CONTRACT REGISTRATION: ADVANTAGES, DISADVANTAGES, AND CONTRACT REGISTRATION PROCESS

3.3.1. WHY IT IS RECOMMENDED TO GET CONTRACTS REGISTERED BY MAFF/DAI?

In virtue of the legal principle of free will (defined in the Civil Code), it is not mandatory for producers or private companies who wish to operate Contract Farming to apply with MAFF for permission to enter in a Contract Farming agreement or to have their Contract Farming agreement endorsed or witnessed by MAFF. Yet MAFF strongly encourages and invites parties willing to develop a Contract Farming agreement to contact its services for advice and registration of the contracts. **This process might be necessary if contracting parties wish to access specific services from MAFF in the implementation of the contract, such as for instance access MAFF mediation or conciliation services in case of conflict, or possibly other services described in the section 2.3.2. of the present Manual.**

Advices and endorsement by MAFF also present other interest and advantages as listed below.

Table 3.3.A.: Advantages and disadvantages of the registration of Contract Farming agreements with MAFF services.

Advantages	Disadvantages
<ul style="list-style-type: none"> ▪ Agri-business companies can get information from MAFF on potential production area and get support to identify suitable producers (ACs, FOs); ▪ MAFF/DAI services may check the reliability of the company, increasing the security for the producer side; ▪ Getting the endorsement of a neutral third party (such as MAFF) contributes to build the trust of the parties in the contract and to strengthen their commitments; ▪ Parties can get support during negotiation and to draft contract papers and check conditions of the contract are balanced and realistic; ▪ Parties can access facilitation or mediation services from MAFF in case of dispute; ▪ Registration with MAFF could be necessary to access additional supports or incentives from the Government; ▪ Compliance with other legal requirements is verified, which secures both producers and buyer parts; ▪ Registration of contracts helps MAFF to access information on Contract Farming implementation and to monitor, get experience and document cases to improve policies. 	<ul style="list-style-type: none"> ▪ The need to mobilized MAFF services (DAI/PDAFF) can take time and may slow down the process of negotiation and signature of the contract; ↳ more anticipation is needed!

EVEN IF THE CONTRACTS ARE NOT REGISTERED, ALL COMPANIES INVOLVED WITH CONTRACT FARMING ARE KINDLY ASKED TO PROVIDE INFORMATION TO MAFF ABOUT ON-GOING CONTRACT FARMING IMPLEMENTED OR UNDER NEGOTIATION.

⁷ A Contract Farming agreement signed without prior consent from MAFF services would still be legally valid and, for instance, would not be considered null and void by a Court.

3.3.2. PROCEDURE TO GET CONTRACT FARMING AGREEMENTS REGISTERED

Stakeholders who wish to get their contract farming agreement endorsed and registered by MAFF should have followed (from the early stage of contract farming negotiation) the procedure to get MAFF support as described above on this Manual, in “§ 3.1.1. MAFF’S SERVICES SUPPORT PROPOSED TO ECONOMIC STAKEHOLDERS WILLING TO DEVELOP CONTRACT FARMING” page 31.

If these above procedures were followed, after the two parties have signed the Contract Farming agreement (and after witnesses have signed as well, if any), any of the two parties (but most frequently this is done by the Buyer part) shall send 5 original copies (at least, but possibly additional copies may be needed in case the contract also involves some third parties – See § 4.14.2. NUMBER OF COPIES in this Manual, page 91) of the contract to the PDAFF for DAI with a cover letter asking for the endorsement and registration of the contract by MAFF services.

Relevant officers will review again the contract and have all the original copies signed and stamped by MAFF services. MAFF services will retain 3 original copies and will send back one original copy to the Buyer part and one original copy to the Producer part (+ additional copies as needed in case the contract also involves some third parties).

The process of endorsement and registration of the contract might take approximately seven working days (subject to variations) from the day the parties send the contracts to be endorsed and registered to the day they get back their original copy endorsed by DAI/PDAFF services.



IF THE IMPLEMENTATION OF THE CONTRACT HAS TO START AND THE PARTIES WISH TO STILL KEEP A SPARE ORIGINAL COPY OF THE CONTRACT IN HANDS WHILE THEY SEND THE NECESSARY NUMBER OF ORIGINAL COPIES FOR THE REGISTRATION PROCESS, THE PARTIES MAY SIGN TWO ADDITIONAL SPARE ORIGINAL COPIES (ONE FOR EACH PARTY) THAT THEY WILL KEEP WITH THEM WHILE THE OFFICIAL ORIGINAL ARE IN DAI/PDAFF SERVICES FOR THE PROCESS OF REGISTRATION.

⁸ The level to which it has to be sent depends on the estimated value of the contract. Above an estimated value of contract of 200 million Riels the applicant need to send to DAI in Phnom Penh directly and not to PDAFF.

SECTION 4: CONTRACT CONTENT AND ADVICES FOR CONTRACT NEGOTIATION AND WRITING:

KEY QUESTIONS THAT THE CONTRACT HAS TO ADDRESS, AND POSSIBLE ANSWERS / MODELS

There is no standard model of Contract Farming agreement. By definition, the contract farming agreement is the result of a negotiation between two (or more) parties, and it shall be tailored on a case by case basis to address particular situation and needs of the parties involved. Therefore, this section will not provide a standard model of contract as turn-key solution. But it will go through key questions that the contract has to address. Answers to these questions have to be discussed and provided by the parties negotiating the contract.

Whereas oral “handshake” agreements are acknowledged as an existing practice of Contract Farming, it is strongly recommended to prefer « *written, straightforward and simple contracts [...] as means to improve the clarity, completeness, enforceability and effectiveness of the parties’ agreement* »⁹.

The form of the contract proposed by DAI (See Annex 4 and developments in § 4.1. below) is only a general template: it proposes a structure of the contract, which only consists of head of chapters or topics of articles, corresponding to the key questions that shall be answered by the contract.

The following paragraphs (from § 4.2 to § 4.14) expose possible answers or possible models or options for each of the key questions, with some advices and analysis of pro and con of different options.

4.1. FORM OF CONTRACT (TEMPLATE)

MAFF’s Department of Agro-Industry has progressively (on the basis of pilot experiences¹⁰) developed the structure of contract presented below. The structure proposed below is only to be considered as a recommended model (which can still be adjusted or improved) to cover all key elements that may have to be discussed and agreed as part of the contract negotiation. Details regarding the roles and responsibilities of both parties that have not been discussed and agreed in advance could become points of disputes, this is why it is recommended to anticipate and review quite exhaustively all the practical elements of organization, implementation and possible situations that may occur.

⁹ Ref: UNIDROIT, FAO and IFAD (2015): “Legal Guide on Contract Farming”, page 67.

¹⁰ Notably as part of the “Support to the Commercialization of Cambodian Rice Project”.

4.1.1. OVERVIEW OF THE PROPOSED STRUCTURE OF CONTRACT

Below is the proposed overall structure of contracts:

A proposed Structure for Contract Farming Agreements	
Title of the contract	Art. 7: Pricing
Name and address /contact information of the signatory parties	Art. 8: Payment methods
Legal references	Art. 9: Force majeure
Art. 1: Objective of the contract	Art. 10: Termination
Art. 2: Term (Duration) of the contract	Art. 11: Dispute resolution
Art.3: Rights and obligations of the producer	Art. 12: Establishment of contract and language
Art. 4: Rights and obligations of the buyer	Date and Signatures of contracting parties
Art. 5: Logistic: harvesting/collection time, place of transportation and storage of products	Signature of witnesses
Art. 6: Product's quality requirements/specifications	ANNEXES

4.1.2. COMMENTS ON THE EXPECTED CONTENT OF EACH SECTION

The Table 4.1.A. below provides more details on what is expected to be found in each of the sections of the above template of contract.

Table 4.1.A.: Expected content of each section of the Contract template and comments

Section / Article	Explanations / Comments / Examples
Title of the contract	<p>A short title of the contract (Possibly with also reference Number: this is not mandatory but it can be useful in particular if a company manage a large number of contracts):</p> <p><i>Example:</i></p> <p style="text-align: center;">« Contract Farming Agreement No..... For the production of [name the product] »</p>
Name and address / contact information of the signatory parties	<p>Below the title, write “established between” and name the signatory parties. It is important to provide all elements to clearly identify the signatories: not only their name and address, but also registration number and name authorized representative (for legal entities) or date of birth and ID card number (for individuals).</p> <p><i>Example:</i></p> <p>« Established between: [Name of the Contractor company] registered with the Ministry of Commerce of Kingdom of Cambodia under the number [Registration number], located on [address of the company], represented by Mr./Mrs [Name the authorized representative, the one who will sign the contract] whose contact details are [insert phone number and e-mail address], hereafter referred to as THE BUYER. and »</p> <p>if the producer is an individual farmer:</p> <p>« [Name of the producer] born on [insert date of birth] (ID Card number: [insert ID Card number] having its permanent residence at [insert address], phone number: [insert phone number], hereafter referred to as THE PRODUCER.</p> <p>if the producer is a Farmer Organization:</p> <p>« [Name of the producer organization] registered with [insert the legal entity which has registered the FO, such as MAFF/PDAFF or Ministry of Interior or MoWRaM...] under the number [Registration number], located on [address of the FO], represented by Mr./Mrs [Name the authorized representative, the one who will sign the contract] whose contact details are [insert phone number and e-mail address, if any], hereafter referred to as THE PRODUCER.</p>
Legal references	<p>The contract may mention the legal background or framework under which it is established, such as the Civil code, the Commercial laws, the specific legal framework on contract farming (Sub-Decree No36), etc... This may have implication on the procedures of enforcement notably.</p> <p>For instance, a reference to the Sub-Decree on contract farming could be:</p> <p>« Having seen: - The sub-decree 36 នៅព្រះរាជាណាចក្រកម្ពុជា dated 24 February, 2011 on Contract Farming »</p>
Art. 1: Objective of the contract	<p>The first article indicates the purpose of the contract. For instance:</p> <p>« This contract is established for the production by the PRODUCER and purchase by the BUYER of [Insert quantity and unit – e.g. 100 tons] of [insert the type of product to be supplied – e.g. fresh Phka Rumduol paddy].</p> <p>The details of the quality specifications are addressed in Article 6, but the type of product shall be indicated here (including possibly the varieties, the form of the product – level of processing, for instance “dry” or “wet” for paddy... – Etc.</p> <p>[Note: See § 4.3. TYPE OF PRODUCTS AND QUANTITIES TO SUPPLY (page 47)].</p>

Art. 2: Term (Duration) of the contract	Indicate the duration of the contract (from the date of signature to the estimated date of end of all delivery of products. The contract may also precise here if it is for one cycle of production only or for several cycles.
Art.3: Rights and obligations of the producer	<p>Separate rights and obligations and list relevant points (below is an example only – to be adapted according to contract negotiation):</p> <p>« The PRODUCER has the following rights: [+ list of bullet points]:</p> <ul style="list-style-type: none"> • Right to receive the support from the BUYER as defined in Article 4. • Right to receive the payment for the acceptable product delivered following conditions of price and payments as stated in this contract. • Right to complain and mobilized mediator/arbitrator as agreed under Article 11 in case the BUYER does not fulfill its obligations as defined in the present contract. <p>The PRODUCER has the following obligations [+ list of bullet points]:</p> <ul style="list-style-type: none"> • To produce and deliver the production defined in Article 1 to the BUYER as defined in the terms of this contract. • To ensure that the quality of the product delivered fulfill specifications defined in Article 6. • To comply with the production method defined in Annex [138]. [Note: On this point, see § 4.5. OBLIGATIONS REGARDING THE PRODUCTION METHODS AND VERIFICATION (page 53)]. • To allow the BUYER's employee to access and inspect the PRODUCER's location in order to verify compliance with agreed terms and conditions stated in the present contract. • To deliver the production according to the modalities set in Article 5. • To reimburse the financial advance received from the BUYER according to the modalities developed in the present contract. • To comply with all the other terms of the present contract. • To be liable for the payment of compensation to the BUYER in case of his failure to comply with the terms and conditions set forth in the present CONTRACT, within the limit of <insert amount of limit of liability and currency>. »
Art. 4: Rights and obligations of the buyer	<p>Reciprocally to the Article 3, the buyers' rights and obligation may be presented as follows (example only – to be adapted according to contract negotiation):</p> <p>« The BUYER has the following rights: [+ list of bullet points]:</p> <ul style="list-style-type: none"> • Right to access and inspect the PRODUCER location in order to verify compliance with agreed terms and conditions stated in the present contract. • Right to be supplied with the product produced by the PRODUCER in accordance with the present contract. • Right to reject part or totality of the products in case of a proven non-compliance with the quality specifications or mode of production defined in the present contract. • Right to complain and mobilized mediator/arbitrator as agreed under Article 11 in case the PRODUCER does not fulfill its obligations as defined in the present contract. <p>The BUYER has the following obligations [+ list of bullet points]:</p> <ul style="list-style-type: none"> • To provide the following inputs to the PRODUCERS: [+ list of inputs]. • To provide the following financial advance to the PRODUCER: [+ list of financial advance]. • To provide the following training / technical support to the PRODUCER: [+ list of training or technical support to provide]. • To collect (following the modalities defined in Article 5) and purchase the product delivered by the PRODUCER compliant with the quality requirements defined in Article 6, at least in the quantity defined in Article 1. [Note: Regarding volumes: see Case Illustration 4.3.A, page 49] • To pay the product delivered at the price defined according to Article 7

	<p>and according to payment modalities defined in Article 8.</p> <ul style="list-style-type: none"> • To comply with all the other terms of the present contract. • To be liable for the payment of compensation to the PRODUCER in case of his failure to comply with the terms and conditions set forth in the present CONTRACT, within the limit of <insert amount of limit of liability and currency> » <p>Regarding the support of the buyer to the producer, if the support is basic it might directly be described in this article. But in most of the cases it might be preferable to insert an additional article or an Annex to define it in details (inputs to be supplied, quality of the inputs, timing of the input delivery, modalities of reimbursement of the inputs, etc... same for technical support...). [See § 4.2. BUYER'S SUPPORT: INPUTS / PRE-FINANCING / TECHNICAL ADVICES (page 45)].</p>
Art. 5: Logistic: harvesting/collection time, place of transportation and storage of products	<p>The contract shall clarify the details of the organization (and coverage of costs) of the collection of product (planning of collection, collection points, responsibility of the transportation to and from collection points, etc.). Elements of reflection on these issues are developed in § 4.8. MANAGEMENT OF TRANSACTIONS: TRANSPORTATION, DELIVERY, RECEIPTS, ETC... (page 71).</p> <p>This can be addressed in this Article, or possibly in an Annex if more details are required.</p>
Art. 6: Product's quality requirements/specifications	<p>Define the quality specification of products (possibly different grades). If more details are required, an Annex of the contract can provide all the necessary details.</p> <p>See possible options and advices in § 4.4. QUALITY: PRODUCT SPECIFICATIONS AND METHOD OF VERIFICATION (page 51).</p>
Art. 7: Pricing	<p>Define the price or the modalities that will apply to define the price at the time of harvest / delivery. See possible options and advices in § 4.7. PRICE AND PRICE REFERENCES (page 55).</p>
Art. 8: Payment methods	<p>Define here the modalities and timing of payment of the product delivered.</p> <p>On this matter see advices in § 4.9. MODALITIES AND TIMING FOR PAYMENTS, page 74.</p>
Art. 9: Force majeure	<p>The contract may list possible situations or events out of the control of both parties but that could affect the ability of one or both parties to fulfill their commitments as defined in the contract. These cases of "Force Majeure" shall limit the liability of one party to the other.</p> <p>This article shall list situations considered as "Force Majeure", (possibly indicate which authority might be entitled to confirm a situation of Natural Disaster or Force Majeure – in case both parties does not agree on the qualification of the situation) and define what should happen then: cancellation of the contract, reimbursement or not of advance received, etc...</p> <p>This article may also specify measures to be taken (and by which party) to prevent or cover such risks (e.g.: financial provisions, insurance...).</p> <p>See § 4.10. EXCUSES FOR NON-PERFORMANCE SUCH AS: NATURAL RISKS / FORCE MAJEURE, page 78.</p>
Art. 10: Termination	<p>List situation leading to Termination of the contract.</p> <p>See § 4.11. DURATION, RENEWAL AND TERMINATION, page 83.</p>
Art. 11: Dispute resolution	<p>Different mechanisms exist to address disputes in contract farming.</p> <p>This article shall indicate the modalities of dispute resolution that both parties should agree to use in case of dispute.</p> <p>See § 4.13. CONFLICT RESOLUTION page 90 and Section 6. of this Manual.</p>
Art. 12: Establishment of contract and language	<p>This last article indicates in which language the contract is established, the number of copies (possibly who shall keep a copy), etc.</p> <p><i>Example:</i></p> <p>« This contract is elaborated signed freely and under no threat by both parties. This contract is established in Khmer. Khmer language shall also be used for any further statement or dispute resolution under this contract.</p>

	<p>This contract was printed and signed in five original copies (each copy having the same full value), to be kept by the following institutions:</p> <ol style="list-style-type: none"> 1. PRODUCER 1 (one) copy; 2. BUYER 1 (one) copy; 3. Commune office 1 (one) copy; 4. Provincial Department of Agriculture 1 (one) copy; 5. Department of Agro-Industry, MAFF 1 (one) copy. » <p>See § 4.14. OTHER LEGAL REQUIREMENTS (NUMBER OF COPIES, LANGUAGE...), page 90 .</p>
Date and Signatures of contracting parties	<p><i>Example:</i></p> <p>« Made in [location] on [date]</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>For the BUYER:</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>[Insert Name, Surname] [Position] Authorized representative of [BUYER]</p> </div> <div style="width: 45%;"> <p>For the PRODUCER:</p> <hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <p>[Insert Name, Surname] [+ position and FO name if “PRODUCER” is a FO].</p> </div> </div>
Signature of witnesses	<p>The contract may be additionally signed by one or several witness(es) acting as a neutral third party to acknowledge that both parties have agreed on the term of the contract freely and not under constraint.</p> <p>In case one party is illiterate, the content of the contract may be red loudly by the third party witness to verify the understanding and agreement of the illiterate party. In this case it is desirable to write, above witnesses signature:</p> <p>« The text of the contract has been red loudly to the two parties and both parties have agreed freely and under no constraint on the term of the contract. »</p> <p>Even if not mandatory, the contract might be endorsed by an official public authority (local authority for instance PD AFF or DAI) or by a notary or lawyer.</p>
ANNEXES	<p>In order to avoid too heavy text in the contract, details or extensive elements may be annexed to the contract, with reference to the Annex in the text (For example: « The producer will strictly comply with the production method detailed in Annex [138] »). Annexes may for instance include:</p> <ul style="list-style-type: none"> ♦ Details of production methods that have to be followed by producers (Alternatively, this can also be developed in an additional article in the main text of the contract). ♦ Location/delimitation (possibly with a map) of the land cultivated under the contract. ♦ List of producers, surface, volumes committed (in particular when the contract is made with a producer organization). ♦ Details of quality specifications for each grade of product. ♦ Details of payments procedure for the products delivered. ♦ Details of the modalities of organization (logistic) of the collection of product, list and location of collection points... <p>Etc.</p>

In the articles 3 and 4 on the right and obligation of producer and buyer, the format of contract proposed by MAFF includes a mention of the liability of each party to pay damages/compensations to the other party in case of failure to comply with the terms and conditions of the contract. It can be desirable and wise to set a limitation to this liability, in order to protect both parties for exaggerated compensation requested. The ceiling amount of the liability can be determined in regard of the value of the contract, or of the specific added value that the contract is expected to generate for each party.

4.2. BUYER'S SUPPORT: INPUTS / PRE-FINANCING / TECHNICAL ADVICES

In principle, Contract Farming is not just a forward agreement to purchase an agricultural product. It generally includes a number of embedded services provided by the buyer to the producer as part of the contract / partnership.

In the format of contract proposed by MAFF, these supports and services should be listed under the Article 4 regarding the rights and obligations of the buyer (See Table 4.1.A. in previous pages) and may be further detailed in an Annex to the Contract.

Buyers support may include: Input supply and/or Services provision and/or Pre-financing and/or Training/Technical Support. Typical supports that contract farming may involve are presented below. Commitments of the buyer should be clearly stated in the contract, and shall be part of the negotiation.

4.2.1. INPUT OR MATERIAL SUPPLY

The buyer may provide input to the producer which can include, for instance:

For vegetal productions:

- Seeds or seedlings,
- Fertilizers,
- Pesticides...

For animal production:

- Animals (for instance chicks, piglets, fingerlings...)
- Animal feed,
- Vaccine,
- Medicines...

The inputs can be provided for free (but this is obviously not often the case, or it is compensated by the modality of pricing for the products delivered) or against a payment either immediately when the farmer receive the input, or (frequently) as an advance payment to be deducted from the price paid to the producer when the final products are delivered to the buyer.

In some case, an interest rate may be charged by the buyer on the initial costs of the inputs, for the embedded credit provided by the buyer.

4.2.2. SERVICES PROVISION

Identically as for inputs, services might be provided as well, for example land preparation or harvesting (for crops) or veterinary services or insemination (for animal production). As for inputs, the services can be provided for free, or charged to the farmer or possibly considered as an advance on the future payment to be received by the farmer.

4.2.3. PRE-FINANCING OR OTHER FINANCIAL SERVICES

The buyer may also propose pre-financing service. Most often, the pre-financing is for inputs or services that are provided in kind (i.e. as under the two previous sections § 4.2.1. and § 4.2.2. above). But in some rare cases, a cash advance can be provided, then deducted from the payment to the producer at the time of product delivery, with or without interest rate charged.

4.2.4. TRAINING/TECHNICAL SUPPORT

An important support which is frequently included in contract farming agreement is the provision of technical training (/agriculture extension) or technical support. This is particularly necessary when the production is new to the farmer, or when the buyer wishes the production to follow certain methods or standards. Training can be done in one time at the beginning of the contract, but, more often, are implemented in several steps at the different stages of the production.

Instead or in addition to training, the buyer can provide a technical assistance. In that case interventions are not scheduled in advance, but the buyer has a team of agricultural technicians (or veterinary for livestock) that can be mobilized on demand by the producers when they face problems.



IF TRAINING / TECHNICAL SUPPORT ARE PART OF THE COMMITMENT TAKEN BY THE BUYER, IT IS IMPORTANT TO DEFINE AND CHARACTERIZE CLEARLY THE SERVICE TO PROVIDE:

FOR THE TRAINING, INDICATE (POSSIBLY IN AN ANNEX TO THE CONTRACT):

- ☐ THE TRAINING CONTENT
- ☐ THE TRAINING TIMING AND DURATION
- ☐ THE TRAINER PROFILE TO MOBILIZE...

IF THE SUPPORT CONSIST IN ON-DEMAND TECHNICAL SUPPORT, PRECISE THE CONDITIONS FOR MOBILIZATION AND RESPONSE

- ☐ MODALITY FOR PRODUCER TO MOBILIZE THE SUPPORT
- ☐ MAXIMUM DELAY OF RESPONSE FOR THE SERVICE TO BE PROVIDED
- ☐ POSSIBLE LIMITATIONS...

4.3. TYPE OF PRODUCTS AND QUANTITIES TO SUPPLY

4.3.1. TYPE OF PRODUCT

The purpose of the contract (in Article 1 in the form of contract proposed by DAI/MAFF) indicates the type of product to be produced and delivered by the producer to the buyer. Without entering into the detailed quality specifications (that are addressed in another article, and developed in the § 4.4. in the present Guidelines) it indicates the nature of the product for which the contract is signed.

Not only the species of the production may be indicated here (rice, corn, chicken) but also the form of the product or the level of processing (example: fresh harvested paddy, dry paddy, milled rice...) and the variety or breed (example: *PhkaRumduol* or *IR66* for rice...).

Anyway more details will be provided in the quality specifications that will complete the elements indicated in the Article on the purpose of the contract.

4.3.2. INDICATION OF THE QUANTITIES:

The contract should indicate the quantity of product that has to be delivered (and also the period of time of the delivery / deliveries - Cf. § 4.8.).

In the form of contract proposed by DAI/MAFF, the quantities can be defined in two articles: *Article 3 Rights and Obligation of Producer* and *Article 4 Rights and Obligation of Buyer*: in Article 3, it is formulated as a commitment of Producer to deliver and sell to the Buyer, and in Article 4 it is formulated as a commitment of the Buyer to purchase from the Producer. Of course the two articles shall be symmetric and consistent (same volumes are indicated in the commitments of Producer and of Buyer).

Different options are possible to define the quantities to be delivered:

- A fixed quantity / volume;
- A range of quantities, with minimum and maximum quantities that the producer is committed to produce and deliver and that the contractor is committed to buy;
- A minimum quantity with the possibility of a purchase option beyond the minimum committed (at same conditions or at different conditions);
- All the production (Attention: in this case the contract shall be particularly precise on the surface and delimitation of the fields in production, and on the process of harvest).

The Table 4.3.A. below summarizes the advantages and disadvantages of these different options for indication of quantities / volumes.

Table 4.3.A.: Review of the different options to define quantities in the contract

Mode of definition of quantities	Explanations	Advantages / Disadvantages, Conditions in which it is relevant
Fixed quantities	The quantity to deliver is strictly defined in the contract.	Does not take into account the variability of agricultural yields. It can be acceptable if producers can have other market opportunities to sell the surplus, if any.
Range: from <i>x</i> (minimum) to <i>y</i> (maximum)	The producers take the commitment to deliver at least <i>x</i> (units) and, if they can, up to <i>y</i> (units) of the product. The buyer take the commitment to buy at least <i>x</i> (units) and up to <i>y</i> (units).	To define a range of quantities (minimum and maximum) takes better into consideration the variability of the production, and provides an acceptable level of security for both parties. But the range and the exact commitments of both parties shall be carefully developed (Cf. recommendations given below).
Fixed + purchase option	Both parties take a commitment on a minimum quantity to deliver / purchase in the conditions of the contract. An extension of the quantity can be considered if more product available, at the conditions of the contract.	This option is similar to the “fixed quantity” option, except that it may provide an opportunity for the producer to sell more volumes if there is a surplus available, and if the buyer agrees to take it. But it might actually already be the case without mentioning this purchase option in the contract that, at the time of harvest, the contractor can buy additional volumes.
All the production	The contractor takes the commitment to purchase all the production, whatever the volume is.	This system is relevant and desirable if the producers have no other market opportunity for the product than selling to the contractor. In that case it provides them with the security of not having un-marketable surplus. If the production has a local market (other collectors/buyers may buy the product) the need for the producers to get this guarantee is not so strong. But the contractor may be willing to have such a clause to maximize the volume of products he will get. It works well if the collector is buying a standing crop (uncut, in the field) and manages by himself the harvesting. More generally, in any highly integrated model (when the buyers is actually undertaking the technical management of the crop and is supplying inputs) it is common that the contract will stipulate that all the production will be sold to the contractor.

RANGE OF QUANTITIES

Since agricultural yields are subject to hazards and variability, it is generally preferable to define a range of quantities rather than a fixed quantity.

Two points require a particular attention if this option is chosen:

- The definition of the range (minimum and maximum) shall be realistic and reasonable. It should reflect the possible variation of the yields, but based on a regular variability and may not consider the hypothesis of extreme events / natural disasters that shall be situations covered by a specific article of the contract (See § 4.10.). Minimum volumes defined shall be still sufficient to ensure a significant supply of the buyer. Maximum shall also be defined to avoid or limit the surplus left to producers, but still being absorbable by the contractor. Indicatively, we could say that the maximum volume committed might be about 20 % to 60 % above the minimum level.

- The formulation of the contract shall be clear because there can be different interpretations of a range of volume. For instance, does the contractor have the obligation to buy all the product delivered by the producers within the maximum limit, or does the contractor is bind to buy only the minimum amount of the contract and can decide to buy or not the volumes that are in the range defined but above the minimum commitment? Case Illustration 4.3.A. below provides some clarifications and recommendations on this matter.

Case Illustration 4.3.A

Unclear meaning of a range of quantities covered by the contract

In a contract between a rice exporter and a Farmer Organizations, quantities have been defined as follows in the Rights and Obligations of each party:

«Article 3 Rights and Obligation of the PRODUCER:

The PRODUCER takes the commitment to sell *Phka Rumduol* paddy in a volume of 60 to 90 tons to the BUYER »

[...]

« Article 4 Rights and Obligation of the BUYER:

The BUYER takes the commitment to buy *Phka Rumduol* paddy in a volume of 60 to 90 tons from the PRODUCER. »

The above formulation is subject to interpretation and thereof can possibly lead to conflict. For instance, if the PRODUCER delivers 70 tons of paddy (compliant with the quality requirements and conditions of delivery), and the BUYER accepts to buy only 60 tons, the BUYER does not infringe the commitment he made in the contract as written above: to buy 60 tons is consistent with the commitment as formulated in the contract. With the above wording, the defined “range” can actually be interpreted as a minimum volume + a purchase option for more.

Another possible formulation of Article 4 would be « The BUYER takes the commitment to buy all the volumes of *Phka Rumduol* paddy tons (compliant with the quality requirements and conditions of delivery stipulated in this contract and at the price defined) within a maximum limit of 90 tons ». With this revised wording, if the PRODUCER brings 70 tons of paddy (compliant with the quality requirements and conditions of delivery), the BUYER has the obligation to buy it all, which is a significant difference with the previous formulation.

This illustrates the need for a clear wording to avoid a conflict on the interpretation of minimum and maximum volumes indicated in the Contract.

RISK OF NOT BEING ABLE TO REACH THE MINIMUM VOLUMES

If the producer side takes the commitment to deliver a fixed or a minimum quantity under the Contract Farming agreement, it should make sure that the volumes committed can be quite easily reached, even in case the yield is not very good. Not being able to supply the volumes committed would be an infringement to the contract. So it is recommended to be a bit conservative on the hypothesis of minimum volumes engaged.

This being said, it is also not wise to be excessively cautious or over pessimistic on the expected volumes, because too limited production capacities will draw away the interest of the buyer.

Besides, one shall keep in mind that a specific article shall cover the situation of natural disaster (or “force majeure”) that would release the producer from its commitment to supply the agreed volume in case the production was affected by factors or events that are beyond his control (See § 4.10.).

Note also that, in the case of an Agricultural Cooperative or Farmer Organization signing a contract with a buyer, the risk of not being able to supply is not only related to a risk of lower yield, but also to the risk that individual farmers, members of the AC/FO don’t deliver their production to the AC/FO and sell it outside. The Section 6 of the present Guidelines is fully dedicated to the internal management of Contract Farming within a Cooperative or a Farmer Organization.

RISK OF HAVING SURPLUS

On the other hand, the producer needs also to consider the risk of having surplus, i.e. volumes of products available above the volume that the buyer is committed to buy.

When the producer has many opportunities to sell its product to other potential buyers / collector locally, this risk is minor because the producer will be able to sell the surplus (possibly at a lower price than the one of the contract, but still acceptable). This would probably be the case for instance in the rice sector in Cambodia.

But the risk is much higher if there is no local market for the product, i.e. if the connection to a broader market is made only via the contractor (for instance it might be the case for wood / trees grown for paper production for instance, or to some extent for spices or for products for industrial use...). In that case the producer shall make sure that the quantities defined in the contract are not too narrow and will not lead to un-marketable surplus. A commitment of the contractor to buy all the production might be desirable in such a case.

4.3.3. UNITS AND MEASUREMENT METHODS

UNITS

Units used in the contract shall have a clear and unique meaning for all the parties involved. This sounds very obvious. Yet it sometimes happens that deals are made by using traditional units or measures that some time does not correspond exactly to the same quantities from one region or locality to another. Both parties shall make sure that they use the same system of reference. It is highly recommended to use the metric system (or International System of Units) as the reference, so it is not subject to interpretation.

In most of the cases, the commitments on quantities will be formulated in term of weight (by using kilograms or metric tons, preferably). Yet there could be some cases for which it can be more relevant to express quantities in volumes (cubic meters) or in number of units (for instance “heads” for livestock production...). This shall be discussed and agreed among the two parties.

MEASUREMENT / SCALES

A much more sensitive issue, leading to frequent disputes, is the measurement of quantities. Different scales might be used to weight a quantity of product, and the different scales might not be perfectly calibrated and may give slightly (or sometime significantly) different measures.

The contract may specify where the products will be weighted, and by using which scale.

Calibration of scale is normally part of the services that can be provided by the Provincial Department of Industry and Handicraft in Cambodia (Services of metrology). But it is not widely used and it is not always possible to use a certified scale for daily transactions.

What the contract may possibly specify is that in case of a dispute on the measurement of quantities due to different scales used, the dispute shall be settled by referring to an independent body and comparing measurements made by both parties with a measurement made on a calibrated scale certified by the metrology services of the Ministry of Industry and Handicraft or by an agreed third party such as a Certification Body for instance. If it is not specified in the contract and if there is a dispute on the measurement, the way the dispute shall be addressed will be left to the decision of the mediation or arbitration body selected in the contract (article about dispute / conflict resolution – See § 4.12. below).

4.4. QUALITY: PRODUCT SPECIFICATIONS AND METHOD OF VERIFICATION

4.4.1. PRODUCT SPECIFICATIONS

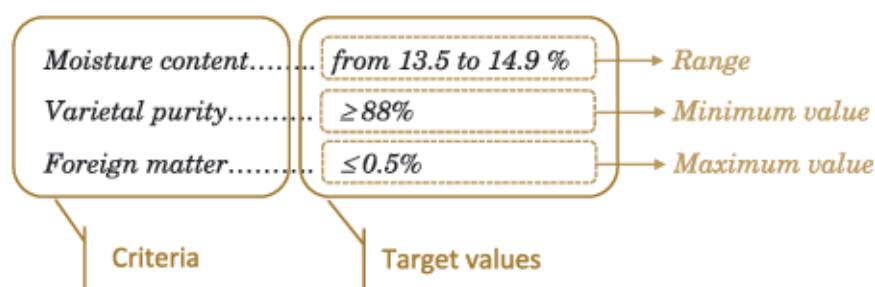
It is important to define precise quality specifications for the product to be delivered¹¹. Quality of the product is frequently a source of disputes in Contract Farming implementation, and a clear and precise definition of the minimum quality required (objectively verifiable) is the best way to prevent such disputes.

At least, the quality specifications shall describe the type/form of product expected and should limit the tolerated percentage of foreign matter (e.g. stones or dust mixed in a grain product...). But specifications can be much more developed and include several criteria (impossible to list in a general way, as highly depending on the type of product).

A technical specification of quality consists in a CRITERIA + a TARGET VALUE. It shall be measurable.

The target value can be a threshold (a minimum or a maximum value) or a range (delimited by a minimum AND a maximum).

¹¹ Maybe the only exception is the cases where the technical management of the production is strongly controlled by the buyer (highly integrated “Centralized models” of Contract Farming – Cf. § 1.1.2. DIFFERENT MODELS OF CONTRACT FARMING). In such cases, the quality of the production depends mainly on the contractor, which supervise (if not manage) all the technical operations of the production.

Example:

The contract may define only one set of minimum quality requirements (in which case any product complying with this minimum will be accepted by the buyer and any product not complying will be rejected). Or it may define different grade of quality, the lowest being the minimum requirements (beyond which the product is rejected) and the higher level of quality being subject to a premium price (See § 4.7.7. ADJUSTMENT OF PRICE TO QUALITY).

Case Illustration 4.4.A.**Example of quality specification for paddy**

The table below shows quality specification for paddy. In this case the contract defines several grades of quality, which will be purchased at different prices. For each grade, different target values are given for the criteria considered.

Grades	Varietal purity	Moisture content	Broken rate	Foreign matters
អ ១ (A1)	90-100 %	13-14.9 %	1-15 %	≤ 0.5%
ប ១ (B1)	82-89 %	13-14.9 %	15-20 %	≤ 0.5%
ស ១ (C1)	90-100 %	13-14.9 %	21-30 %	≤ 0.5%
ស ២ (C2)	90-100 %	13-14.9 %	31-35 %	≤ 0.5%
អ ២ (A2)	90-100 %	15-19 %	19-20 %	≤ 0.5%
ប ២ (B2)	82-89 %	15-19 %	15-20 %	≤ 0.5%
ឌី ១ (D1)	90-100 %	15-19 %	31-35 %	≤ 0.5%
ឌី ២ (D2)	90-100 %	15-19 %	36-37 %	≤ 0.5%

Detailed specifications can be written in the text of the contract directly or in Annex to the contract (with a reference to the Annex in the text of the contract).

If necessary, terms or criteria used can be defined in the contract (or in an annex to the contract).

If official standards are existing for the product, then it is a possibility to refer to the existing official standard (supposed to be known by both parties, in this case) and to skip the detailed quality description in the contract.



BEFORE TO ACCEPT THE QUALITY SPECIFICATIONS REQUIRED BY THE BUYER, THE PRODUCER SHOULD ASK HIMSELF IF THE LEVEL OF QUALITY REQUIRED IS ACHIEVABLE IN HIS FARM CONDITIONS:

- ☐ HAS HE ALREADY PRODUCED THE SAME PRODUCT WITH THE SAME LEVEL OF QUALITY AND CAN HE ENSURE IT REGULARLY?
- ☐ IF NOT, DOES THE TECHNICAL SUPPORT (OR INPUT SUPPLIED) BY THE CONTRACTOR PROVIDE ENOUGH SECURITY TO REACH THE REQUIREMENT?
- ☐ IT IS IMPORTANT TO IDENTIFY THE MAIN FACTORS THAT ARE DETERMINING THE QUALITY AND CHECK IF THEY CAN BE CONTROLLED BY PRODUCERS.
- ☐ CLIMATE / DISEASES / PESTS FACTORS CAN INFLUENCE NOT ONLY THE YIELD BUT ALSO THE QUALITY. THIS RISK FACTOR CAN BE CONSIDERED (SEE SECTION 4.10. NATURAL RISKS / FORCE MAJEURE) AND A TOLERANCE ON QUALITY LEVEL COULD BE INTRODUCED IN CASE THE INABILITY TO FULLY REACH THE SPECIFICATIONS IS CLEARLY ATTRIBUTABLE TO FACTORS OUT OF THE CONTROL OF PRODUCERS.

4.4.2. METHOD OF VERIFICATION

In addition to the criteria and target values, it is recommended to also indicate the method used for verification (testing method), and in some case the type of measure instrument to use. It is necessary if different methods exist to measure a certain criteria, which might lead to slightly different results.

For instance, verification of the varietal purity for rice can be done by physical examination of the grains, or by boiling test or alkaline test, or by DNA testing. Of course all the methods do not have the same accuracy, neither the same costs.

(Note that if testing method is expensive or requires specific equipment, the contract shall stipulate who will be in charge for implementing the quality testing and who will pay for the testing costs).

4.5. OBLIGATIONS REGARDING THE PRODUCTION METHODS AND VERIFICATION

In addition to the specification regarding the product quality (and verifiable based on product examination), the contract may also define obligations for the producers regarding the production methods.

This may include many different rules to apply regarding the production, for instance:

- Prohibition of the use of certain types of pesticides or inputs, or on the contrary obligation to use certain specific inputs;
- Obligation or prohibition to use some kind of containers for the products;
- Obligation to follow some specific process for harvest / post-harvest.

These rules for the production methods may be defined specifically by and for the needs of the buyer or may be common or public rules that have to be applied to make the product compliant with a label or quality sign that the buyer is intending to use: for instance to get an organic certification (See for instance case illustration in Box 2.1.C.) or to be entitle to use a Protected Geographical Indication (See for instance case illustration in Box 2.1.F. on Contract Farming for Kampot pepper).

Depending on this, the verification of the compliance might be done by the buyer himself or by a third party certification body (for the case of organic production for instance).



BEFORE TO ACCEPT ANY IMPOSED PRODUCTION METHOD, THE PRODUCER SHOULD ASK HIMSELF:

- ☐ DOES HE HAS ACCESS TO THE REQUIRED INPUTS OR EQUIPMENT (IF NOT PROVIDED BY THE CONTRACTOR)?
- ☐ IS THERE ANY RISK OF NEGATIVE IMPACT OF THE PROPOSED PRACTICES ON THE PRODUCTION / YIELD?
- ☐ IS THERE ANY RISK OF NEGATIVE IMPACT OF THE PROPOSED PRACTICES ON THE ENVIRONMENT OR MEANS OF PRODUCTION (E.G. TOXICITY, CONTAMINATION OF SOIL OR WATER, LOSS OF FERTILITY OF SOIL...)?

THE PRODUCER MAY SEEK ADVICES FROM EXPERTS (FOR INSTANCE FROM THE PROVINCIAL DEPARTMENT OF AGRICULTURE FORESTRY AND FISHERIES) IN CASE OF DOUBTS.

4.6. OTHER OBLIGATIONS OF PRODUCERS (E.G. REGARDING INFORMATION TO PROVIDE ON THE PRODUCTS, MODE OF PRODUCTION, SERVICE FUNCTIONS ETC...)

Contract Farming agreements may sometime include additional requirements or obligations from the producers. For example it could be the obligation to record and document the method of production (even if there is no specific requirement on the way to produce – which would fall under the above § 4.5 OBLIGATIONS REGARDING THE PRODUCTION METHODS AND VERIFICATION). Or it can include services embedded in the contract that the producer should undertake. Few examples of such additional obligations are developed below.

4.6.1. OBLIGATION OF INFORMATION

In some case the contractor just want to know more about the way the product was obtained (even if he does not impose any obligation on the production method): for instance quantity of fertilizer used, use of irrigation or not, number/type/ date of treatments, etc... or if the crop or animal production has been exposed to certain disease during the production phase.

Sometime this type of information is important for the contractor because he may have to adjust his processing methods accordingly.

Another frequent type of information requirement is related to traceability. For example if there are different farmers under a same contract (contract with a Farmer Organization) or different area of production, the contractor can request that different batches are made from the products coming from different farms or different zones. This will require the setting-up of basic tools for traceability, under the responsibility of the producer (the Farmer Organization in that case).

4.6.2. OBLIGATION OF ATTENDANCE TO MEETINGS OR TRAINING...

In some cases, the contractor may have specific recommendations or training to make to the producers at certain stage of the production method. Contractor may require the presence of all the producers to information / training sessions. The obligation of attendance can thereof be a requirement explicitly mentioned in the contract. In this case, the producer shall be provided with a proof of attendance (or an attendance list shall be established and signed by the contractor and kept at FO level in case of contract with a Farmer Organization) so the producer side is able to prove its compliance with this obligation.

4.6.3. EMBEDDED SERVICES TO BE UNDERTAKEN BY THE PRODUCER

Other services may also be required from the producer side, in particular in the case of contracts with Farmer Organizations.

It can for instance include logistic or coordination services such as the organization of the collection of product to agreed collection points, or the assessment of maturity of the product in the fields, the determination of the date of harvest and the communication of harvest planning to the buyer (this can be particularly necessary and important in the case of fresh / perishable products).



ADDITIONAL OBLIGATIONS MAY GENERATE SOME COSTS. IF IT IS THE CASE, THE COSTS MAY BE COVERED BY THE PRICE PAID FOR THE PRODUCTS DELIVERED (IN WHICH CASE THE PRODUCERS SHOULD MAKE SURE THAT THE PRICES WILL BE SUFFICIENT TO COVER THESE COSTS). OR THE CONTRACT CAN ALSO DEFINE A SPECIFIC ADDITIONAL REMUNERATION FOR THE COSTS OF THESE SERVICES. FOR INSTANCE SOME CONTRACTS ARE INCLUDING THE PAYMENT OF A "SERVICE FEE" TO A FARMER ORGANIZATION (FOR ITS ROLE OF FACILITATION WITH INDIVIDUAL PRODUCERS AND GATHERING OF THE PRODUCTION) WHICH IS ADDITIONAL TO THE PAYMENT OF PRODUCTS DELIVERED. (Cf. SECTION 7 OF THIS MANUAL)

4.7. PRICE AND PRICE REFERENCES

The contract farming agreement has to define either the price (fixed price) or the way the price of the product will be defined (and at what time it will be fixed if not at the signature of the contract).

Five possible systems of price definition are presented below:

- Fixed Price;
- Market Price;
- Market Price + Premium;
- Guaranteed minimum price;
- Guaranteed minimum price + premium.

These five options are developed in the following paragraph (4.7.1. to 4.7.5.). An additional paragraph (4.7.6) is focused on the selection and the use of a proper source of information to be used as the reference in case the contract is set on a variable price system. Last paragraph (4.7.7.) in this section 4.7. is about the adjustment of the price paid to the quality of the product delivered.

4.7.1. FIXED PRICE

In the **Fixed Price** system, the price of the products is set in advance, from the signature of the Contract. It is accepted by both parties and it is binding.

IN WHICH CASES A FIXED PRICE SYSTEM IS SUITABLE?

A Fixed Price contract might work well for a production for which farmers do not have many selling opportunities. If there is no other collector / buyer than the company which provide market access through the contract farming agreement, it can be desirable to establish a fixed price in advance so there is no surprise and dispute on the way the price will be established.

Besides, if there is no other purchase offer from other buyers / collectors, there is no risk of side selling by farmers due to better price offered by other buyers.

The fixed price contract may notably be well adapted for a new product that farmers are not already used to produce (and thereof for which they don't know well the market).

On the contrary, if farmers are locally in contact with many other potential buyers who are potentially interested by the same product as their partner in Contract Farming, a Fixed Price system can be difficult to implement if at the time of harvest / delivery the fixed price set in the contract is below the price locally offered by other buyers. The risk of side selling (farmers to default on the delivery of products to the buyer) is highly increased in such a situation. This risk is particularly high if the contract is signed between a Farmer Organization / cooperative with a buyer, as the Farmer Organization / Cooperative will have to struggle to prevent side selling from its members and ensure that it can actually collect the production (See Section 6 of these Guidelines).

A fixed price may also be well accepted, even in an environment with potentially other buyers, if the conditions of the contract and in particular the technical support and/or inputs provided by the contractor allow farmers to produce a product type or quality that they are not able to produce without the contract. All in all, if the net remuneration received by the farmer is higher than what they would have get without the contract (because the type or quality of their production has changed thanks to the contract farming), they are likely to stay loyal to the contractor (even if another opportunistic buyer may offer them a higher price at the time of harvest).[See Case Illustration 4.7.A. below].

Case Illustration 4.7.A.

A successful fixed price contract for an innovative variety of fragrant rice

A successful case of Fixed Price contract for paddy production has been experienced as part of the Support to the Commercialization of Cambodian Rice Project between a Rice miller / exporter and several Farmer Organizations. The contractor was providing farmers with seeds of a new variety of non-photoperiodic short term fragrant rice. The variety could be grown in Dry Season, as a substitute to IR varieties mainly used in the same period, and with a similar productivity.

In the contract, the company has offered a fixed price of about 1,000 KHR/kg, approximately 20 to 25% above the usual price for IR paddy. Whereas this price was probably still relatively cheap for a fragrant type of paddy (at the time the contract was implemented), it was highly appreciated by farmers since the income generated was much higher than what they would have been able to get outside of the Contract Farming agreement. This case was truly a win-win situation.

HOW A FIXED PRICE SHALL BE DEFINED?

If the contract is based on a fixed price, it should consider both producer's and buyer's constraints and stakes.

PRODUCER'S POINT OF VIEW

From the Producer point of view, the fixed price should be considered in relation to the production costs (all costs of inputs and services needed to produce the product, including hired labor, the rent of the land – or opportunity cost of renting out the land if the producer owns it –, costs of financial services – i.e. interest rates of the loan that the producer may have to contract to cover production costs, until he get paid for the goods delivered – and processing, storage and cost of transportation of products, depending on what the contract is specifying for the timing and location of the delivery) and leave an acceptable level of remuneration of the producer own labor.

Of course, the Producer's gross income is a combination of the price and quantities sold. The estimation of the income that the contract will generate has also to consider the likeliness to reach the expected volume of production (See comments on the estimation of volumes in the § 4.3.2. in previous pages). If the contract defines a range of quantity, it might be wise to verify that even the lower hypothesis on yields leave a decent income for the farmer.

Also it has to be considered that the production requirements (and costs) cannot be fully anticipated. Extra actions (additional to the standard plan of production activities) may be required along the production process, for instance additional treatment in case of pest attack, additional irrigation in case of drought... These additional tasks or inputs requirements come at a cost, so the anticipated production costs should include a reasonable margin for such unforeseen expenditures.

BUYER'S POINT OF VIEW

From the buyer point of view, a fixed price model is safe if the buyer has also fixed price long-term contracts with its own clients. Otherwise it means that the buyer cover the risk of the price fluctuation, which can be high if the product is marketed as a commodity with potentially important variations on the international markets. If the buyer brings significant added value by the processing or branding of the product and position the product on a niche market or as a well differentiated product, then the risk of choosing a fixed price option might be tempered for the buyer.

Yet, setting a fixed price in advance is always a bet on the future (for both parties). Buyer may win if the market price is above the fixed price at the time of purchase, or may lose in the opposite situation.

4.7.2. MARKET PRICE

The other main option for Contract Farming model is the **Market Price** based contract. In this option, the Contract does not indicate in advance the price that will be paid by the buyer to the producer for the product delivered, **but shall indicate the method that will be used to determine the price at the time of delivery** (or payment).

At the time of the transaction, the price will have to be determined based on the current market. This requires the definition of a clear **reference** that will be agreed and used by both parties as the source of information in order to determine the price to apply. § 4.7.6. provides some specific comments and advices regarding the price reference.

IN WHICH CASES A MARKET PRICE SYSTEM IS SUITABLE?

The contract with a market price leaves the risk of market fluctuation on the farmers. Farmers are often used to face this risk, but depending on their resilience (ability to cope with the risk of low price, which depend on their level of capitalization and the diversity of their sources of income), a more predictable pricing system might be preferable if farmers are very vulnerable.

The market price system might yet be relevant for a production that farmers are used to, and in case there is a dynamic local market (i.e. farmers are exposed to other buyers). In such a case, the advantage of the market price option is that it reduces the risk of side selling (which can be high in a fixed price system and when market price is above the price of the contract).

Market price system is less relevant when there is no local market for the products (often the case if the production is new to the farmers). In that case the risk of side selling is null, whereas it will be difficult to agree on a local reference to be used to set the price at the time of harvest/delivery¹².



MARKET-PRICE BASED CONTRACT DOES NOT MEAN THAT THE FIGURE OF THE PRICE REFERENCE IS DIRECTLY USED AS THE PRICE TO BE PAID TO THE PRODUCER. THE METHOD AGREED TO CALCULATE THE PRICE IN THE CONTRACT MIGHT BE A FORMULA IN WHICH THE REFERENCE IS USED AS THE VARIABLE, BUT INTEGRATING OTHER ELEMENTS, FOR INSTANCE:

- ☐ A REFERENCE OF PRICE PAID BY LOCAL COLLECTORS + AN ESTIMATION OF THE COSTS OF TRANSPORTATION IF THE PRODUCER HAS TO DELIVER THE PRODUCTS TO THE BUYER FACILITY;
- ☐ A PERCENTAGE OF AN INTERNATIONAL REFERENCE PRICE FOR A PROCESSED PRODUCT (E.G. PRICE OF PADDY = X% OF THE FOB PRICE FOR THE SAME VARIETY OF MILLED RICE)...

¹² Even if, in that case, a non-local reference can be used, for instance an international market price as explained in § 4.7.6.

4.7.3. MARKET PRICE + PREMIUM

A variant of the market price contract is the **Market Price + Premium** option.

As for the market price system, a price is determined based on an agreed reference (possibly with a calculation formula), but the market price is increased by a fixed (or variable) bonus or a “premium” to be paid to the producer. This serves as an incentive to ensure the loyalty of the producer, and/or can remunerate a specific quality or value of the product that the local market might not value.

➔ Price paid to producers will be:

$$\text{Price to Producer} = \text{Market Price} + \text{Premium}.$$

The premium may be defined in absolute value or as an additional percentage of the market price.

➔ In the case of a premium defined as an absolute value (amount per unit of quantity)¹³:

$$\text{Price to Producer} = \text{Market Price} + x \text{ (KHR/kg)}.$$

➔ In the case of a variable premium:

$$\text{Price to Producer} = \text{Market Price} + x \text{ \%}.$$

Market Price + Premium is for instance commonly used for the production of a certified organic product, that local trader might not pay more than the conventional product but that the contractor can value because of its specific market connection [See Case Illustration 4.7.B below].

Case Illustration 4.7.B.

« Market Price + Premium » model for organic paddy supply

A successful case of Contract Farming with a Market Price + Premium system has been experienced as part of the Support to the Commercialization of Cambodian Rice Project between a major rice exporter and eight Agricultural Cooperatives in Preah Vihear province for the production and supply of organic paddy.

Organic rice can be sold on the international market with a significant premium price. Whereas the exporter was successfully exploring the organic market in the European Union and USA, it was important for him to secure his supply with organic paddy (that can be certified by an international certification body, against EU and USA organic standards).

On the other hand, the compliance with organic standards can lead in some case to a slightly lower productivity, and besides requires investing in an Internal Control System (payment of internal inspectors to verify the compliance with organic standards). Cooperatives might be reluctant to do such an investment if there are no guarantees to sell the paddy as organic at a higher price.

For such a case, Contract Farming is very relevant as both parties need to secure their deal.

Contract farming agreements signed between the exporter and the cooperatives since 2014 are based on a market price + premium model.

In 2014, the level of premium was varying between +70 to +200 KHR/kg, depending on the quality grade of the paddy delivered.

A part of the added value generated by the organic certification was thereof shared with farmers, leading to a win-win partnership. The market price + premium is well adapted in this case and reduce the risk of side selling since the price offered for organic is always higher than the price that would be offered by a local collector for the same quality of paddy, marketed as conventional.

In the following years, contract between the same buyer and cooperatives have been renewed, with increased volumes and a higher level of premium (from +125 to +260 KHR/kg).

¹³ This is the case for instance in the Case Illustration 4.7.B., next page.

Contract farming is sometime a way for the buyer not only to secure its supply but also to know more about the product he buys (improved traceability and information on the production method, for instance). This can be a requirement for the purchasing company to reach requirements for international standards certification, leading to a better access to market or better prices. But if an additional effort is required from producers (at least to document their practices and provide, in addition to the product, some information on the production method), it is legitimate that this effort would be rewarded. A premium price would also be justified in such a case. Illustration 4.7.C. below is a counterexample of a failure in a case where the buyer was requesting such additional effort to document production process, while not valuating this extra effort.

Case Illustration 4.7.C.

A case of failure: « Market Price » offered while asking more from producers

In another case facilitated by SCCRP project, a rice miller and exporter has contracted a Farmer Organization to supply conventional paddy. It was agreed to pay the paddy at market price (using other rice mills in the vicinity of the buyer facility as the reference). But in addition to the paddy, the buyer was expecting the Farmer Organization to provide information on the production method (use of fertilizer, pesticide, etc.) requiring an additional work for data collection from the members and compilation of the information.

No premium was offered for this additional work load, which has limited the farmers' motivation in this contract. The partnership has not been very successful and has not been renewed afterward.

4.7.4. GUARANTEED MINIMUM PRICE OR MARKET PRICE IF ABOVE

The option of a **Guaranteed Minimum Price** is a mix of fixed price and market price system.

In this model, the market price is used (as in § 4.7.2. above), but the price paid cannot be under a minimum level that is guaranteed. If market price (or the price calculated according to the agreed formula and based on a market reference) is lower than this minimum level, then the amount paid will be the minimum guaranteed price.

➔ If market price is above the minimum level guaranteed, the price paid to producers will be:

Price to Producer = Market Price

➔ If market price is equal or below the minimum level guaranteed, the price paid to producers will be:

Price to Producer = Minimum Guaranteed Price

The guaranteed minimum price is often a very good option for producers since it offers the guarantee of a minimum price for the producers (which should cover the production costs and leave a decent net income for the remuneration of farmers' labor). At the same time, as the price will follow the market prices when those ones are going up, the risk of side selling due to a better market opportunity out of the contract is limited.

Elements provided in the § "How a fixed price shall be defined" (in § 4.7.1) remains largely applicable when establishing the level of the minimum price guaranteed.

The Guaranteed Minimum Price system is in use in many systems of Fair Trade certification.

To guarantee a minimum price often reflects a certain attention (/care) of the contractor to the producers and its willingness to develop a long term partnership with them. It can be an asset for the buyer's Corporate Social Responsibility and image.

4.7.5. GUARANTEED MINIMUM PRICE OR MARKET PRICE IF ABOVE + PREMIUM

The option of a Guaranteed **Minimum Price + Premium** is a mix of the system described in § 4.7.3 and 4.7.4. A premium is added to the market price, but the applied market price in the formula will not go below the minimum guaranteed.

➔ If market price is above the minimum level guaranteed, the price paid to producers will be:

$$\text{Price to Producer} = \text{Market Price} + \text{Premium}.$$

➔ If market price is equal or below the minimum level guaranteed, the price paid to producers will be (if it is agreed that the guaranteed price is exclusive of the premium, see ⑨ point of attention below):

$$\text{Price to Producer} = \text{Minimum Guaranteed Price} + \text{Premium}.$$

This system is the most protective for producers. It can be difficult to sustain for the buyer if he is marketing the production in a very competitive commodity market environment. But such a system can be viable in the case of a niche market and if the good practices (social responsibility) of the company can be valued by clients and consumers (for instance via fair trade certification).



IN THIS MODEL OF A GUARANTEED MINIMUM PRICE + PREMIUM, IT IS IMPORTANT TO CLEARLY STATE IF THE MINIMUM PRICE GUARANTEED IS INCLUSIVE OR EXCLUSIVE OF THE PREMIUM. AN UNCLEAR FORMULATION CAN LEAD TO DIFFERENT INTERPRETATION, THEREOF TO DISPUTE. GENERALLY, THE GUARANTEED PRICE IS CONSIDERED TO BE EXCLUSIVE OF THE PREMIUM (I.E. BEFORE THE PREMIUM IS APPLIED).

EXAMPLE: FOR A GUARANTEED PRICE 98 \$/t OF PRODUCT + A PREMIUM OF +8 \$/t OF PRODUCT:

- ☐ IF THE GUARANTEED PRICE IS INCLUSIVE OF THE PREMIUM, PRODUCERS WILL RECEIVE 98 \$/t WHENEVER THE PRICE IS BELOW 90 \$/t. THEY WILL RECEIVE 99 \$/t WHEN THE MARKET PRICE IS 91 \$/t, 100 \$/t WHEN THE PRICE IS 92, ETC.
- ☐ IF THE GUARANTEED PRICE IS EXCLUSIVE OF THE PREMIUM, PRODUCERS WILL NEVER RECEIVE LESS THAN THE GUARANTEED PRICE OF 98 \$/t + 8 \$/t OF PREMIUM WHICH MEANS AN ACTUAL GUARANTEE OF 106 \$/t.

Synthesis: Comparisons between the 5 types of pricing systems

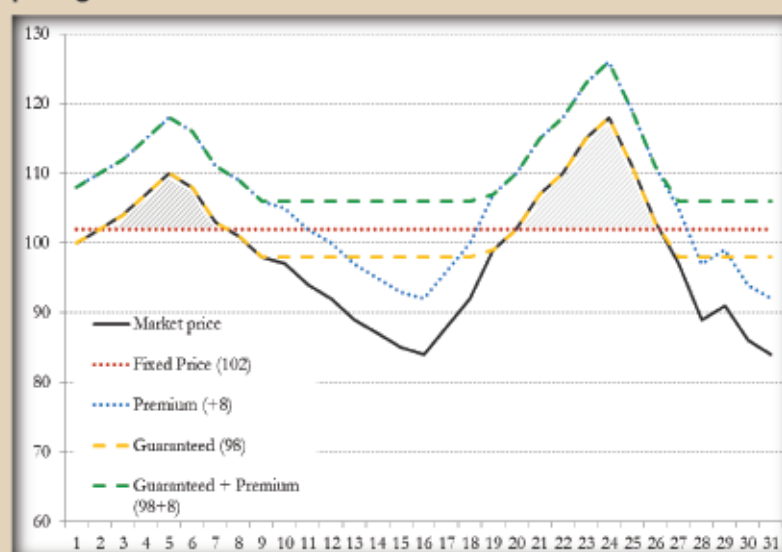
Table 4.7.A: Synthesis and comparisons of the pricing systems in Contract Farming

Pricing system	Advantages	Disadvantages	Appropriate cases
1. Fixed Price	Security of the price for the producers. The risk of price fluctuation is transferred to the contractor.	When market prices are above the fixed price, risk of side-selling is high if producers have access to other market opportunities.	Suitable in particular for a new production, for which farmers have no local selling opportunities and may be reluctant to start if there is no guarantee on price.
2. Market Price	Limit the risk of side selling that can occur when farmers are in contact with other buyers and market prices are high.	The risk of price fluctuation remains on producers. If the contractor does not provide other incentives than prices (like pre-financing, access to inputs...) then the CF may not be attractive for farmers.	Can be relevant for a production that farmers are used to, and in case there is a dynamic local market (exposure to other buyers). But contract should bring other benefits to producers.
3. Market Price + Premium	Limited risk of side selling: the premium serves as an incentive to ensure the loyalty of the producer, and can remunerate a specific quality.	The risk of price fluctuation remains on producers but is tempered by the premium.	Appropriate to value a specific quality which may not be valued by other buyers (for instance organic production).
4. Guaranteed minimum price	The risk of price fluctuation is partly transferred to the contractor, ensuring a reasonable level of remuneration of farmers.	Difficult for the contractor to sustain if implemented in a very competitive commodity market.	A minimum price guaranteed to producers is showing the commitment of buyer and encourage long term partnership and loyalty. It can be valued as a proof of buyer's social responsibility.
5. Guaranteed minimum price + premium	Provide both security and incentive for the producers. This system is likely to build a very strong trust and long-lasting partnership.	Difficult for the contractor to sustain if implemented in a very competitive commodity market.	Most favorable case for producers. Very suitable if the contractor can value this partnership toward his clients and consumers (CSR, Fair trade...).

The Figure 4.7.A (opposite) shows how the prices paid to producers would evolve in relation to the market price in the 5 systems of pricing (market price, fixed price, market price + premium, guaranteed price and guaranteed price plus premium). In the case of a Fixed Price option, the areas hatched in grey correspond to a period of high risk of side selling since the fixed price offered is lower than the market price.

The curves illustrate well the staging of price paid to producers in guaranteed price systems, when market prices slump below the minimum guaranteed.

Figure 4.7.A.: Illustration of price variations in the 5 systems of pricing



4.7.6. REFERENCE AND FORMULA TO USE IN CASE OF VARIABLE PRICE (/MARKET PRICE)

Any pricing system which makes a reference to “market price” (i.e. all the pricing system described in the previous paragraphs 4.7.1. to 4.7.5. except the “Fixed price” model) need to clearly indicate the source of information that will be used as the reference for what is called “market price”. This might be either a local price reference or a national/international price reference (see below).

In addition to the source of price information used, it also requires to clearly define the time or period on which the considered reference will be used and the time or period duration on which it will be applied, and the modalities of the calculation of the price to be applied in the contract based on the price references.

LOCAL PRICE REFERENCE

A local price reference is a price applied by other stakeholders (in principle in the same area as the contract signatories) for the same product as the one for which the contract is signed. Same product means that the product used for the reference is the same quality (for instance the same variety) and the same level of processing that the product that has to be delivered by the producer to the contractor. For instance if the product to be delivered by farmers in the contract is dry (14% moisture content) paddy of *Phka Rumduol* variety¹⁴, the reference price will be a price for a similar dry *Phka Rumduol* paddy.

From the point of view of figures manipulation, it is easier to use a local price reference (= a reference price for the same product in the vicinity of the geographic location of the area of production – option 1 above). It corresponds to the price that other buyers of the same product would offer to the contracted farmers, and it is therefore a reference directly applicable to set the price to be paid under the contract. But this is of course applicable only if there is a dynamic local market for the product of the contract (in other words if the producers are exposed to other buyers than the contractor).

Since there might be several other buyers active locally, the contract may have to specify namely which ones will serve as a reference, and how / by whom the information will be collected.

It is desirable to select not only one source but at least three or four sources of information, or more. And if there are different sources of information, one also need to specify which figure will be considered: for instance it can be the average price offered from three local buyers identified, or it can be the highest price among the prices offered by the same three local buyers. Note that, to avoid a temptation for side-selling, it is preferable to use the highest price as a reference instead of an average price. It is also of course more favorable to producers.

The list of buyers to be used as a reference has to be agreed by both parties. They have to be well selected: they need to buy the same category of product as the one in the contract (if they do not buy the same type of product, then they cannot be used as a reference, as seen in the Case Illustration 4.7.D). One also needs to verify that these buyers will actually agree to disclose the data on their purchasing prices when needed.

¹⁴ With possibly additional specifications defined, such as purity, broken kernels rate...

Case Illustration 4.7.D.

A case of inapplicable price reference: the variety is too specific and not purchased by other buyers which were expected to be used as market references

In 2014, among the pilot cases of Contract Farming supported by SCCRP project, a rice miller has contracted a Farmer Organization for the supply of a relatively uncommon variety designated by the buyer and the producers as “*Malis Srangae*” (note that the contract was initially considered for another variety, but the variety was finally changed due to the lack of quality seeds availability for the initial variety considered).

When came the time of harvest, difficulties have been faced by the Farmer Organization because the price offered by local collectors for *Malis Srangae* paddy (collected in the village) was equivalent to the price offered by the rice miller for paddy delivered at the mill. The contract stated that the price would be defined based on the prices offered by 3 to 5 other rice mills (named in the contract and agreed jointly by the two parties) nearby the buyer’s facility. Unfortunately, at the time of the purchases, none of these reference mills were buying *Malis Srangae* variety. Thereof, the reference used in the contract to set the price was not applicable anymore.

➡ It is important to make sure that the foreseen reference will actually be applicable, i.e. will provide a price reference for the same product (same variety...) at the expected time of the delivery.

There shall not be close links between any of the party in the contract and the buyers selected to serve as reference, otherwise there might be a bias in the prices indicated.



QUESTIONS TO CROSSCHECK WHILE SELECTING LOCAL SOURCES OF INFORMATION ON PRICES, TO SERVE AS REFERENCE:

- ☐ DO THE LOCAL BUYERS IDENTIFIED TO BE USED FOR PRICE REFERENCE PURCHASE THE SAME TYPE OF PRODUCT AS THE ONE IN THE CONTRACT (E.G. SAME VARIETY...). IF NOT THE REFERENCE WILL NOT BE VALID AND THE TWO PARTIES SHOULD SEEK ANOTHER REFERENCE.
- ☐ ARE THE POTENTIAL BUYERS SELECTED AS REFERENCE TOTALLY INDEPENDENT FROM ANY PARTY IN THE CONTRACT (NO BUSINESS OR FAMILY RELATIONSHIP WITH ANY PARTY IN THE CONTRACT)? [NOTE THAT DIFFERENT COMPANIES SOMETIMES HAVE THE SAME OWNERS!]

NATIONAL / INTERNATIONAL PRICE REFERENCE

A National / International price reference is likely to be the price of the processed product as it is marketed on national or international market. It can be for instance the export price (FOB) for the processed product of a similar category. Several sources of information might be available, depending on the type of products, especially for internationally marketed commodities¹⁵. Case Illustration 4.7.E below provides examples of such sources of price references for internationally trade commodities.

For rice, for instance, the “Live Rice Index” website can provide daily or weekly reference prices on international markets for Cambodian Long grain fragrant rice, which can be used as a benchmark to set the price of payment in the contract. In such a case the reference will not be used directly as the price to apply in the contract, but the price to be paid by the contractor to the producer can be a formula using this reference as the variable data.

¹⁵ Note that some sources of information on market prices are not free and require the users to pay a subscription fee to get access to the data. This is something that has to be verified. If it is the case, it is wise to ensure that producers can have an access to the data, possibly via another subscriber to the service who is independent from the contractor.

Case Illustration 4.7.E.

Example of sources of international market price information for internationally traded commodities

Reliable public information might be available for the international market price of processed commodities. They can be updated daily or weekly.

For instance, information on FOB prices for Cambodian long grain fragrant rice are available on the website of Live Rice Index. They also may be reported on the Cambodian Rice Federation (CRF) website.

▼ *Example of price information on the Live Rice Index (livericeindex.com).*

CAMBODIA - LONG GRAIN FRAGRANT RICE	CHANGE	PRICE
Phka Malis/Phka Rumduol (Wet Season) 5% Broken STX	-30	\$820
Sen Kra Ob/Sen Pidao (Dry Season) 5% Broken STX	-10	\$740
Fragrant 100% Broken A1 Super	-10	\$450
Email: info@livericeindex.com		

Cambodian Weekly FOB Indication price Week 31st : 27/07/15 - 02/08/15	
	FOB (USD per ton)
Cambodian Long Grain Fragrant	
1. Premium Jasmine Rice 5% (Purity 90%)	850
2. Jasmine rice 5% (Purity 85%)	820
3. Premium Sen Kra-Ob 5% (Purity 90%)	780

Example of price information published on CRF website (www.crf.org.kh) ▲

Similar sources of information on prices exist for various other agricultural commodities, such as rubber (e.g. International Rubber Board – <http://rubberboard.org.in/internationalrubberprice.asp>), coffee (e.g. International Coffee Organization website – www.ico.org), sugar cane (e.g. <http://www.sugaronline.com>), etc.

*Example of price information available
on the International Rubber Board website ►*

Rubber Price as on 28/9/2015 per 100 Kg BANGKOK				
CATEGORY	IN RS		IN USD	
	Price	Change	Price	Change
RSS-1	▲ 9,001.00	+58.00	136.15	+0.88
RSS-2	▲ 8,892.00	+58.00	134.50	+0.88
RSS-3	▲ 8,791.00	+58.00	133.00	+0.88
RSS-4	▲ 8,737.00	+58.00	132.20	+0.88
RSS-5	▲ 8,655.00	+58.00	130.95	+0.88
SMR-20	♦	*	0.00	*
Latex(60% drc)	♦	*	0.00	*

Note that there are often several categories of products referred in such websites. If such a source of information is used as a reference, it should clearly state:

- The source (website address, for instance, or organization compiling information),
- The exact denomination and category of the product to serve as reference,
- Possibly, the place of quotation if there are several references,
- The time or period considered (example: shall daily price index be used? Or weekly index? Or monthly index?).

Synthesis: Comparisons between the 2 types of price references

Table 4.7.B.: Local price reference or international market price reference

Price reference	Explanations	Advantages	Disadvantages
1. Local Price Reference	Price applied for the same product (row material) in the area of production of the contract. (e.g. local price for Jasmine paddy of the same quality in the commune or district where the contract is signed).	<ul style="list-style-type: none"> ▪ The reference can directly be compared to the price for the row product producers will deliver to the contractor. ▪ It is easy to manipulate and directly applicable to set the price to be paid under the contract. ▪ Both parties can seek and access information. 	<ul style="list-style-type: none"> ▪ The information on the local prices is often not collected and publicized by another party. The information has thereof often to be collected / surveyed by the signatory parties of the contract themselves. Figures provided by any producer or by the contractor can be disputed by the other party. ▪ Also there is a risk of collusion between the buyer (or the producers) with other actors of the value chain in the vicinity to provide false or manipulated values to serve as price benchmarks.
2. National / International Price Reference	Price for the processed product as marketed nationally or internationally. (e.g. international market price – FOB – for Cambodian Jasmine rice).	<ul style="list-style-type: none"> ▪ The price references used as the benchmark are produced by a third party based on the aggregation on numerous data. They cannot be manipulated by any party signatory of the contract. ▪ Figures are publicized and thereof easy to verify, and they are (generally) reliable data. 	<ul style="list-style-type: none"> ▪ The figures provided are not for the row material (the product delivered by producers to the contractor: e.g. <i>paddy</i>) but for an internationally traded processed product (e.g. <i>rice</i>). The figure of the price reference is not directly usable, but shall be converted to a price for the row material based on an agreed formula (e.g. row product paid to the farmer at 60% of the FOB price)... ▪ Access to the price information (generally via the internet) can be difficult for smallholder farmers. ▪ The access to data is not always free (paying subscription required to access full data).

TIME AND PERIOD OF USE OF THE PRICE REFERENCE

To define the source of information on price is not sufficient. The contract farming agreement also has to indicate how frequently and when the price reference shall be consulted and for which period of time the price to apply for the payment of goods delivered is set. The contract also needs to define how the price reference is used. For instance if there are several price records taken into account (either different sources – such as different buyers locally – or different times for example 7 price recorded during the 7 consecutive days), the contract should clearly indicate if the reference that will be used is an average of the different prices records considered, or is the highest of those different records, or any different combination.

There are countless options for this issue. For instance it can be:

- On a daily basis: price reference will be consulted every day and the price to apply in the contract will be reset on a daily basis.

- On a weekly basis: price to apply in the contract will be set for a full week. It can be based for instance on the price reference for the first day of the week, or on an average of prices of the previous week, or defined according to the highest price observed in the previous week.

FORMULA TO BE USED TO CALCULATE THE ACTUAL PRICE OF PAYMENTS BASED ON A NATIONAL OR INTERNATIONAL PRICE REFERENCE

As indicated above, when a national or international source on price information is used, the figure of the price reference is not directly usable. It has to be translated in a local price for the row material, based on a figure which might be for instance the FOB (export) price for a processed product.

Two methods can be proposed to correlate the price that should be paid for the row material delivered to the contractor with the export price reference for the final product:

- A cost assessment method.
- An historical method.

COST ASSESSMENT METHOD

In this method, we try to estimate the processing yield (what quantity of row product is needed to produce 1 ton of final exported product corresponding to the one used as price reference), and all the costs (except the cost of the row material that we want to determine) that have to be supported by the contractor (or by downstream agents in the value chain) until the product is loaded for export (it also needs to integrate a reasonable profit expected for the contractor). On the other hand, expected incomes are also calculated (income from the final product at the reference price + possibly incomes from by-products). The difference between (incomes) and (costs + expected profits) define the amount that can be allocated to pay the quantity of row product needed to produce 1 ton of final product. From this calculation we can deduct a price for row product based on the reference FOB price of the final product. A (theoretical) illustration of the method is shown in the “Case Illustration 4.7.F” next page. It has to be noted that this method is actually very theoretical and might not be very easy to apply. It is actually very difficult to get exact figures on processing yields, operation and logistic costs on the buyer side.

HISTORICAL METHOD

An historical method would consist in reviewing records of the national or international price used as the reference on a medium or long period and to correlate these prices to prices locally paid for the row material at the same dates. Whereas historical records may be easy to find for the exported product, local prices for raw material may not be well documented. But it is possible to try to re-build this information based on stakeholder records or memory.

Based on the records for national or international reference price for the exported product and local prices for the row product, one can try to establish a correlation.

If the ratio $\frac{\text{Local row product price}}{\text{Reference price}}$ does not vary a lot, then we can determine a factor to define a fair local price based on the national or international reference price. See a (theoretical) illustration of the method in the “Case Illustration 4.7.G” page 70.

International price reference are sometime used as a reference to determine a basic price (ref. x coefficient) which is completed by a premium and/or a minimum guaranteed price. Also it is more easily used if the product sold by producers to the contractor is at the same level of processing as the exported product. For instance such a reference is often used for fair trade in the coffee sector, in which producer groups are delivering green coffee beans to the buyer, which is the form in which it is generally exported. In a fair trade contract for coffee, the price will generally be calculated as:

$$\text{Price paid} = \text{guaranteed price or FOB ref. price (whichever is higher)} + \text{premium}.$$

Case Illustration 4.7.F.

Theoretical and simplified example of elaboration of a formula to convert the reference FOB price to an applicable price for the row product in the contract

(Note: Figures below are fictional and are taken just to illustrate the method)

Case of a contract between a Farmer Organization and a rice miller. The Farmer Organization has to deliver the paddy to the rice mill. The price to be determined is thereof a mill-gate price for the paddy. The price used as a reference is the price for “Cambodian Long Grain Fragrant rice Phka Malis/Phka Rumduol (wet season) 5% Broken STX” as displayed daily on the Live Rice Index webpage (See Case Illustration 4.7.E page 66).

CAMBODIA - LONG GRAIN FRAGRANT RICE	CHANGE	PRICE
Phka Malis/Phka Rumduol (Wet Season) 5% Broken STX	-30	\$820
Sen Kra Ob/Sen Pidao (Dry Season) 5% Broken STX	-10	\$740
Fragrant 100% Broken A1 Super	-10	\$450

e.g.: Reference FOB price of 820 \$/t

To estimate a fair mill-gate price for the farmers, based on an indication of the FOB price, we need to consider different parameters:

1. The milling yield: how many kg of paddy are needed to produce 1,000 kg of rice (5% broken, same as the reference used). → E.g. 2,000 kg of paddy are needed to produce 1,000 kg of high quality rice.
2. Consider the costs of processing, transportation and other operation costs of the miller/exporter (energy, labor, other operation costs, financial costs, taxes, transport)... → E.g. 65 \$/t of rice for processing + 40 \$/t for transportation, loading, custom clearance...
3. Consider valorization of by-products (broken rice, rice bran...) → E.g. with 2,000 kg of paddy, in addition to 1,000 kg of high quality rice, 300 kg of broken rice will be produced, valued at 290 \$/t (mill gate), and 200 kg of rice bran, valued at 160 \$/t (mill gate).

Miller incomes			
	Quantity	Unit value	Amount
5% broken rice	1.00 t	\$ 820.00	\$ 820.00
Broken rice	0.30 t	\$ 280.00	\$ 84.00
Rice bran	0.20 t	\$ 160.00	\$ 32.00
TOTAL incomes			\$ 936.00
Miller costs (out of paddy purchase)			
	Quantity	Unit value	Amount
milling and operation	2.00 t	\$ 65.00	\$ 130.00
logistic transport	1.00 t	\$ 40.00	\$ 40.00
TOTAL costs out of paddy purchase			\$ 170.00
Miller expected profit	1.00 t	\$ 20.00	\$ 20.00
Amount remaining to pay the paddy			
Incomes			\$ 936.00
Costs			- \$ 170.00
Expected profit			- \$ 20.00
Amount remaining to pay the paddy			\$ 746.00
Price that can be paid for paddy			
Volume of paddy to purchase:	2,000 kg		
Price defined for paddy based on FOB refere			0.37 \$/kg

Based on the above parameter, as shown in the table above, we can calculate the expected incomes of the rice miller for the purchase of 2 tons of paddy leading to 1 ton of high quality (5% broken) rice exported + by-products. We can estimate the costs and the expectation of profit of the miller, and deduct the amount remaining for the remuneration of 2,000 tons of paddy.

Based on this assessment a simplified formula can be deducted: for FOB price of 820 \$/t, mill gate price of paddy can be set at 370 \$/t. i.e. the paddy can be paid at mill gate at **45 % of the FOB price** for 5% broken.

[Note that in reality a direct proportion (like “45%”) does not reflect the real calculation which combines fixed costs and costs variable according to volumes, but it can be used as an approximation to simplify the system].

Case Illustration 4.7.G.

Theoretical example of historical price record analysis to define a correlation between the reference FOB price to an applicable price for the row product in the contract

(Note: Figures below for local prices are fictional and are taken just to illustrate the method)

In order to establish a correlation between an international market price reference and the local price applicable for row material, we can compare the international market price reference records to local prices paid for the row material in the past at the same time.

For instance, the table below compares international reference price for 5% broken milled white rice with local prices of white rice paddy that could have been locally recorded.

In this example, it is observed that the ratio Local Price for paddy / Reference price for white rice does not vary a lot. As seen on the line in grey in the table, it varies only between 46.9% to 48.6%, with an average at 47.9% on the considered period.

Historical records												
	Dates	Nov-14	Dec-14	Jan-15	Feb-15	Mar-15	Apr-15	May-15	Jun-15	Jul-15	Aug-15	Average
Reference price ⁽¹⁾ \$/t		\$419.00	\$410.70	\$409.70	\$409.50	\$400.70	\$392.40	\$382.40	\$370.50	\$387.70	\$375.70	\$395.83
Local row product price ⁽²⁾ \$/t		\$203.00	\$199.00	\$195.00	\$195.00	\$192.00	\$184.00	\$183.00	\$180.00	\$185.00	\$181.00	\$189.70
Ratio Local row / Ref price		48.4%	48.5%	47.6%	47.6%	47.9%	46.9%	47.9%	48.6%	47.7%	48.2%	47.9%
⁽¹⁾ Rice, 5 percent broken milled white rice, Thailand nominal price quote, US Dollars per Metric Ton (Source: World Bank)												
⁽²⁾ White rice paddy												

In such a situation, it seems realistic to use the reference FOB price for white rice to determine the local price to be paid for paddy. For instance 48% of FOB price for white rice 5% broken... or a slightly above (49% or 50%) if we want to provide an additional advantage/incentive to producers.

4.7.7. ADJUSTMENT OF PRICE TO QUALITY

In a given contract, different grade of quality can be described for the product to be delivered, and different prices can accordingly be applied for each grade of quality.

In that case, the article of the contract defining the quality requirements (See § 4.4. in the present guidelines) should well identify the different grades, the criteria and the target value used to determine the grade of each batch of product delivered, and the method and procedure to be used for quality control.

For each grade of quality, the contract can indicate the price that will apply (in case of a fixed prices system – See § 4.7.1. page 56) or (in the case of variable prices – See § 4.7.2. to 4.7.5. pages 58-63) a premium to apply to the higher quality (or vice-versa, a discount on lower quality grades). In this case the contract has to be clear about the grade considered for the reference price, and premium that apply for above quality or discounts for lower ones.

4.8. MANAGEMENT OF TRANSACTIONS: TRANSPORTATION, DELIVERY, RECEIPTS, ETC...

The arrangement of transportation and delivery of the agricultural products is an important issue to clarify for both producers and buyers. Modalities and timing have to be clearly discussed and agreed as part of the contract. This is particularly important and sensitive when the products to be delivered are fresh/perishable products which have to be handled rapidly from the farm to the processing plant (or distribution network). The arrangement to secure appropriate means of transportation for delivering the produce on time is one of the important factors for the success of implementation of contract farming, notably to preserve the quality of the products until the delivery point and thereof maintain high prices¹⁶. Yet, it has to be acknowledged that it is not always possible to set all the details at the time of contract negotiation and signatures, and that final details may be fine-tuned only few days before product collection. The section 5.2. pages 99 - 105 provides some advices on the finalization of arrangements for product collection and transactions.

Below is a check-list of key points that shall be discussed and clarified as part of the agreement between the producer and the buyers. The following paragraphs provide additional clarification, reflections and advise for each of these points.



CHECK-LIST OF POINTS TO CLARIFY IN THE CONTRACT REGARDING THE MANAGEMENT OF COLLECTION AND TRANSPORTS OF PRODUCTS:

- ☐ SHALL ALL THE QUANTITIES OF PRODUCTS COMMITTED BY CONTRACT BE DELIVERED IN ONE TIME ONLY OR IN SEVERAL DELIVERY OPERATIONS? (NOTE: IN MOST OF THE CASE THERE WILL BE SEVERAL DELIVERY OPERATIONS, ESPECIALLY IF LARGE VOLUMES OF PERISHABLE PRODUCTS ARE ENGAGED)
- ☐ IS THERE A MINIMUM AND/OR A MAXIMUM VOLUME PER DELIVERY OPERATION? (GENERALLY THE CONTRACT MAY STATE A MINIMUM QUANTITY PER DELIVERY IN ORDER TO KEEP TRANSPORTATION COSTS PER UNIT AT AN ACCEPTABLE LEVEL).
- ☐ IS THERE A MINIMUM AND/OR MAXIMUM NUMBER OF DELIVERY OPERATION IN THE FRAME OF THE CONTRACT?
- ☐ IS THERE ONLY ONE POINT OF DELIVERY/COLLECTION OR SEVERAL POINTS OF COLLECTION?
- ☐ WHERE THE COLLECTION POINTS ARE LOCATED?
- ☐ WHO IS IN CHARGE TO ORGANIZE THE TRANSPORTATION FROM FARMS TO COLLECTION POINT?
- ☐ WHO IS IN CHARGE TO COVER THE COSTS OF THE TRANSPORTATION FROM FARMS TO COLLECTION POINT?
- ☐ WHO IS IN CHARGE TO ORGANIZE THE LOADING OF TRUCKS (OR OTHER VEHICLE) AT THE COLLECTION POINT?
- ☐ WHO IS IN CHARGE TO COVER THE COSTS OF THE LOADING OF TRUCKS (OR OTHER VEHICLE) AT THE COLLECTION POINT?
- ☐ WHO IS IN CHARGE TO ORGANIZE THE TRANSPORTATION FROM COLLECTION POINT TO PROCESSING PLANT / STORAGE FACILITY / DISTRIBUTION POINT?
- ☐ WHO IS IN CHARGE TO COVER THE COSTS OF THE TRANSPORTATION FROM COLLECTION POINT TO PROCESSING PLANT / STORAGE FACILITY / DISTRIBUTION POINT?
- ☐ WHAT ARE THE COORDINATION AND COMMUNICATION MODALITIES BETWEEN PRODUCERS AND BUYERS TO ARRANGE THE COLLECTION (HOW AND WHEN THE BUYER SHALL BE INFORMED THAT A CERTAIN VOLUME OF PRODUCT WILL BE GATHERED AND DELIVERED AT A CERTAIN TIME ON A DEFINED COLLECTION POINT?).
- ☐ RESPONSIBILITIES IN CASE OF NON-COMPLIANCE OF A PARTY WITH THE DELIVERY SCHEDULED AGREED: E.G.: IF PRODUCERS ARE BRINGING THEIR PRODUCTS TO THE COLLECTION POINT AND THE BUYER IS NOT READY TO PICK-UP THE PRODUCTS ON TIME, SHALL THE BUYER BE RESPONSIBLE FOR POSSIBLE DEPRECIATION OF THE QUALITY (ESPECIALLY FOR PERISHABLE PRODUCTS), ADDITIONAL COST FOR STORAGE OR KEEPING THE PRODUCTS, ETC. ON THE OTHER HAND, IF THE BUYER SEND A TRUCK AT THE DELIVERY POINT AND THE GOODS ARE NOT THERE, SHALL THE PRODUCER BE RESPONSIBLE TO COMPENSATE THE COSTS OF THE TRUCK MOBILIZATION?

¹⁶ See § 4.7.7. ADJUSTMENT OF PRICE TO QUALITY.

4.8.1. BENCHMARK NUMBER OF DELIVERIES AND/OR VOLUMES OF EACH DELIVERY

In addition to the quantities that the producer commits to supply to the buyer, the contract may also indicate the number of deliveries (all the product to be delivered in one time or several deliveries?). Otherwise, in many cases, the contract does not precise the number of delivery (or collection) operations, but can indicate the minimum volume of products to be gathered for one delivery or collection operation to take place. Indeed, it would not be economically efficient to mobilize a truck for too small quantities of products, and this is why it is necessary to set the minimum quantity for one delivery operation.

4.8.2. COLLECTION POINT(S)

The contract shall clearly state the precise location where the producer has to hand-over the products to the buyers. Or if not stated in the contract, it shall be clearly discussed and agreed before the beginning of the harvest of products.

Collection point might be nearby the place where the production takes place (sometime the buyer purchase the product uncut and manage the harvest by himself, in which case the place of delivery is *de facto* the field where the production is grown).

In other cases the producer will be responsible to deliver the product to the buyer facilities (processing plant).

Alternately, the location where the product will be handed over can be agreed collection points, generally nearby the production site, where products from different production sites (fields...) will be gathered and where the buyer will pick up these products. This is often the case in particular if the signatory of the contract is a producer organization which will define where its individual members will bring their products. The producers and the buyer shall agree together on the location(s) where the produce shall be gathered by members of group, association or cooperative where the buyer will pick-up the products.

The location of collection points shall be defined taking into account:

- The accessibility by trucks: collection points are generally located on an accessible road that trucks can use.

The proximity of production sites to reduce the length of the transportation of small quantities. To optimize transportation costs, it may be preferable to define several collection points to gather the production of nearby farmers, but ensuring that at least one truck load is gathered at a time (or that a truck can be filled in a limited number of stop-points on a collection itinerary).

4.8.3. ORGANIZATION OF THE TRANSPORTATION

The responsibility for payment of transportation costs (including cost for loading and unloading trucks) and delivery arrangement from the fields to collection points and from collection points to the processing plant shall be discussed and agreed by both parties during contract negotiation and this mutual consent has to be written in the contract. In some areas there is a shortage of labor to work on load of the produce on the trucks, for this case the producers shall inform or making aware of that situation with the buyer in order the buyer has enough time to mobilize workers elsewhere

or the producers can assist to pinpoint the locations where local labor resources are available for loading the products. However the contract shall state who is responsible to pay for the costs of loading / unloading the trucks.

When delivery takes place at the buyer facilities (processing plant) at a peak of harvest, there might be some delays (queue) for the products delivered by the producer to be handled by the buyer side. This costs time to the producers, but also, if fresh products are delivered, the waiting can affect the quality of the products delivered. Producers may negotiate a priority treatment at the facility of the buyers for their products to be checked and received in priority and without waiting. This priority shall be mentioned in the contract if it is negotiated. It can also be formulated in term of a maximum delay for the buyer to proceed to the reception of products delivered.

For seasonal production with a high peak of production, both parties shall agree upon all relevant resources and shall be arranged beforehand to deal effectively with the peak of volume to handle, including sufficient human resources to check the quality of produce and manage the transportation, loading and management of the transactions in order to avoid delays.

4.8.4. QUALITY CHECK

The time and way to proceed to quality control before or at the time of the delivery of the products shall also be well defined and agreed by both parties. This is particularly important because the management of the delivery of products often requires to be done rapidly, and quality control might be time consuming.

In the case of producer groups, a verification and sorting of the quality of products delivered by members can be done internally before to hand over the product to the buyer (See §7.3.3. page 127). This is likely to fasten the process of reception of the products by the buyer. It might require carrying out training on quality assessment method in the field to local facilitators (FO representatives...), which can be offered by the contractor.

Quality criteria and quality control methods are addressed in the section 4.4. pages 51-53. Additional advices on the procedure for quality verifications are also provided in § 5.2.3. page 102.

4.8.5. COORDINATION AND COMMUNICATION MODALITIES

Practically, in order to ensure the quality of produce, the producers shall interact with the buyer prior to harvest / collection. It is recommended that the buyer come to the production site before harvest / collection in order to supervise the production and make a joint decision with the producers regarding the date of harvest / collection. Especially, in case of an agreement made on the sale of fresh produce, that requires the producers to strictly comply with the timing of the delivery to the processing plant or other buyer's facilities, or to agreed collection points. See detailed recommendations on the coordination of collection of the produce in section 5.2., pages 99-105.

4.9. MODALITIES AND TIMING FOR PAYMENTS

While quantity, quality and price of product to be delivered are defined (as seen in Sections 4.3, 4.4., and 4.7), the Contract Farming agreement also has to clearly define the modalities to proceed to the payment of products delivered. This is sometimes a neglected aspect in the contract, which can lead to serious disagreements if not clarified from the contract negotiation stage.

The following questions have to be addressed in the contract:

4.9.1. NUMBER OF INSTALLMENTS AND TIMING OF THE PAYMENTS

NUMBER OF INSTALLMENTS OR PERIODICITY OF INVOICING AND PAYMENTS

If all the products committed by contract are delivered at a time, most likely the full payment will be made in one time as well (except if an advance is paid before the harvest and delivery). But this is not always the case.

For fresh/perishable products (such as fruits or vegetables) which will not all come to maturity at the same time, the volumes agreed are likely to be supplied to the buyer in several and frequent delivery operations (for instance daily or every 2-3 days, over a period of several weeks or months) – See Section 4.8. above. In such a case, payments may be made at each delivery, or with a delay of one cycle of delivery (i.e. the payment for delivery No n will be made when the buyer will pick-up delivery No $n+1$). But to save time spent in transactions, both party may agree to regroup several deliveries in one invoicing and payment operation (for instance one invoice and payment per week or per month for all the products delivered during the week or month). If this induces too heavy cash flow difficulties for the buyer, it can possibly be addressed by a pre-harvest advance payment to be recovered at the end of the harvest period, as suggested (for the case of contracts with Farmer Organizations) in section 7.4. THE ISSUE OF CASH FLOW / DELAY FOR PAYMENTS WITHIN THE FARMER ORGANIZATION, page 128.

TIMING OF PAYMENTS

The timing of the payment shall be clearly stated in the contract. The payments might be made on the spot for each delivery of product. The timing of payment is immediate in this case, but it should be explicitly mentioned in the contract.

In other cases, if the timing of invoicing and payment is not the timing of delivery (notably when several delivery operations are grouped in one invoice), then the contract should indicate the delay provided to the buyer to proceed with the payment of each invoice received. This delay can be expressed in a number of working days or calendar days or in a number of week(s) or month(s). It can even possibly include a penalty for late (i.e. beyond the delay agreed in the contract) payment of invoices, which should at least cover the financial costs of the producers, especially if this one has an on-going loan to reimburse with the payments he is expecting to receive.

4.9.2. MEANS OF PAYMENTS

Different means of payment can be used, which should be preferably mentioned in the contract: the payment for the products delivered can be made:

- by cash,
- by check,
- by transfer to the bank account of the producer,
- or
- by mobile banking services¹⁷.

The choice of the mean of payment depends on the decision of both parties and should be discussed. Nevertheless, transaction costs, security and traceability of payments are criteria that should be considered by the contract signatories while making this decision.

On one hand, producers often prefer to be paid in cash at the moment of delivery of the product (on the spot), if they feel unsure that they will receive a bank transfer later on or that they will be able to cash a check they received.

On the other hand, cash transaction takes time (need to count the notes, which can takes a significant amount of time when many producers deliver the goods in one single collection point), and means that individual will have to carry important amount of cash, often in rural/remote area, which can present risks in term of security. Moreover, the payments in cash need to be formalized by the signature of a receipt, which can be a source of mistake, whereas payments by bank transfer or check provide a more reliable source to verify (based on the bank statements / transfer orders) that payments have been made, with the correct amount.

When amounts of transactions are important, payment by bank means (check or transfer) shall be favored. Table 4.9.A below provides a synthesis of advantages and disadvantages of the different options for payment means.

¹⁷ Nowadays few innovative mobile banking services are emerging in Cambodia, allowing to make or to receive payments via mobile phones or Smartphone applications.

Table 4.9.A.: Review of the different options of means of payments

Payment means	Advantages	Disadvantages	Appropriate cases
1. Cash	<ul style="list-style-type: none"> ▪ Immediate payment to farmers (whereas, when farmers do not have a banking culture, they may not trust payment by check or bank transfer). ▪ Does not require the producers to hold a bank account. 	<ul style="list-style-type: none"> ▪ Takes time to count notes. ▪ Need to prepare a payment receipt (with a risk of mistake). ▪ Security risk if carrying important amount of cash, especially in remote areas. 	<ul style="list-style-type: none"> ▪ Appropriate for small amount on-the-spot payments, directly to smallholder producers.
2. Check	<ul style="list-style-type: none"> ▪ Better traceability of payment. ▪ Higher security. ▪ Does not require the producers to hold a bank account. 	<ul style="list-style-type: none"> ▪ Risk of bounced check that cannot be cashed. ▪ Transaction cost including cost of check and time required to go and cash the check (not justified if amount is small) – especially if bank branch is located far away from producers. 	<ul style="list-style-type: none"> ▪ Secured way of payment. ▪ Appropriate when amount to pay are important and if producers have a relatively easy access to a bank branch to cash their check.
3. Bank transfer	<ul style="list-style-type: none"> ▪ Better traceability of payment. ▪ Higher security. 	<ul style="list-style-type: none"> ▪ Transaction cost (cost of transfer). ▪ Requires the producers to hold a bank account. ▪ Buyer can proceed with the payment only on working days, which can induce delays, whereas product may be delivered any day including during week-ends or public holidays. 	<ul style="list-style-type: none"> ▪ Suitable only when producer holds a bank account. ▪ Most secured way of payment. ▪ Appropriate when amounts to transfer are relatively high.
4. Mobile banking solutions	<ul style="list-style-type: none"> ▪ Good traceability of payment. ▪ Good security. ▪ Payment can be processed on site, immediately. 	<ul style="list-style-type: none"> ▪ Producers may not be familiar with the technology and not always equipped. 	<ul style="list-style-type: none"> ▪ Still largely to be explored... but could potentially be a good way to combine immediacy, traceability and security of payments.

**BANK ACCOUNT DETAILS:**

IF A PAYMENT BY BANK TRANSFER IS CHOSEN, THE BANK ACCOUNT DETAILS SHALL BE WRITTEN IN THE CONTRACT. THE FOLLOWING INFORMATION ON THE BANK ACCOUNT SHALL BE PROVIDED:

- NAME OF THE BANK: _____
- BANK BRANCH OFFICE: _____
- ADDRESS OF THE BANK: _____
- ACCOUNT OWNER: _____ (SHOULD BE THE NAME OF THE PRODUCER SIGNING THE CONTRACT)
- ACCOUNT NUMBER: _____
- CURRENCY: _____ (FOR INSTANCE CAMBODIAN RIELS OR US DOLLARS...)
- SWIFT CODE: _____

It has to be noted that costs may apply for the bank service for payment by check or transfer. Usually these costs are the responsibility of the payer (= the contractor). Otherwise it shall be stated by written in the contract.

4.9.3. INVOICING AND PROOF OF PAYMENT FORMATS

Both parties need to be able to prove that products have been delivered and payment has been settled. To the minimum, the Contract Farming agreement may state that delivery receipt (/delivery slip) and payment receipts will be established and signed in duplicate copies and kept by both parties. Format of delivery receipts and payments receipts can possibly be attached as annexes to the contract or can be discussed later on between the parties.

Additional practical elements on management of transactions and payments are proposed in Section 5.2.5. page 104.

The Contract Farming agreement does not need to provide much details, but it is desirable that it at least mentions the different documents (delivery slips or receipts, invoices, payment receipt...) that will be used to manage the transactions.

In the case of a contract made with a Farmer Organization (FO) or an Agricultural Cooperative (AC), additional advices are provided in the Section 7 of this Manual for the management of transactions between farmers and FO / AC, and between FO/AC and the contractor.

4.9.4. OTHER OPTIONAL QUESTIONS THAT CAN POSSIBLY BE CONSIDERED DEDUCTION OF ADVANCE RECEIVED

If, as part of the contract, the buyer is providing in-cash or in-kind credit to the producer (for instance if seeds or fertilizers are provided by the buyer as a loan to the producer – See Section 4.2. Buyer's support: inputs / pre-financing / technical advices), then the contract should precisely indicate the modalities for the reimbursement of this credit. Generally, the reimbursement of this advance is made by a direct deduction on the payment of the product at delivery time. If all the production is delivered and paid in one time, then the full amount to repay will be deducted on the only payment transaction and there are no more details to provide.

But if the delivery and payment of products is made in several delivery and payments operations, then the modalities of the reimbursement shall be detailed. Many options are possible. Some examples are given in the Box below. But they are just illustrative examples and during contract negotiation, the contractor and the producers can tailor the modalities that will best suit them.

Possible options for deduction of advance to reimburse to the contractor

▪ Option 1: Reimbursement first

The reimbursement is made on the first deliveries: the first batches of products delivered serve as reimbursement of the credit, until the value of the products delivered has covered the amount to be reimbursed.

▪ Option 2: Fixed amount per delivery operation

If the parties can fix in advance the number of delivery operation, a flat amount of deduction can be decided on each delivery. For instance if it is expected that there will be 5 delivery operations of approximately equivalent volumes, then a deduction of 20% of the amount to reimburse is made on each delivery.

▪ Option 3: Fixed amount per unit of quantity of product delivered until complete reimbursement

Based on an estimation of the volumes of product to deliver (See § 4.3.2. Indication of the quantities), the amount to be deducted is calculated per unit of product to deliver. For instance if the producers owes 5 million Riels received as inputs, and is expected to deliver 10 tons of product, a deduction of 500,000 Riels per ton will apply. But if volumes delivered overcome the minimum of 10 tons, the deduction shall not be applied for all volumes delivered above the 10 tons committed. And inversely if the producer fails to supply the 10 tons agreed, he should complete the reimbursement of the amount due by a monetary payment to the contractor.

POSSIBLE NEGOTIATION OF A CASH FLOW ADVANCE

When a contract is made with a Farmer Organization / Agricultural Cooperative which actually purchase the products from its members (who are the actual producers) and sell to the buyer, payments may become actual a few days after deliveries (especially if made by bank transfer or check), whereas farmers may expect to receive the payment for their product immediately at delivery. A short term cash flow advance can possibly be negotiated in the contract to be provided by the contractor few days before the beginning of the harvest and delivery and cleared out with the final payments. More details are provided on this cash flow issue in Section 7 (§ 7.4. The issue of cash flow / delay for payments within the Cooperative / Farmer Organization).

4.10. EXCUSES FOR NON-PERFORMANCE SUCH AS: NATURAL RISKS / FORCE MAJEURE

Agricultural production contracts are particularly vulnerable to events that make performance either impossible or significantly more challenging than was envisaged at the time of entering into the contract (See section 4.10.1. below). While events beyond control make the performance temporally or definitively impossible, changes of circumstances over the contract's life may also affect the contract (See section 4.10.2., from page 81).

4.10.1. EVENTS BEYOND CONTROL

Events beyond control, also called "events of force majeure", are legal provisions which authorize a party to suspend or terminate the performance of its obligations when certain circumstances beyond their control arise. The Force Majeure is a legal ground for exemption from liability. Force majeure provisions vary depending on the jurisdictions. Although Cambodia is civil law country, there is no clear reference to force majeure / event beyond control and no specific definition of force majeure in its law, its civil code or any other legal text.

However, the Civil Code dedicates some articles for Impossibility of performance, when it is "physically impossible to perform an obligation, the performance shall be deemed impossible", and the "performance shall also be deemed impossible where performance is determined to be impossible from a social or economic standpoint". And "if performance of an obligation has become impossible without the fault of the obligor, the obligation shall be extinguished and the obligee may not demand performance thereof."

Since Force Majeure, Event Beyond Control or Impossibility of performance are cases which will be interpreted only by the judge, it is strongly recommended to the parties to have clear and detailed provisions related to events beyond control. Then, it is important to understand events beyond control through some examples (a), its legal recognition (b), and its consequences on the contract (c).

A) EXAMPLES OF “EVENTS BEYOND CONTROL”

After entering into an agricultural production contract, performance may be affected by events beyond control of parties that are specific external factors affecting the producer’s ability to perform its obligations. The most common events are the following:

Natural events such as floods, droughts, fires, earthquakes, abrupt climatic changes, exceptionally high or low temperatures, insects or plagues affecting crops and epidemics or pests attacking livestock are the most common events that could destroy, in whole or in part, a producer’s goods. In this regard, climate change might be an obvious multiplier effect to supervening events.

Others factors: Other supervening factors may also influence the ability of one of the parties to perform the contract:

- Events such as changes in legislation or policy on agriculture, environment or health with a more general application at the domestic or international level;
- Dislocations such as riots, revolutions, insurrections or armed conflicts;
- Social events such as strikes or labor union actions or resolutions impacting the production process or the transport and facilities;
- Government’s decision to ban the export of specified agricultural products;
- Embargoes against a particular country;
- A strike in the communication or transportation industries;
- An abrupt depreciation of currency or a freezing of fund transfers; etc.

B) THE LEGAL RECOGNITION OF “EVENTS BEYOND CONTROL”

Although the term “Force Majeure” is used in many Cambodian legal texts including the Civil Code, there is no legal definition of the “Force Majeure” events provided by the law neither legal case.

Under French law, the Civil Code specifies that damages are not due in the case of force majeure indicating that “There is no place for damages when, owing to force majeure or unforeseeable circumstances, the debtor was prevented from giving or doing what he was obliged to or did what he was forbidden to do”¹⁸.

Force majeure is a legal concept. Its assessment falls within the scope of control of the Court of Cassation, meaning that judges have the responsibility to qualify an event as a force majeure, creating thus case law¹⁹, which defines force majeure as an event that meets the following three criteria:

- The event shall be “**irresistible**”: this clearly distinguishes the force majeure from unpredictability. If the event simply makes the performance of the contract more difficult or more expensive, then the obligation shall nevertheless remain due; and
- The event shall be “**insurmountable**”: the event must be unforeseeable and unavoidable; and
- The event shall be “**external**” (an outside one): the event should be absolutely beyond the control of the debtor.

¹⁸ French Civil Code, Article 1148, unofficial translation.

¹⁹ Cass. civ 2 , 11 juillet 2002.



IN CAMBODIA, CASES LAWS ARE NOT PUBLISHED YET, THEN IT IS HIGHLY RECOMMENDED TO THE PARTIES TO HAVE IN THE CONTRACT A PROVISION DEFINING AND LISTING CLEARLY THE EVENTS BEYOND CONTROLS. THE PARTIES CAN ALSO MAKE CLEAR THAT THE LIST IS NOT EXHAUSTIVE BY USING EXPRESSIONS LIKE “SUCH AS”, “HIGHLIGHTING, AMONG OTHER”, “INCLUDING, BUT NOT LIMITED TO”; BY SIMPLY INSERTING SUSPENSION POINTS OR “ETC.”; OR BY ADDING A COVER-ALL FINAL DESCRIPTION.

In practice, in most of the cases, “events beyond controls” can be jointly acknowledged by both parties (and if possible in presence of an administrative authority), and their consequences on the obligation of each parties can be formally and amicably accepted in a signed agreement between the two parties when the situation occurs (each party keeping an original copy + possibly additional copies for institutions involved in the monitoring of contract implementation, such as PDAFF or DAI, for instance). In the section 5 on this report, practical guidelines are proposed for such situation, notably in Box 5.1.B. page 96: “Example of format of report for damage assessment and exoneration of producer obligation”.

C) THE CONSEQUENCES OF THE RECOGNITION OF EVENTS BEYOND CONTROL

The possible consequences of the recognition of events beyond controls are the following:

- Excuses for non-performance: An important element to be considered is the extent to which the force majeure event should affect the parties’ performance before the clause comes into play. Contracts should expressly require cases where the obligation becomes impossible to perform. Indeed, the recognition of a force majeure event exonerates the party from performing the obligation affected by the event because it would be unfair to hold a party liable for a performance that has become impossible. It is important to note that if the clauses referring to force majeure are too general and without further specifications concerning the parties’ liability, they would be interpreted in accordance with the Cambodian civil law. An analysis shows that in the absence of a specific contractual clause, recognition of exempting events is a rare occurrence in the context of commercial contracts.
- The suspension of performance: The parties could have interest in keeping the relationship alive despite the adverse circumstances and choose the obligations to be performed rather than to be excused. Contracts may then, further address that the impediment to perform their obligation is temporary in nature in order to suspend the parties’ obligation for a determined period. It can entail an extension of the contract’s duration for a temporary period of time equal to the duration of the impediment: the parties should specify the extension and indicate the period in order to avoid uncertainties in contractual interpretation.
- Termination of the contract after the suspended period: Contracts may grant to only one or both parties a right to terminate the contract based on the occurrence of a force majeure event. This right may either arise after the period during which the performance was suspended expired, or immediately if the performance would not be possible. The contract may then contain a list of events permitting an automatic termination and the impossibility to perform due to force majeure events.



AFTER DEFINING EVENTS BEYOND CONTROL, THE CONTRACT SHOULD STATE MEASURES THAT WOULD APPLY IN SUCH OCCURRENCE, SUCH AS:

⇒ **TERMINATION OF CONTRACT**

⇒ **SUSPENSION / PROVISION OF ADDITIONAL DELAY TO IMPLEMENT THE CONTRACT.**

4.10.2. CHANGE OF CIRCUMSTANCES NOT DEEMED AS AN EXCUSES FOR NON-PERFORMANCE

In order to avoid interpretations and conflicts in case of change of circumstances, it is strongly recommended to the parties to clearly understand its legal recognition, (a) and its consequences in the contracts (b).

A) THE LEGAL RECOGNITION OF CHANGE OF CIRCUMSTANCES

Changes in circumstances do not necessary prevent performance, but where they fully modify and alter the balance of the parties' relationship, they usually constitute a ground for non-performance. Moreover, its effects may differ and constitute an excuse of non-performance resulting from the same legal regime as force majeure events, giving one or both parties a right to termination, restoring a proper contractual balance by imposing an obligation or granting a right to renegotiate the conditions of the agreement or, less often, a right to modify the contract and adapt it to the change of circumstances. The parties should envisage the consequence of an event's occurrence in a clause on change of circumstances in their contract. This provision would not prevent performance of the contract by the parties but merely contain a right or duty to renegotiate certain conditions of the contract in order to mitigate the effect of the event.

B) THE CONSEQUENCES OF THE LEGAL RECOGNITION OF CHANGE OF CIRCUMSTANCES

An event that is qualified as a change of circumstances would not lead to an excuse for non-performance as force majeure event but may lead to the right to renegotiate or in very specific case to termination.

- **Right or duty to renegotiate:** Parties may wish to continue their relationship even when unexpected circumstances prevent or restrict performance. Then, a clause of the initial agreement may provide a right or a duty to renegotiate its terms following an occurrence of a specific event. This is the reason why it is important that the contracts contain clauses on exceptional circumstances that do not render the performance impossible. In the absence of such provision, the parties could always decide to modify their original agreement or conclude another one by mutual consent in order to insert it.
- **Termination:** When parties wish to include a right to renegotiate, it is advisable that they also specify the consequences of a failure to enter into negotiations in good faith or to reach an agreement as the termination of the contract.

If the contract does not contain such provision as the duty to renegotiate or the termination of the contract in case of failure, the traditional response would be to deny any remedy unless the situation gave rise to an impossibility to perform.

4.10.3. THE PREVENTION OF SUPERVENING EVENTS BY THE ALLOCATION OF THE RISK

Agricultural production contracts are particularly vulnerable to occurrences that make performance impossible or significantly more challenging than what was envisaged at the time of entering into the contract. Anticipating the risks is essential to the economic viability of any agricultural production which should be undertaken either by contracting insurance (a) and/or a risk mitigation mechanism (b).

A) INSURANCE

The activity of the producer, party to the contract farming should require to be covered by insurance in order to prevent it from falling into debts, especially in case of events such as natural events which can lead to bankruptcy. The producer invests in machines and infrastructure for several years and beyond the duration of the contract farming. Consequently, parties and in particular producers, may respond to this need by contracting private insurance against the occurrence of adverse events.

Although the new recent insurance law in Cambodia²⁰, insurance still remains relatively unusual for Cambodian people. But parties may insert contractual obligation of having appropriate insurance by specifying the insurance obligor and indicating the insurance type (such as that for the facilities, crops and livestock, or liability insurance, health insurance or life insurance...). Insurance contracts are complex legal instruments, then it is recommended to indicate also the amounts to be covered and the main minimum coverage requirements, such as the risks to be insured (fire, theft, disease or hail...). In this regard, it should be noted that insurers have started to develop defensive measures by excluding some extreme adverse climatic events to protect their business models against highly unpredictable weather patterns, which are becoming more frequent with global climate change. The parties have to be very careful when contracting such insurance.

At present, this above recommendation on risk coverage by insurance contract is difficult to implement for the producer side, given the absence (or scarcity) of offer for crop insurance services in Cambodia.

Weather index based crop insurances are just starting to be developed at a pilot stage in Cambodia. But they could become more widely available in the coming years. Once the service become widespread, parties may consider to include obligation of contracting such insurance as part of the terms of the contract.

²⁰ The new Cambodia insurance law – promulgated on August 04, 2014, replacing that of July 25, 2000 and the Sub-Decree on Insurance adopted on October 22, 2001, which remains in force – provides the following changes: a better protection for policyholders, an increased control for the regulatory body, dispute resolution and insurance companies' liquidation and dissolution process, and a clearer regulation for insurance companies to operate in Cambodia.

B) RISK MITIGATION MECHANISMS

Parties may adopt risk mitigation mechanisms by inserting a periodic adaptation or revision clause into their contract. When the parties draft a contract and include obligations, they also allocate risks that will fall upon one party or the other. The main risks to which the parties are exposed during the contract's life are divided into two main categories:

- The **“production risk”** is the risk of loss or shortfall of production by expected or unexpected events that arise during the production period. Usually, the contract will contain provisions specifying which of the parties bears the risk of loss and which party is responsible for securing the quantities needed to meet contractual requirements.
- The **“commercial risk”** is the risk that the product's actual market value upon delivery or marketing may be lower or higher than the price the parties' anticipated when they set the price or the formula for its calculation and then are not generated the expected revenue. It has to be noted that one of the possible motivation of contract farming is for the buyer to control commercial risks by agreeing on a fixed price or at least a pre-established price calculation formula. This will protect him against unfavorable price fluctuation and also require compliance with predetermined volume, quality and production standards, which reduces the risk of rejection of the produce by the intended customers along the value chain. The, commercial risks are largely controlled and mitigated with the price mechanism set up in the contract. Indeed, the more the parties are able to plan a mechanism that preserves the contract's mutual balance despite price fluctuations, the more the parties will be able to establish a sustainable contractual relationship.

It is also to be noted here that the definition of a range of quantity of produce to be delivered (rather than a fixed quantity) is also a way to take into consideration (to some extent) the risks and the inherent variability of the production (Cf. Section 4.3.2. pages 47).

4.11. DURATION, RENEWAL AND TERMINATION

The issues of contract duration (See § 4.11.1. below), termination (See § 4.11.2. below) and renewal (See § 4.11.3. next page) are essential in the context of agricultural production contracts. It is therefore essential for both parties to know when their contractual relationship begins and ends.

4.11.1. THE DURATION OF CONTRACT

Provisions on contract duration are common practice in agricultural production contracts. In order to determine the contract duration, parties have to take into consideration the production cycle of the good and their financial obligations. The duration is especially important where the producer in order to meet its production objectives has to make long-term investments such as the acquisition of particular equipment or the building of new facilities. Then to be economically viable, such investments require that the contractual relationship between the producer and the buyer be long enough. The reasons for choosing one particular option mostly depend on the nature of agricultural products and the will of the parties. Indeed, duration clauses can be drafted in various ways: it can take either the form of a short term contract, either the form of a long term contract:

- A short term contract is usually expressed as a number of months or with reference to a crop season. Contracts for short term crops such as vegetables and field crops are usually concluded on an annual or seasonal basis. For example, a contract to grow maize (an annual crop) is implicitly limited to a single year (if not explicitly stated otherwise).
- A long term contract usually specifies a period of several years or simply does not specify an ending term. For example, contracts imposing a substantial financial obligation on one party (generally the producer) may imply a more durable relationship and an expectation of renewal and continued purchasing by the buyer. It is important to note that long term agricultural production contracts give rise by their nature to a relationship based on trust and confidence between the parties and an ongoing duty to cooperate to allow each party to properly perform its obligations.

4.11.2 THE RENEWAL OF CONTRACT

Upon expiration of a fixed-term agreement, the parties might be willing to continue the contract. Renewal may take different forms: by an express agreement (a) or by a tacit renewal provision incorporated in the initial contract (b).

A) RENEWAL BY EXPRESS AGREEMENT

Parties may plan that their contract can only be renewed by an express written agreement. The agreement ends at the fixed-term period unless the parties come to an agreement to renew it before the end of that period.

If renewed, the contract is usually agreed under the same conditions as the previous “old” contract, but the parties can also enter into negotiations within a certain period of time before the expiration date in order to renew the contract and make relevant the amendments.

Case Illustration 4.11.A

Seasonal Contract Farming completed by a multi-annual Memorandum of Understanding between AMRU Rice (Cambodia) Co. Ltd. and Agricultural Cooperatives in Preah Vihear province

In the case of Contract Farming between AMRU Rice (Cambodia) Co. Ltd and Agricultural Cooperatives in Preah Vihear (described in Case Illustration 2.1.C page 19), Contract Farming agreements are signed for one seasonal crop only and thereof renegotiated annually, but the shared intention of both parties to develop a longer term partnership, and the main principles of this longer term relation, are defined in a multi-annual Memorandum of Understanding signed between the two parties.

This has been seen, in this case, as a good solution to give enough confidence to both partners to engage and invest in a long lasting partnership, while detailed terms of the contract can be adjusted from one year to another to adjust to market, producer situations, and incorporate lessons from the implementation in the previous years.

B) TACIT RENEWAL

An agricultural production contract could also be renewed tacitly if neither of the parties expressly objects within a specified period of time.

In the case of a continued renewal of the “old” contract over many years, the producer may believe reasonably that its contractual relationship with the buyer had become a long-term relationship. Thus, according to the general principles of good faith and the prohibition of inconsistent behavior, the buyer may be precluded from terminating the contract on short notice and be obliged to give notice of termination a reasonable time before the renewal date. A reasonable notice period is calculated upon the duration of the relationship, particularly regarding the nature of the agricultural production and the specific investments made by the producer.



IF THE CONTRACT IS MADE ONLY FOR A CERTAIN PERIOD OF TIME (FOR INSTANCE ONCE SEASON OF PRODUCTION), IT IS RECOMMENDED TO WRITE IT EXPLICITLY IN THE CONTRACT AND TO STATE THAT “THE CONTRACT CAN ONLY BE RENEWED BY AN EXPRESS AGREEMENT IN WRITING”, IN ORDER TO AVOID AN INTERPRETATION OF TACIT RENEWAL.

4.11.3 TERMINATION OF CONTRACT

Contract termination, also called rescission, discharges the parties from their respective obligations flowing from the agreement, but the accrued rights or liabilities survives (claim damages, settlement of dispute...) as well as specific provisions that are binding the parties even after the contract’s termination such as the return of seeds and plants. Occasionally, other provisions such as so-called confidentiality clauses, so-called non-compete clauses or non-disclosure clauses may be also inserted.

The termination of contract may happen normally (a) as defined by the parties, or may cause by a tort of one party (b)²¹.

A) NORMAL TERMINATION

Automatic termination: Fixed term contracts end automatically and without any advance notice on the date stipulated in the contract. Parties may also provide that the contract ends upon the fulfillment of their contractual obligations.

Consensual termination: An agreement between the parties releasing each other from their respective obligations may also end the contractual relationship. To increase clarity and certainty, in the contract, the current situation and the procedural requirements for contract termination shall be specified a notice period. It is then common practice that the parties indicate a precise period of time within which the advance notice must be given when the contract is of an indefinite duration or when termination is permitted under the contract before its expiration. Then, a party intending to terminate the contract is often required to give notice of its intention to the other party. In order to be effective, the notice has to meet certain requirements as to form. Generally, the notice has to be given in writing and sometimes even in the form of a registered letter or judicial writ. Specifically, an advance notice is required and it is fair to say that the longer the contract duration, the longer the period of required advance notice and vice versa.

²¹ Termination for breach (Section 4.12.), force majeure and changes of circumstances (Section 4.10.) are not developed in this chapter as they are specifically addressed in other chapters of the manual.

Thus, if the notice receiver does not object on the grounds that the notice was not given in the form or within the time provided in the contract the receiver's silence may be construed as tacit consent to derogate from the perspective contract provisions. Even if the receiver rejects an improper notice, the termination party may still serve a new one in the prescribed form.

B) TERMINATION FOR TORT

Breach of contract: When a contract is intentionally not honored by one party, it is called a breach of contract and is grounds for contract termination. A breach of contract may exist because one party failed to meet his obligations at all or did not meet his obligations fully. Most agricultural production contracts contain provisions that allow parties to terminate the contract. It may entitle both of the parties to do so or only one party.

Loss of trust: Agricultural production contracts particularly in case of long-term contracts are subject to the risk of a loss of the parties' trust and confidence making the continuation of their relationship no longer possible. Then, parties may pretend to terminate the contract for the loss of trust or confidence. It is better to draft a clause in specifying the events warranting termination in order to avoid uncertainties and causes for opportunistic behavior. Such events might include when a party becomes subject to a judicial order or bankruptcy proceedings. The clause may also specify how such a right may be exercised.



SPECIFY IN THE CONTRACT THE EVENTS OR SITUATIONS THAT MAY LEAD TO AN ANTICIPATED TERMINATION OF THE CONTRACT (SUCH AS FAILURE OF ONE PARTY TO FULFILL ITS OBLIGATIONS, OR LOSS OF TRUST DUE TO EXPLICITLY LISTED EVENTS SUCH AS: A PARTY BECOMES SUBJECT TO JUDICIAL ORDER OR GET BANKRUPTED).

4.12. REMEDIES FOR BREACH IN CASE OF UNEXCUSED NON-PERFORMANCE

Remedies are legal protections and measures provided by law and contractual provisions. Most of the time, the default measures may not satisfy the parties and then, they prefer to design additional contractual remedies in order to protect the interest of an aggrieved party against the consequences of another party's non-performance remedies or in the case one party fails to meet its obligations under the contract. Parties may design different remedies depending on the nature of the breach as long they are not contrary to the applicable law. When the breach is due to events beyond controls, the non-performance may be excused, as already discussed above in Section 4.10.1.

We will then focus here on remedies for breach in case of unexcused non-performance by introducing first the legal remedies provided by Cambodian law (Section 4.12.1. below) and second presenting the main types of remedies (Section 4.12.2., from page 87).

4.12.1. LEGAL REMEDIES PROVIDED BY CAMBODIAN LAW

The Cambodian Civil Code dedicates a full chapter to remedies for breach of contract²².

Non-performance is defined *“as an obligor’s failure to perform an obligation arising under a contract”*²³.

Are deemed as non-performance of the obligation the below cases:

- Delay in performance can be: (i) the obligation shall be performed at a specified time, such time has arrived and the performance is done yet; or (ii) the obligation shall be performed at an unclear time, but the obligor knows that this time has arrived and he/she does not fulfill the performance yet; or (iii) no time for the performance has been specified, and the obligor receives a demand for performance.
- Impossible performance means: physically or socially or economically impossible to perform. Parties can also specify a range of time of impossible performance.
- Non-complete performance: refers to partial performance (complete performance in accordance with the intended purpose of the obligation was not fully carried out).
- Other non-performance refers to a breach of any other obligations arising under the contract.

When the obligation is not fulfilled, *“the obligee may demand specific performance, damages, or termination of the contract”*²⁴. The obligor in breach is then liable for non-performance. Where multiple remedies are available to the obligee, the obligee may select any or all of such remedies so long as they are not in mutual conflict. Indeed, the obligee may demand damages either instead of performance or together with performance so long as there is no conflict between these two demands²⁵.

In order to force an obligation’s performance not done by the obligor, the obligee shall seek an order of compulsory performance from the Court, except where the nature of the obligation does not permit for compulsory performance²⁶.

4.12.2. THE MAIN TYPES OF REMEDIES²⁷

Within the limits provided by law, the parties are free to select remedies, to define their hierarchy and sequence, and to limit them in different ways. Parties to a contract may choose whether to include in the contract the conditions under which each remedy may be used or to leave that choice to the aggrieved party. Remedies can be mainly classified: in kind remedies (a), suspension of performance (b), price reduction (c), termination or rescission (d), restitution (e) and damages (f).

a) In kind remedy consists on providing the obligor the identical or equivalent benefit expected from the contract performance. They involve the right to perform, the repairing, the replacement and the correctives measures relative to the production process and the final product. These remedies aim to achieve as more as possible the output that the parties had envisaged by implementing a solution which match best the initial obligations.

²² Cambodia Civil Code, Chapter 4 - Remedies for breach of contract.

²³ Article 389 of the Civil Code.

²⁴ Article 390 of the Civil Code.

²⁵ Article 397 of the Civil Code.

²⁶ Article 396 of the Civil Code.

²⁷ Legal Guide on Contract Farming, UNIDROIT, FAO, IFAD, Rome 2015.

Producer's Remedies in case of the following breach by the Buyer	Buyer's Remedies in case of the following breach by the Producer
Delay in price payment	Breach of process-related obligations
Failure to provide conforming inputs	Product non-conformity
Failure to take delivery of conforming goods	Failure to deliver the product

b) Suspension of the obligations' performance as remedy can be used in the case of anticipatory breach, when the present situation and circumstances shows clearly that the obligee will not able or does not want to perform his/her contractual obligations. For example, because a big flood has damaged the harvest, and it is obvious that the producer won't be able to provide enough products as agreed in the contract, then the buyer may suspend his/her obligations of keeping on providing seeds.

Producer's Remedies in case of the following breach by the Buyer	Buyer's Remedies in case of the following breach by the Producer
Failure to provide conforming inputs	Failure to deliver completely goods
Delay in financing production	Failure to deliver conforming goods
Delay in price payment	

c) Price reduction remedies aim to preserve the exchange and restore the balance between the values of the exchanged performances, and are used in case of breach for non-conformity or for partial delivery, when one of the two performances is defective or incomplete and the obligor is not interested in (or may not obtain) specific performance, nor contract termination. For example, a price reduction can be requested by the buyer when the obligations of quality or quantity are not respected at the delivery.

Producer's Remedies in case of the following breach by the Buyer	Buyer's Remedies in case of the following breach by the Producer
No relevant example	Product non-conformity delivery
	Product partial delivery
	Failure to deliver conforming agricultural products

d) Contract termination or rescission as a remedy results from fundamental breach which let no room for continuing the contractual relationship. Contract rescission is the most severe remedy against any party's breach since it reflects the failure of the contractual relationship: it terminates the contractual duties of both parties. The consequences of termination consist of dissolving the contractual relationship, thereby extinguishing the parties' original obligations. Generally, parties define rescission clauses that confer a unilateral right to terminate the contract in case of fundamental breach.

Producer's Remedies in case of the following breach by the Buyer	Buyer's Remedies in case of the following breach by the Producer
Failure to pay	Breach of process-related obligations
Failure to provide conforming inputs	Product non-conformity
Failure to take delivery of conforming goods	Failure to deliver the product
Failure to purchase the whole production/ a percentage of it	

e) Restitution as remedy occurs in the case of contract termination caused by a fundamental breach by a party whereas the other party has performed fully or partially his/her obligation. This remedy is designed to restore the injured party to the position occupied prior to the formation of the contract. The restitution may be done in kind or in monetary value. In order to prevent the unjust enrichment, the defaulting party is then not entitled to retain goods or money in its possession, which shall be returned them to the owner, the non-defaulting party.

Producer's Remedies in case of the following breach by the Buyer	Buyer's Remedies in case of the following breach by the Producer
Failure to pay	Failure to deliver the product

f) Award of damages as remedy can be claimed by the party injured by the breach of contract. Damages are compensatory awards in monetary value. They are intended to compensate the non-breaching party for losses that result from the breach. There are two types of compensatory damages that the non-breaching party may be entitled to recover: expectation damages which aim to cover the loss directly and necessarily incurred by the breach of contract and what the injured party expected to receive from the contract; and consequential damages which aim to reimburse the injured party for indirect damages other than contractual loss; for example, loss of business profits due to an undelivered machine. But in this latter case, to obtain damages for this type of loss, the non-defaulting party shall prove that the defaulting party knew of the special circumstances or requirements at the time the contract was made.

Producer's Remedies in case of the following breach by the Buyer	Buyer's Remedies in case of the following breach by the Producer
Delay in payment	Breach of process-related obligation
Failure to provide conforming inputs	Product non-conformity
Failure to take delivery of conforming goods	Failure to deliver the product

4.13. CONFLICT RESOLUTION

Any contractual relationship may give rise to disputes arising from non-performance events deriving from parties' breaches of obligations, or even from external factors not depending upon the parties' behavior. Accordingly, **contracts should incorporate methods and mechanisms for dispute resolution**²⁸. These provisions add important procedural certainty to contract interpretation and methods for dispute resolution.

The Section 6 of the present Manual provides an extensive description of the different mechanisms that may be used (and referred to in the contract) for dispute resolution.

One possibility is to use the mechanism for conflicts resolutions proposed in sub-degree 36, which is based on three steps. First step: The negotiation between both parties according to conditions wrote in the Contract. Second step: In case first step cannot solve the problem, both parties can request PDAFF to facilitate on the conflict resolution. Third step: if PDAFF intervention cannot end the dispute, this issue will be send to Conflict resolution Committee. Note: Contract Farming implementing parties could receive the above mentioned service only if they have registered with DAI and PDAFF. The objectives of this to facilitate producers and buyers to be able to get the conflict resolution outside court system via MAFF mechanism.



MANY DIFFERENT POSSIBILITIES OR OPTIONS EXIST TO ADDRESS CONFLICTS IN CONTRACT FARMING (AS DETAILED IN SECTION 6 OF THE PRESENT MANUAL). BUT THE CONTRACT HAS TO SPECIFY WHICH MECHANISM(S) WILL BE USED IN CASE A CONFLICT NEEDS TO BE ARBITRATED.

MORE THAN ONE STEP CAN BE AGREED, AND THE CONTRACT MAY STATE (FOR INSTANCE) THAT FIRST THE PARTIES WILL TRY TO FIND AN AMICABLE SETTLEMENT, THEN MAY MOBILIZE AN MEDIATOR/CONCILIATOR (TO BE IDENTIFIED, FOR INSTANCE PDA, LOCAL AUTHORITIES, OR NATIONAL COORDINATION COMMITTEE FOR CONTRACT FARMING), AND AFTER IF THE DISPUTE IS NOT YET SETTLED, REFER TO A DECISION MAKING BODY (ARBITRATION MECHANISM OR COURT).

IT IS IMPORTANT THAT THE LAST RECOURSE DESIGNATED (IN THE CONTRACT) TO SOLVE A CONFLICT CAN BE A DECISION MAKING BODY (MEANS WHICH CAN REALLY ARBITRATE AND MAKE AN ENFORCEABLE DECISION REGARDING THE ISSUE OF THE CONFLICT). IF THIS FINAL RECOURSE IS NOT INDICATED IN THE CONTRACT, BY DEFAULT THE CONFLICT CAN ALWAYS BE BROUGHT IN FRONT OF A COURT (JUDICIAL SYSTEM). IT HAS TO BE NOTED THAT PDAFF / MAFF OR THE CONTRACT FARMING COORDINATION COMMITTEE CAN ONLY ACT AS CONCILIATOR OR MEDIATOR TO FACILITATE THE RESOLUTION OF THE CONFLICT, BUT CANNOT MAKE AN ENFORCEABLE DECISION, IF THE MEDIATION IS NOT SUCCESSFUL. SO THEIR INTERVENTION MAY NOT CLOSE THE DISPUTE AND A FINAL STEP CAN BE ADDED IN THE CONTRACT OR OTHERWISE THE FINAL RECOURSE WILL BE THE JUDICIAL SYSTEM.

4.14. OTHER LEGAL REQUIREMENTS (NUMBER OF COPIES, LANGUAGE...)

The last section of the contract (often name « Other Provisions ») provides additional provisions or indications such as the following ones:

4.14.1 APPLICABLE LAW

The applicable law of a contract is the law designated in the contract. In the case there is no law specified by the parties, the court shall apply the law of the country with which the performance is most closely connected, in view of its nature and surrounding circumstances. A commercial contract

²⁸ See details in Section 6 of the present Manual.

is presumed to be mostly connected with the law of the country where the party who has to perform the obligation or where the party has its place of business.

For contract farming in Cambodia, by default, if no specific law is expressed, the Cambodian law is then applicable. Anyway, to avoid any doubt, it is recommended to parties to express it clearly in the contract. It is important to consider that the use of Cambodian law in contract farming is advised to the parties especially to farmers that in most case are considered as the weaker party. The use of Cambodian legislation fosters the parties' access to law, to justice and to procedural protection both during dispute resolution procedures and at the enforcement stage in case of conflict.

A typical sentence or formulation that can be used to express the reference to Cambodian law in the contract could be for instance:

« THIS AGREEMENT SHALL BE GOVERNED, CONSTRUED, AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE KINGDOM OF CAMBODIA. »

4.14.2. NUMBER OF COPIES

The number of original copies signed by parties can be indicated in the contract, by a sentence such as:

« THIS CONTRACT IS MADE IN <INSERT NUMBER> ORIGINAL COPIES. »

At least, an original of the contract shall be given to each party. In addition, original copy/copies can be kept with a third party (Local Authority, Provincial Department of Agriculture and/or MAFF, a lawyer...).

4.14.3. LANGUAGE OF THE CONTRACT

The language of the contract can be indicated. If the contract is translated in different language, the contract shall indicate which language prevails in case of inconsistencies between the different versions.

In Cambodian law, by default, the contract in Khmer language prevails on the others versions in other languages. Nevertheless, other languages can be used for unofficial translation of the contract.

4.14.4. SIGNATURE OF THE CONTRACT

In written contract, it shall be signed (or thumb-printed) by parties and it shall be indicated date and place of contract formation. As a good practice, the parties should sign (or thumb-print) in the presence of witness(s) which also sign (or thumb-print) on the document.

As already stated in Table 4.1.A, page 41, signature by witnesses is recommended to acknowledge that both parties have agreed on the term of the contract freely and not under constraint. In case one party is illiterate, the content of the contract may be read loudly by the third party witness to verify the understanding and agreement of the illiterate party. In this case it is desirable to write, above witnesses' signature: « The text of the contract has been read loudly to the two parties and both parties have agreed freely and under no constraint on the term of the contract. » The signature of the third party witness becomes essential in that case.



Even if not mandatory, the contract might also be endorsed by an official public authority (local authority, PDAFF or DAI) or by a notary or lawyer.

Example of contract signature ▷

◁ *Signature of Contract Farming agreement between AMRU and cooperatives from Preah Vihear is acknowledged by witnesses in 2014 (Photo: SNEC, Support to the Commercialization of Cambodian Rice Project)*



Whenever contracts are signed with a Farmer Organization, the contract itself may not be signed by all the members of the FO (but only by the legal representative). But it is recommended to add an annex with individual commitments (volumes of products to deliver and/or surface committed for the production under contract farming agreement) taken by each members, and signed by each member (See in the Section 7 of the present Manual which is dedicated to Contract Farming with Farmer Organizations, and in particular Part 7.2. page 123).

SECTION 5: DURING AND AFTER IMPLEMENTATION OF CONTRACT: MONITORING AND ASSESSMENT

After signing the contract between the two parties, the monitoring and assessment during the implementation of the contract are very important in order to make sure that all the agreements mentioned in the contract are well fulfilled by the two parties, or if some adjustments are required that they can be negotiated and agreed on time in order to avoid conflict.

Assessment after the completion of contract implementation is also desirable in order to evaluate the benefits drawn by both parties from the contract, to identify difficulties encountered and possible improvements. This is especially needed if a renewal of the contract is considered.

This session will describe about the method how to monitor and assess the implementation of the contract between the two parties.

5.1. DURING THE PRODUCTION PERIOD: MONITOR AND COMMUNICATE TO ANTICIPATE ON POSSIBLE DIFFICULTIES

During the production period, the monitoring and the communication with the producers in order to prevent the risk and solve the problem should be regularly conducted by (or with) the two parties. In most of the cases, this monitoring will be done by the economic stakeholders themselves, for instance:

- By producers own records;
- Or by regular visit of the buyer to the producer(s);
- Or in the case of a contract via a Farmer Organizations or a producer groups, by representatives of the group;
- Or jointly by the FO representative and a representative of the buyer.

In some case the monitoring of the implementation of the contract may also involve a third party (for instance the Provincial Department of Agriculture, or a support organization / project, or local authorities...).

Except if stipulated otherwise in the contract, each party cover its own costs for the participation in the monitoring of the contract implementation. If a third party has to be mobilized, either this third party cover its costs by itself (this might be the case for support provided by a project or by a public institution), or the contract should identify the costs for monitoring service and the party responsible to cover those costs.

5.1.1. MONITOR AND DOCUMENT THE IMPLEMENTATION OF BUYER'S COMMITMENTS

If, as part of the commitment taken by contract, the buyer is expected to provide technical support (training/technical advices), or financial support or to provide inputs for the production, it is essential to document the actual implementation of all these support. Delivery receipts of inputs or material, or receipts of advance payments, etc. have to be properly established in duplicate (one for each party) and properly kept as proof. Besides, a summary monitoring sheet of implementation of all buyers' commitments can be prepared and up-dated regularly, as in the example below:

Table 5.1.A: Example of check-list to monitor the implementation of buyer's commitments regarding support to producers

No.	Commitments to be monitored ^(a)	Source of information / verification / Support documents to attach ^(b)	What? ^(c)	When? ^(d)	Remarks/ Issues ^(e)	Solutions agreed ^(f) (in case of difference with the contract)	Signature of both parties ^(g)
1.1	Technical supports						
e.g.	1.1.1. Training on production	Training attendance list					
e.g.	1.1.2. Technical support on demand	Form for request for support and attestation of delivery.					
1.2	Input supports						
e.g.	1.2.1. Seeds/ Seedlings	Delivery receipts, list of farmers received					
e.g.	1.2.2. Fertilizers	Delivery receipts, list of farmers received					
1.3	Financial supports						
e.g.	1.3.1. Loan for seeds purchase	List of payments and receipts (or proof of payment) or list of inputs received with indication of value if the loan is in kind.					

Note: This table can serve as a basis to establish a full check-list of the implementation of the buyers' commitment. It can be printed in two copies (one for the buyers and one for the producer – or FO – and signed by two parties at each step (i.e. for each line, corresponding to a commitment). Each party can then keep this as a proof of the implementation (this can serve as a reference document in case of dispute).

Lines in orange color are just examples (for a vegetal production in that case).

- (a) List all the commitments taken by the buyer in the contract (ex: deliver seeds, deliver inputs...).
- (b) Indicate the source of verification (documents) that can be attached with the check list (e.g. delivery receipt for inputs...)
- (c) Describe the support or input provided (including quantities of inputs or amounts for loans...)
- (d) Indicate the date of implementation or delivery.
- (e) If there are issues or problems encountered, it can be indicated in this column.
- (f) Solutions agreed by both parties to address possible problems can be written here and signed by both parties. It is then considered as an amendment to the contract. Alternatively or additionally a more formal addendum to the contract can be signed (including signature of witnesses / PDAPP) in order to complete the initial contract.
- (g) Both parties sign the statements.



REGARDING INPUTS SUPPLIED, IT CAN BE WISE TO TAKE AND KEEP SAMPLES OF THE INPUTS DELIVERED IN A SEALED BAG OR ENVELOP (SIGNED BY BOTH PARTIES).

EITHER TWO SEALED SAMPLES CAN BE KEPT BY BOTH PARTIES, OR A SEALED SAMPLE CAN BE PREPARED AND KEPT WITH A THIRD PARTY (FOR INSTANCE PDAPP).

IN CASE THERE IS A DISPUTE ON THE QUALITY OF THE INPUT SUPPLIED AFTER IT IS USED (FOR EXAMPLE LOW GERMINATION RATE OF SEEDS, OR INEFFICIENCY OF A TREATMENT OR A FERTILIZER...) THE SAMPLE CAN BE USED AND ANALYZED / TESTED AS PART OF THE DISPUTE RESOLUTION PROCESS.

BUT OF COURSE ONE SHALL MAKE SURE THAT THE CONDITIONS OF CONSERVATION OF THE SAMPLES ARE SUITABLE AND WILL NOT AFFECT THE CHARACTERISTIC OF THE SEEDS OR PRODUCTS SO IT CAN SERVE AS A RELIABLE SOURCE FOR FURTHER VERIFICATION IF NEEDED.

5.1.2. MONITOR AND DOCUMENT THE IMPLEMENTATION OF PRODUCERS' COMMITMENTS OVER THE PRODUCTION PERIOD

Reciprocally, producers' commitment regarding production process should also be monitored and documented. We do not speak here about the delivery of products, which will be addressed in the Section 5.2. (from page 99), but about the commitments taken by producers on production methods, if any (See § 4.5. page 53). The Table 5.1.B. below provides an example of check list.

If the commitments regarding production methods correspond to a public standard which requires a certification (for instance EU organic standard, or Global GAP standards, or a Geographical Indication product...) then a certification mechanism will apply and there might not be a need to add more monitoring tools. Yet, if a production is expected to comply with a certain standard, and during the production stage it is identified that the standard will not be met, it is recommended to inform the buyer with no delay so a solution can be found for the selling of the product, or the buyer can seek another supplier.

Case Illustration 5.1.A

Real-time adjustments of producers and volumes engaged during the production stage, based on control of compliance with standards

In the case of contracts made by AMRU Rice with Agricultural cooperatives for Organic paddy supply, the contracts indicate a list of producers and surface and expected volumes.

Cooperatives have their own Internal Control System (which is then verified by external inspector of the Certification Body for organic certification).

While implementing inspections, the cooperatives found non-conformity leading to the exclusion of some producers from the organic paddy contract farming scheme. The cooperatives have immediately informed their partner (AMRU Rice) and provided an up-dated list of farmers, surface and expected volumes to be delivered.

In July 2016, 12 cooperatives had signed contract farming agreements involving 1,656 farmers. But after a first round of internal control, 69 farmers were found not compliant with the organic requirements, and the cooperatives have sent an up-dated list of the remaining 1,587 producers to AMRU Rice.

Transparency and quick information are important so at least the buyer can anticipate and take into consideration the evolution of the situation (notably while he plans deliveries of his own clients). It is better than waiting for harvest time to inform, and it consolidate the trust between the two parties.

Table 5.1.B: Example of check-list to monitor the implementation of producers' commitments regarding production methods

No.	Commitments to be monitored ^(a)	Source of information / verification / Support documents to attach ^(b)	What? ^(c)	When? ^(d)	Remarks/ Issues ^(e)	Solutions agreed ^(f) (in case of difference with the contract)	Signature of both parties ^(g)
1.1	Land preparation						
<i>e.g.</i>	<i>1.1.1.</i>	<i>Proof of purchase.</i>					
1.2	Seed used						
<i>e.g.</i>	<i>1.2.1. Use of certified seeds</i>	<i>Proof of purchase.</i>					
1.3	Fertilization						
<i>e.g.</i>	<i>1.3.1. Basal organic fertilization</i>	<i>Farmer book.</i>					
1.4	Treatments / Pest control						
<i>e.g.</i>	<i>1.4.1. Follow IPM practices</i>	<i>Farmer book.</i>					

Note: This table is only an example and can serve as a basis to establish a full check-list of the implementation of the farmers' commitments regarding production process. It can be printed in two copies (one for the buyers and one for the producer – or FO – and signed by two parties at each step (i.e. for each line, corresponding to a commitment). Each party can then keep this as a proof of the implementation (this can serve as a reference document in case of dispute).

This table can be developed and filled by one of the party, or jointly by both parties or by an external facilitator or evaluator during the implementation of the contract. The objective of this check-list is to make sure that all agreements are well implemented and that difficulties or issues occurring during production stage can be raised, discussed, and solved by the two parties.

Lines in orange color are just examples (for a vegetal production in that case).

- (a) List all the commitments taken in the contract by the producers, regarding production method.
- (b) Indicate the source of verification (documents) that can be attached with the check list.
- (c) Indicate for instance the product use and dose (fertilizer...)
- (d) Indicate the date of implementation of the operation (fertilization, treatment...).
- (e) If there are issues or problems encountered, it can be indicated in this column.
- (f) Solutions agreed by both parties to address possible problems can be written here and signed by both parties. It is then considered as an amendment to the contract. Alternatively or additionally, a more formal addendum to the contract can be signed, including signature by witnesses and PDA, in order to complete the initial contract.
- (g) Both parties sign the statements.

5.1.3. COMMUNICATION / REPORTING IN CASE OF PROBLEMS OR UNFORESEEN SITUATION

ISSUES NOT ANTICIPATED IN THE CONTRACT

During the implementation of the contract, it may happen that stakeholders face questions which they did not anticipate while signing the contract and which require an agreement between both parties. It is recommended in that case to raise and discuss the issue as soon as it is identified in order to avoid a possible source of dispute. Once points missing in the contract are found or identified, the two parties should discuss and agree together on clarifications and additional clauses to be included in an amendment to the contract. The agreement (addendum to contract) shall be signed by the two parties, and preferably with witnesses signature as well and same endorsement as for the original contract (See § 4.14.4. page 91).

COMMUNICATION AND ASSESSMENT OF DAMAGES IN CASE OF EVENTS BEYOND CONTROL

It can also happen that unforeseen situations are faced which affect the capacity of one party to fulfill all its commitments: for instance adverse weather conditions, flood, drought, uncontrollable pest attack, unavailability of certain inputs on the market (such as vaccine for livestock for instance), etc. This case may fall under “Force majeure” cases (see § 4.10 page 78). Yet it is important for producers to communicate immediately such problems to the buyer, in order to find a solution if possible, or at least to allow the buyer to take adequate measures on his side.



FOR PRODUCERS AND PRODUCER ORGANIZATIONS: ALWAYS INFORM YOUR BUYER IN CASE OF PROBLEM THAT MAY AFFECT THE VOLUME OR QUALITY OF THE PRODUCTION YOU WILL BE ABLE TO DELIVER AS SOON AS THE PROBLEM IS IDENTIFIED. DO NOT WAIT FOR THE TIME OF PRODUCT DELIVERY. IT WILL BE EASIER FOR YOUR BUYER TO ADAPT TO THE SITUATION AND DEAL WITH HIS OWN CLIENT IF HE IS INFORMED EARLIER, AND THE DIFFICULTIES MET WILL BE LESS HARMFUL FOR THE TRUST OF YOUR PARTNER AND FOR YOUR PARTNERSHIP THAN IF YOU HIDE THE PROBLEM UNTIL THE LAST MINUTE!



In case of natural disaster or event considered as a force majeure that affects the production, it is recommended that both parties visit the production site jointly and assess the situation, in presence of a trustable third party (such as local authorities or PDAPP) which can attest that the production loss is beyond the control of producer and trigger the exoneration of the party from performing its obligation as defined in the clause of the contract related to “risks and force majeure” (See Table 4.1.A. pages 41-44 and § 4.10.1. pages 78-81). Depending on the extent of the damages, the producer may be fully or partly exonerated from their obligations.

◁ *In Prey Nup polders (Sihanoukville) a commission involving local authorities assesses the damages after rice fields have been flooded in 2013 (Photo: MOWRAM / GRET, Prey Nup polders rehabilitation project).*



IN CASE OF DAMAGE OF THE PRODUCTION DUE TO NATURAL DISASTER OR SEVERE PEST ATTACK ON CROPS OR DISEASE ON LIVESTOCK, FOR INSTANCE, IT IS ESSENTIAL TO ASSESS AND FORMALLY DOCUMENT THE CASE WHILE THE EVENT AND ITS CONSEQUENCES ARE STILL VISIBLE. A JOINT VISIT OF THE PRODUCTION SITES (BY BOTH PARTIES AND/OR WITH A THIRD PARTY) SHALL BE DONE WHILE THE DAMAGE ARE VISIBLE, AND ASSESSMENT SHALL BE DOCUMENTED IN REPORT SIGNED BY BOTH PARTIES AND/OR THIRD PARTY, IN AT LEAST TWO ORIGINAL COPIES (PREFERABLY THREE, ONE KEPT BY A THIRD PARTY).

5.1.B. Example of format of report for damage assessment and exoneration of producer obligation in case of “event beyond control” such as natural disaster

REPORT ON ASSESSMENT OF DAMAGES BY (FLOOD/DROUGHT/...) ON _____ PRODUCTION

Date: ____ / ____ / 20____

Ref: Contract Farming agreement No..... signed on ____ / ____ / 20____ between _____ and _____.

Composition of the commission:

- Mr/Mrs _____ Representative or producer side
- Mr/Mrs _____ Representative or buyer side
- Mr/Mrs _____ Representative of commune council (or PDAPP, or...)

Area visited: (describe the area and surface – attach map if possible)

Event: (Flood / Drought / ...): possibly indicate rainfalls records or indication on the event.

Assessment of damages:

- It is estimated that production is 100% lost on a surface of ____ ha.
- It is estimated that production is ____% lost on a surface of ____ ha.
-

In total, the volume of production loss is estimated to ____ tons.

It is agreed by both parties that the obligation of delivery of product defined in the Contract Farming Agreement No _____ between _____ and _____ is reduced by the above volume. The revised volume to be delivered under the Contract Farming Agreement No _____ is now ____ tons (or other unit).

Done in: _____ (insert location) on ____ / ____ / 20____ (insert date).

Signatures:

Producer representative

Buyer representative

Local authority/PDAPP

5.1.4. OTHER ADJUSTMENTS TO ADDRESS UNFORESEEN SITUATION

Other problems may be identified and anticipated with a good monitoring and communication between the two parties during the period of implementation of the contract. A good understanding between the parties will allow to search for solution and compromise and to adjust the terms of the contract when needed, rather than hiding the problem and facing the conflict when time to deliver the product has come. To inform without delay when there is a problem and try to anticipate on difficulties and find solution is always advisable. It avoids dispute and consolidate the trust. Sometime both parties may face difficulties, and a good information and dialog can help to compromise and find good solutions for both producers and buyer.

Case Illustration 5.1.C.

A compromise during implementation to address issues faced by both parties

In 2014, groups of producers involved in a contract to supply paddy have faced problems with the management of harvests leading to a lower quality of paddy than what was expected. A significant part of the paddy produced was below the lowest grade of quality defined in the contract.

On the other hand, the buyer (a miller and exporter) had difficulties with the cash-flow availability.

Both parties agreed on the following compromise: An additional grade (lower quality) was added in the contract, allowing farmers to sell nearly all their paddy and supply the expected volumes, whereas extra delay for payment (few days delay instead of immediate payment) was accepted by the producer side.

5.2. AT HARVEST / DELIVERY TIME: ENSURE A SMOOTH COORDINATION

Few days or weeks before the time for production delivery (harvesting season for vegetal productions) it is highly recommended to organize a coordination meeting between the two parties in order to confirm and adjust the figures on the expected volumes that will be delivered and to discuss in details the practical and logistic arrangements for the collection and delivery. Several issues may have to be addressed such as optimum harvesting time, mobilization of harvesting machines, drying, sorting, transportation, storage, process for quality control, delivery time, collection points, etc.

The contract should have already benchmarked most of these issues (See notably § 4.8. pages 71-73), but generally all details are not set in the contract and need to be discussed and agreed for a smooth implementation.

The main issues that should be clearly discussed, decided and monitored at this stage can be as following:

5.2.1. TIMING OF HARVEST AND SCHEDULING COLLECTION

The contract farming agreement usually indicates a period of harvest of product collection, but with a limited precision (months or weeks...). When it gets close to the time of harvest or product delivery, it is recommended to plan in detail the calendar of harvest and collection, with a daily schedule for the collection. Buyer should visit the production site and assess with the producer the stage of crop ripening (or animal growth or fattening for livestock production, etc.) and define optimum date for harvesting/collection. The schedule should take into consideration the optimum timing to maximize the quality of the product, but also possible logistic constraints (limitation factors such as labor availability, harvesting or transportation equipment availability, etc.).

In many cases, if the collection is done in one times or in only few times, the agreement in the date of collection is made informally and verbally (for instance by phone call only). Yet, to avoid a risk of dispute, it can be preferable to fix the collection plan by written and have it signed by both parties. This is particularly recommended if the contract is made through a Farmer Organization and involves many producers and several operation of product collection. In that case the plan shall clearly indicate the date, time and location of each delivery, the estimated volume of product that will be picked up, and which producers have to bring their product on a given day and location.



A PRECISE PLANNING OF COLLECTION IS ABSOLUTELY NECESSARY AND HAS TO BE STRICTLY RESPECTED IN THE CASE OF FRESH AND PERISHABLE PRODUCTS. OTHERWISE, A POOR COORDINATION OF THE COLLECTION OPERATIONS WILL IMMEDIATELY LEAD TO SIGNIFICANT LOSS OF VALUE OF THE PRODUCTS... AND POSSIBLY ON DISPUTES ON THE RESPONSIBILITY FOR THOSE LOSSES.

5.2.2. LOGISTIC OF THE HARVEST AND COLLECTION

CHOICE OF LOCATION FOR PRODUCT COLLECTION

Sometime the producer is responsible to bring the product to the buyer location (processing plant). But in most of the case, the buyer will come to collect the production from the production area. The place where the products will be collected and handed over from the producer(s) to the buyer has to be precisely defined²⁹.

The choice of location(s) has to take into consideration various factors, such as:

- The accessibility for the trucks / trailers (take into consideration limitation of truck size and weight on rural roads, as well as maximum load that bridges can support);
- The proximity from the place of production;
- Possibility the availability of a shelter or temporary storage facility if the product has to be protected from sun or rain for instance.

If several producers are involved on a large area, several collection points will be identified in order to optimize the logistic of the collection (and reduce costs). The quantity to gather in a given location at a given time shall be defined taking into account the capacities of trucks. To save costs, it is important to reduce the distance from the farm to the collection points (where products are transported in smaller quantity and generally with higher transportation costs per unit) but also to avoid mobilization of trucks that will not be loaded at their maximum capacity.



IF THERE ARE MANY COLLECTION POINTS, PREPARE A LIST OF ALL COLLECTION POINTS AND IDENTIFY THEM PRECISELY (GIVE A NAME OR A NUMBER FOR EACH COLLECTION POINT AND LOCATE THEM ON A MAP) SO IT IS EASY TO REFER TO EACH COLLECTION POINT IN THE PRODUCT COLLECTION SCHEDULE.

²⁹ It is important to note that in the case of organic products, the collection points have to be identified and submitted to the certification body before the audit as they locations have to be inspected by the certification body to make sure that the collection points are compliant with the requirements based on the organic standard (notably in order to prevent the risk of contamination).

TRANSPORTATION MEANS³⁰

In principle, the producers are responsible of the transportation of the products from the field (or production location) to the collection point. If the contract is made with a Farmer Organization, then internally the FO should make clear with its members on the organization of the transportation of their products to the collection point.

The buyer is then responsible to organize the transportation from the collection point to his warehouse or factory, either with his own truck or with rented material.

If the producer has to transport the product to the buyer's location, then it is also important for the producer (in particular in case of a FO) to develop a clear plan of collection and delivery of the product in order to be able to book the truck(s) as needed.

HARVESTING EQUIPMENT

If special equipment or machinery is needed to harvest the products, such as for instance combine harvesters for rice (that each producer may not own individually), a clear planning of harvest will help to organize the mobilization of the machines, book the service, and also optimize the utilization of the machines. But reciprocally, if there is a constraint on the availability of such equipment, the planning of collection may have to be adjusted back. This is one more reason to anticipate and prepare the harvest/collection sufficiently in advance if there is such dependency on external service providers.

BAGS, CONTAINERS

In case specific bags or containers are required to pack the row product before transportation, make sure that these bags and containers are provided on time. In some case they may be provided by the buyer (for instance for organic products when new bags made of eligible material are required).

LABOR FOR LOADING/UNLOADING TRUCKS

It is generally clearly understood (and often specified in the contract) that producers are responsible to bring their product to a collection point, and then the buyer is in charge to take over further transportation (i.e. to organize truck). But "who is responsible to load the truck" is sometime an issue that parties omit to discuss in their negotiation. By default, one can understand that the party responsible for a certain vehicle is also responsible to load and unload the goods from this vehicle. But to avoid any dispute it is always a good idea to precise this point during the negotiation of the contract or at least while planning the details of the collection of products.

*Loading of paddy at collection point in Preah Vihear ▷
(Photo: Amru Rice)*



³⁰ See also § 4.8.3. page 72.

RESPONSIBILITIES IN CASE OF NON-COMPLIANCE OF A PARTY WITH THE DELIVERY SCHEDULE AND MODALITIES AGREED

Non-compliance with agreed modalities and timing of the management of products gathering and deliveries can lead to losses for one or the other party. If the procedures for the management of the deliveries (including locations and timing) are well defined, then the responsibilities in case of non-compliance can easily be identified as well, and compensation can possibly be claimed for subsequent losses (if both parties do not agree on the estimation of losses and payment of compensations, this can be referred to the dispute resolution mechanism).

Examples of situations that may occur in the management of product delivery and risks of losses or unexpected costs engaged:

- Example 1: producer bring the products at agreed time and location (collection point), but buyer's truck is not yet there: producer side may face additional costs such as compensation for the time spent to watch over the products, storage costs, etc. and also the quality of the product may be depreciated (especially for perishable products or if the product cannot be well protected against sun / rain, etc. at the collection point).
- Example 2: the buyer send a truck to pick-up products at the agreed point and time, but the products are not yet brought by the producer side at the collection point. The buyer may then face additional costs to pay for truck and driver mobilization for the time they have to wait there.
- Example 3: a bridge is broken on the way between producer and buyer which will lead to delay to pick-up the products. This is clearly not the responsibility of either of the party, but has to be addressed anyway and may have consequences for both parties.

Such situation may occur and have to be acknowledged.

5.2.3. QUALITY ASSESSMENT AT DELIVERY

If the contract farming agreement includes (as it is generally the case) some specific quality requirements for the product to be delivered (See §4.4. pages 51-53), then the organization of the verification of the quality has to be clearly defined. This means not only the method and instrument that should be used to check the quality (which should have been stipulated in the contract with the quality specifications), but also the location and timing of the quality control, the staff allocated the organization of the flow of products, etc. The case illustration 5.2.A. (next page) shows how a weak organization of quality controls (inefficient and time consuming) has led to the failure of a commercial deal, whereas the production was there. This is obviously a particularly important issue for fresh and perishable products.

Please note that sometime, in the contract agreement, it does not include all the quality of paddy that can be supplied by the producer and purchased by the buyer. In this case, the producer should propose to the buyer and then decide whether the buyer can buy all kinds of quality of the paddies and agree on the price during the harvesting season.

Case Illustration 5.2.A.

Failure of a contract due to insufficiently prepared procedure for quality control

In 2013, a rice miller and exporter have confirmed an intention to buy approximately 600 tons of paddy from producer cooperatives, with certain requirements on the quality (varietal purity, broken kernels rate, moisture content...). Price offer proposed was significantly above the price offered by local traders.

As the paddy was sold wet, it had to be transported to drying facilities within 24 to 48 hours after harvest. But the organization of the quality control was not well prepared. The buyer had sent only two staff to buy paddy from cooperatives at the harvest time, and they were going from one farm to another to check the quality of paddy. The process was thereof far too slow: farmers could not wait with their wet paddy (otherwise the quality was spoiled) and most of them finally had to sell their harvest to local traders even if the price was lower. Eventually, only 100 tons were bought, out of a target of 600 tons, and this failure was largely due to a lack of organization of the quality control procedures, which were too time-consuming.

In the case of a contract made via a Farmer Organization, the quality of the product may first be checked by the FO with its members, and then by the buyer by taking some samples to check whether the quality of products as assessed by the Farmer Organization(s) is correct in regard of the criteria defined in the contract. For this purpose, the FO will entrust a committee (constituted from some of its members or possibly with external persons) to implement the quality assessment. This committee has to be trained for this function. The training might be provided by the buyer so he is sure that the methods applied comply with its own procedure. Note that this training on quality control can be mentioned in the contract as a support provided by the buyer. (See more details in the § 7.3. page 125 on the issue of quality management with Cooperatives and FOs).

5.2.4. RECORDING OF DELIVERIES

The information of delivery of the produce is essential because it will be used as the reference for payment. A form of delivery certificate shall be developed and agreed with both parties.

For each delivery operation, a delivery certificate shall be issued in two original copies and signed by both parties (buyer and producer). One copy shall be kept by each party.

The delivery certificate shall be identified by a certificate number and shall indicate:

- A reference to the contract (Contract Number);
- The date (+possibly time?) of delivery;
- The place of delivery;
- The nature of the product delivered;
- The volume of product delivered;
- The quality grade;
- The price as agreed upon the quality.

A detailed composition of batches of product delivered might be annexed to the delivery certificate (for instance with number of bags, quantity in each bags, in the case of a producer organizations, the name of producers for each batch of product...) ³¹.

Persons in charge shall know clearly how to fill and file these delivery certificates. If necessary they shall be trained for this purpose.

³¹ This might be necessary when traceability requirements are high, for instance for products that comes with a certification such as organic product or GI product.

5.2.5. PRICE AND PAYMENTS

PRICE

Price or modalities of price determination have obviously to be applied as in the contract and shall not be discussed again at the time of harvest. But when the price is not fixed but based on a reference, there is a need for both parties to search the up-date of the information on the price reference used at the time of harvest / delivery of the product (or in the previous days) and to check that they agree on the same figures. If there are discrepancies in the reference price found by each of the parties, both parties should discuss and find an agreement on a common reference.

Case Illustration 5.2.B.

Agreement on the value for price reference: a practical illustration in contract for paddy supply in Preah Vihear

In the Contract Farming agreements signed between AMRU Rice and cooperatives for organic paddy supply in Preah Vihear province, the price system is based on the model “market price + premium” (See § 4.7.3. page 59). The reference price used is defined as « the highest market price offered by 3 large rice mills from the neighboring province of Kampong Thom (agreed by both parties) for similar type of paddy (conventional) within 7 days before the beginning of the paddy collection ».

Therefore, in practice, just before the harvesting season, representatives of the cooperatives are checking the prices proposed by the reference mills (and they also check local traders for their own reference) and then they propose a value as the price reference for the season. On its side, the AMRU Rice has also made its own assessment, and based on their own “price surveys” the two parties meet to crosscheck their figures and agree on a common reference price for the season.

PAYMENTS

Payments of products delivered have to follow the modalities defined in the contract (regarding timing of the payment, means of payments, etc.). Advices about possible options / modalities of payments have already been developed in the section 4.9. of this manual (pages 74-78). Notably advantages and disadvantages of payments in cash, by check or by bank transfer are shown in Table 4.9.A. page 76.

In some cases, in particular when products delivered over several days are paid in one time, it is recommended that the producer issues an invoice to request the payments of the products delivered with reference to all the corresponding product delivery slips. The Table 5.2.A. below provides more indication on what system of delivery receipts and invoicing / payment receipt is suitable for different situations.

Table 5.2.A.: Delivery and payment receipt only or need for an invoicing system depending on the situations

	Immediate payment at delivery	Grouped invoicing for several deliveries or Delayed payments
Individual producers	If contract is made with individual producers and payments are made immediately at delivery, there might not be a need to develop a format of invoicing. The management of delivery and payments might be done only with a delivery receipt and a payment receipt (to be duplicated and signed and kept by both parties).	If the payments are not made for each delivery of product, but several delivery operations are paid in one time, then it is desirable to have a format of payment receipt that refers to all the delivery receipt concerned by the payment. Copies of the delivery receipts shall be attached with the payment receipt (or delivery receipt shall be numbered and the payment receipt shall clearly refer to the corresponding delivery receipts).
Farmer Organization (FO) / Agricultural Cooperative (AC)	In the case of a contract with a Farmer Organization, several producers may bring their products to the collection points and it is possible that separated delivery receipts are made for the product brought by each producer, member of the FO / AC. But the contracted party being the FO/AC, it is desirable that the FO or AC issues an invoice for the payment of all the products delivered, with reference to each delivery receipt.	If the payments are not made for each delivery of product, but several delivery operations are paid in one time, then the FO/AC should issue an invoice for the payment of all the products delivered, with reference to each delivery receipt.

5.3. AFTER IMPLEMENTATION: ASSESS THE RESULTS, IDENTIFY PROBLEMS TO BE IMPROVED IN THE PERSPECTIVE OF A NEW CONTRACT

After the contract implementation is finished and the contract is closed, if the buyer and the producer intend to pursue their partnership and renew the contract farming agreement for further production cycle(s), it is recommended that they take the time to meet³² and review the implementation of the previous contract in order to identify all the difficulties, problems and lessons learnt with the objective to improve the terms of the contract farming between the two parties in the next season(s) or production cycle(s).

To analyze the implementation of the contract and assess the results and satisfaction, we can structure the assessment process in three main groups of questions:

- The respect of the terms of the contracts.
- The identification of points that need an agreement between both parties but were not covered in the terms of the contract.
- The satisfaction of the parties (benefits / final aim of contract farming reached or not).

³² It is also recommended that, before to meet their partner, each party prepares its own review internally. In particular for Farmer Organizations which should have an internal review first and collectively identify the difficulties, problems, issues they wish to raise.

These three aspects are partly linked, but not fully. For instance, the terms of the contracts may have been fully respected, yet one (or both) party (or parties) are not satisfied with the implementation, which means that the contract was maybe not well negotiated or did not cover some essential points.

5.3.1. ASSESS THE RESPECT OF THE TERMS OF THE CONTRACTS

A first aspect of the assessment of Contract Farming implementation is based on the exhaustive review of actual respect of each point of the contract.

This can be prepared easily with a simple check-list / table to review each of these points, including notably the verification of the compliance of product delivered (in quantity and quality), of price paid, of timing of payments, etc. The Table 5.3.A. next page proposes a model of such a check-list. It is based on a fictive example for chicken production but can be adapted to any contract.

A column in the check list should be left for comments and remarks. Indeed, if some quantitative parameters might be easy to assess (for instance quantities), parties may have different opinions regarding the respect or not of certain clauses of the contract, which can reveal different interpretation. This can be quite common situation. If different interpretations are possible, then it means that the wording of the contract has to be improved to clarify how each point should be understood. This analysis will then be helpful to improve the contract if parties wish to continue their partnership.

If some points were not respected, the reasons have to be discussed. For instance: if the producer could not fulfill a requirement regarding production method, the constraint has to be identified and a next contract can help to address it. Or maybe the point can be dropped off from the next contract if it is difficult to achieve but not so important for the buyer. Another example: if the level of quality required by the contract could not be reached, solution may be found with additional support provided by the buyer in a new phase of partnership (more training, access to better quality inputs, etc...).

Table 5.3.A.: Check-list for review of actual implementation of the terms of the contract (an example for poultry production)

Topic/ Article	Content ⁽¹⁾	Conformity ⁽²⁾ of implementation	Comments / Remarks	Improvement required
Art. 3. Obligation of producer	<i>Respect specifications for chicken housing.</i>	⊙⊙⊙⊙⊙	<i>Specification not fully respected according to buyer (number of chicken per square meter too high). But specifications were not clear enough and not well understood by producer.</i>	<i>Clearer description of requirements is needed.</i>
	<i>Use only the animal feed provided by the buyer.</i>	⊙⊙⊙⊙⊙		
Art. 4. Support to be provided by buyer	<i>Provide training.</i>	⊙⊙⊙⊙⊙	<i>Only half day training. Not fully satisfactory for producers.</i>	<i>Clarify the time required and content of the training to provide in the contract.</i>
	<i>Provide 1-day-old chicks vaccinated against Newcastle disease.</i>	⊙⊙⊙⊙⊙		
	<i>Provide animal feed on time</i>	⊙⊙⊙⊙⊙		
	<i>Provide veterinarian support in case of disease outbreak (within 24 hours)</i>	⊙⊙⊙⊙⊙	<i>In some case the veterinarian of the company came 2 days after the company was called by producer.</i>	
Art. 5. Logistic arrangement for collection	<i>Day of collection agreed one week in advance.</i>	⊙⊙⊙⊙⊙		
	<i>Buyer comes with a truck to the producer location.</i>	⊙⊙⊙⊙⊙		
	<i>Buyer provides crates.</i>	⊙⊙⊙⊙⊙		
Art. 6. Quality	<i>Chickens are delivered when aged between 2 and 2.5 months.</i>	⊙⊙⊙⊙⊙		
	<i>Minimum weight 1.300 kg</i>	⊙⊙⊙⊙⊙	<i>Few chickens a bit below 1.3 kg, accepted by buyer.</i>	
	<i>Average weight: not less than 1.450 kg</i>	⊙⊙⊙⊙⊙	<i>Average weight was only 1.350 kg</i>	
Art. 7. Price	<i>Fixed price 9,000 KHR/ kg of live chicken</i>	⊙⊙⊙⊙⊙		
Art. 8. Payment	<i>Payment in cash.</i>	⊙⊙⊙⊙⊙		
	<i>Payment on the day of collection</i>	⊙⊙⊙⊙⊙	<i>Cash not always available of time and payment late.</i>	

(In orange color is a fictive example for a contract on chicken production).

⁽¹⁾ Add one line for each element under a given article or section to be able to have a detailed evaluation.

⁽²⁾ The format can be either a YES/NO box to tick, or a bit more qualified assessment (Not respected / Partly respected / Mostly respected / Fully respected), or a score, for instance from 0 to 5 (0=Not implemented, 5 = Fully implemented).

5.3.2. IDENTIFY POINTS THAT WERE NOT DEFINED IN THE CONTRACT BUT SHOULD BE PART OF THE AGREEMENT

Quite frequently (especially if the contract is implemented for the first time), some discussion on disagreements can occur during the implementation, not because the terms of the contract are not respected, but because some important questions were not addressed in the contract. While both parties meet to do this joint assessment of the contract implementation, they can recall about the “history” of the implementation and the problem they have faced (sometime the disputes they have had) that revealed such shortcoming in the contract writing. Sometime these imprecisions of the contracts were addressed by discussions and agreements (often verbal) made during the implementation stage. If the contract is being renewed for a new cycle of production, all these elements that have been clarified during the implementation of the previous cycle can be introduced in the new version of the contract to make it clearer. It may also serve the scaling up of the contract farming schemes: new contracted farmers will benefit from the experience of the pioneers!

5.3.3. ASSESS THE LEVEL OF SATISFACTION

A Contract Farming can be considered as successful not only if all the conditions defined in the contract were respected, but also if the parties are satisfied with the results and estimate that they benefit from the partnership. As stated above: it is possible that all the terms of the contracts were not fully respected, and yet both parties are rather happy with the partnership. And reciprocally it is possible that all the terms of the contract were respected, yet not bringing satisfaction to one or both parties. More than the full respect of the initial contract terms, the satisfaction (the confirmed interest) is the main element that will lead to a possible renewal of the partnership.

Each party should thereof review its initial objectives while entering into the contract farming agreement, and assess if the objectives were achieved (and if not if there would be room for improvement to achieve them in a new phase of partnership).

Initial objectives can be quite diverse (as shown in Sections 1.2 and 1.3. in this Manual, pages 11-13), and thereof there is not a standard format to assess them. Of course, profitability of the contract farming scheme should systematically be part of the assessment of the satisfaction (for both buyer and producer). But other aspects can be considered as well, such as the security or other benefits allowed by the contract.

ASSESS PROFITABILITY

For producers an economic analysis of the production under contract farming can be done, taking into account all costs and incomes, resulting in a calculation of the net profit for the farmer. This net profit can then be compared to a scenario without contract farming if the resources mobilized (land, capital, labor) for the production under the contract would have otherwise been used in a different way, either for the same type of production (but with a different market outlet and maybe a different production technique) or for another production or activity (on-farm or off-farm).

If the producers are contracted via a Farmer Organization, the economic result for the FO has also to be assessed (Cf. § 7.5. pages 131-133).

ASSESS SECURITY

The calculation of the profitability above may need to be qualified. If economic result of the contract is compared to what the producer would have got without the contract, this comparison element depends on contextual factors (notably market factors). For instance: if the contract is a fixed-price contract, it is possible that at the time of product collection, the producer could have obtained a better price if selling to another buyer, outside of the contract farming scheme... but with a risk to face an opposite situation in case of lower prices on the market (See Table 4.7.A. page 56). So contract may not systematically provide a higher remuneration, but sometime a higher security.

The possible effect on risk-prevention can be measured not only on price of a given commodity, but also on the overall income for the farm. A contract farming agreement made on a new production for a farmer allows him to diversify its activity and become more resilient.

ASSESS OTHER BENEFITS

The contract may have provided some other benefits that are not directly identified in a simple analysis of costs and incomes.

For instance, on producer side, the producer may have gain technical knowledge from training received from his partners, or access to specific inputs he could not get by himself, or access to equipment that can be used also for other crops or production, or access to inputs on credit whereas financial resources would have been a limiting factor to develop his activities, etc. Also in some cases the production under contract can generate some by-products or collateral benefits that can be valued for other productions on his farm and that may not have been considered in the economic assessment: for instance manure used as fertilizer, or increased soil fertility thanks to the implementation of a legume crop, or post-harvest residue that can be used as a fodder for livestock, etc.

5.3.4. DRAW LESSONS TO IMPROVE IN A NEXT PHASE (OR END THE PARTNERSHIP!)

After they've gone through this review process as defined above, the two parties should consolidate their observations, conclude on their intention to pursue or not their partnership, and compile all the elements they have identified to improve the contract if they decide to renew it.

SECTION 6: CONFLICT RESOLUTION IN CONTRACT FARMING IMPLEMENTATION

When entering into an agricultural production contract, the parties should envisage that disagreements may arise and they might not be able to solve on their own. Thus, when negotiating and drafting the contract, the parties are well advised to envisage a method for dealing with disputes that they may not be able to solve directly and would thus require third-party intervention. There are many possible methods of resolving disputes: under a judicial process where parties are subject to the authority of courts (See Section 6.2.) or through alternative dispute resolution mechanisms called non-judicial dispute resolution (as developed under Section 6.1., below).

6.1. NON-JUDICIAL DISPUTE RESOLUTION: THE DIFFERENT OPTIONS/MODALITIES FOR CONFLICT OR DISPUTE RESOLUTION

Recourse to non-judicial settlement methods is based on both parties' consent and the choice of which dispute resolution mechanism to adopt can be based on the nature of the dispute. Therefore, there are different types of alternative disputes resolutions outside the court system

6.1.1. MAFF PROPOSED CONFLICT RESOLUTION SYSTEM (BASED ON SUB- DEGREE 36 ON THE CONTRACT FARMING).

The sub-decree 36 on contract farming was adopted in February 2011 and established the Contract Farming Coordination Committee (CFCC) to solve the conflict for the implementation of contract farming³³.

This coordinating committee is composed of members from several ministries and headed by the Ministry of Agriculture, Forestry and Fisheries has been established.

The coordinating committee is responsible to *"intervene or reconcile argument or conflict that might be occurred from the implementation of the Contract Farming Agreement that specialized institution is unable to settle or conflict which required settlement at inter-institutional level"*³⁴.

³³ Article 6 of the sub-decree provides that "the MAFF shall cooperate with relevant Ministries, and institutions to play the following roles: (...) involving in conflict resolutions and addressing problems pertaining to the implementation of contract-based agricultural production based on national laws".

³⁴ Article 7 of the sub-decree provides that: "A mechanism shall be established which is called Contract Farming Coordination Committee (CFCC)" and the same article includes, among the responsibilities of this committee, the following role: "To intervene or reconcile argument or conflict that might be occurred from the implementation of the Contract Farming Agreement that specialized institution is unable to settle or conflict which required settlement at inter-institutional level".

The role of the committee is not to render a solution, it is solely to coordinate and reconcile the parties, therefore doing mediation on formalities and implementation of the agricultural production contract. Then, if the parties cannot agree on a compromise or solution to the conflict with the mediation of the CFCC, the CFCC has no power to make an arbitration decision and impose a solution on its own. Parties may further refer their dispute to an arbitrator or to a Court.

The sub-decree recalls that the parties must have settled in advance the way to address conflict in the agreement contract. Where conflict cannot be resolved as settle in the agreement, the disputing parties should then comply with the ruling of the CFCC³⁵.

It also has to be noted that the parties cannot mobilize directly the Contract Farming Coordination Committee to address a dispute. They should follow the three following steps:

First step: The negotiation between both parties in order to find an amicable solution

Second step: In case first step cannot solve the problem, both parties can request PDAFF to facilitate on the conflict resolution.

Third step: if PDAFF intervention cannot end the dispute, this issue will be send to Conflict resolution Committee. However the additional details on these procedures are expected to be further developed by MAFF in the near future.

Note: Contract Farming implementing parties could receive the above mentioned service only if they have registered with DAI and PDAFF.

6.1.2. SETTLEMENT BY ALTERNATIVE DISPUTE RESOLUTION

Arbitration, negotiation and mediation are the most common forms of alternative dispute resolution (ADR). In Cambodia, informal ADR has been practiced for centuries. However, until recently, ADR was never formally part of the official dispute resolution regime. Now, Cambodia has begun to incorporate ADR techniques into its legal system³⁶.

The choice of dispute resolution mechanism to adopt can be based on the nature of the dispute and tends to foster a better relationship between the parties. It is because the process is confidential as opposed to a trial which is public³⁷. The ADR process is also likely to be a better venue for the parties to discuss unsettled or misunderstood issues in a less intimidating atmosphere³⁸. This can create a win-win solution which allows both parties to move forward amicably³⁹. The motivating factor that also contributes to the increased use of alternative dispute resolution is the length of the court process as well as its expensive cost contrary to the low cost and short term period of ADR.

³⁵ Article 11 of the sub-decree provides that *"Whenever there is a conflict regarding the implementation of the Contract Farming agreement, the producing party and purchasing party should first address it by negotiating together following the terms and conditions stated in the contract. In case that the conflict cannot be solved, the conflicting parties can implement the mechanism described in the article 7 of this Sub-decree"*.

³⁶ Introduction to Cambodian Law, Hor Peng, Kong Phallack, Jorg Menzel, Konrad Adenauer Stiftung, 2012.

³⁷ National Arbitration Forum, "Business-to-Business: Mediation/Arbitration vs. Litigation" accessed from <http://www.adrforum.com/users/naf/resources/GeneralCommercial WP.pdf>.

³⁸ Goldberg, "Online Alternative Dispute Resolution and Why Law Schools should prepare Future Lawyers for the Online Forum", p.14.

³⁹ Ibid.

There are different alternative disputes resolutions outside the court system. To consent to these methods, the parties may either include a term in their agricultural production contract or conclude a separate agreement, usually after the dispute arisen. When problems arise, the parties should first endeavor to overcome them through negotiations (a) and subsequent mediation or conciliation (b) and then, in the absence of agreement, they can resort to arbitration (c).

A) NEGOTIATION

Negotiation is the most common form of ADR in Cambodia and is used by parties to resolve disputes directly through compromise, without the assistance of a third party⁴⁰. In Cambodia, a survey of small firms found that negotiation was the most preferred method of dispute resolution⁴¹.

Negotiation is generally the first step of settlement through alternative dispute resolution in which and contrary to the others following type of alternative dispute resolution (mediation, conciliation and arbitration), the parties are involved without any third parties to settle their dispute. Indeed, negotiation is based on general principles, legal obligations and also, very often the clauses in the contract itself.

Negotiation can be formal (meeting, written agreement) or casual (phone, email, or letter). In Cambodia, negotiation commonly occurs in person, but it can also be done over the telephone⁴².

The advantages of negotiation are first the saving cost: the cost of negotiation is lower than for any other dispute resolution method, the privacy: negotiation can be a completely private process and the speed: the parties do not have to wait for the judge, arbitrator or mediator to hear and make a court decision.

Indeed, usually, negotiation is the best initial option before filing a lawsuit or invoking an arbitration clause.

B) MEDIATION AND CONCILIATION

Conciliation and mediation are usually the next step after a failure of the negotiations between the parties. Conciliation and Mediation can be broadly defined as assisted or facilitated negotiation⁴³. These Alternative Dispute Resolution methods are part of the Cambodian culture and traditional legal system and today, continue to play an important role in Cambodian dispute resolution. A World Bank survey of small firms in Cambodia found that mediation was the most preferred method of dispute resolution after negotiation⁴⁴.

⁴⁰ Introduction to Cambodian Law, Hor Peng, KongPhallack, JorgMenzel, Konrad Adenauer Stiftung, 2012.

⁴¹ The Provincial Business Environment Scorecard in Cambodia: A Measure of Economic Governance and Regulatory Policy, World Bank/IFC-MPDF and AusAid/The Asia Foundation, 40 (2007)[here- inafter Business Environment Scorecard]. The survey found that 92% of Cambodian firms choose negotiation as their top dispute resolution option. In contrast, only 1% of firms cited local courts as their most common dispute resolution method.

⁴² Steven M. Auster miller Alternative Dispute Resolution: Cambodia A Textbook of Essential Concept(USAID, 2010).

⁴³ Patterson et al., supra note 9, at 53.

⁴⁴ Business Environment Scorecard, supra note 3, at 40. The survey found that local firms choose mediation as their second best option, far ahead of court litigation.

The term mediation and the term conciliation have been confused over the years and both terms refer to a negotiation process facilitated by a neutral third party. Today, mediation and conciliation are often used interchangeably to refer to the same process. Although some have tried to draw a distinction, there is no common international legal authority defining how the terms might differ⁴⁵. Even if Mediation and Conciliation both involve two or more disputing parties attempting to negotiate a settlement with the assistance of a third party, the two mechanisms can be differentiated as following:

- **Mediation** is a process in which a third party called a mediator will aim to facilitate dialogue between the parties and assist them in their attempt to reach an amicable settlement of their dispute.
- **Conciliation** is a process in which a third party called a conciliator encounters the disputants separately. It is different from the mediation where the mediator meets the disputants jointly with the aim to seek efforts from the parties that would help resolve the dispute⁴⁶.

In the Khmer tradition, Conciliation and Mediation are conducted by a third party, namely a monk, an Achar (knowledgeable expert), a prominent person the parties trust, the village chief or the King and formally, it is conducted by a public officer appointed by the government and the judge. In practice, the settlement of disputes through conciliation is conducted as part of daily life⁴⁷.

In the case of dispute resolution for Contract Farming, the role of mediator / conciliator can be undertaken by local authorities or by the Provincial Department of Agriculture, Forestry and Fisheries (PD AFF) or by the Department of Agro-Industry (DAI), or possibly by the (CFCC)⁴⁸.

Mediator/conciliator bring opposing parties together and attempt to work out a settlement or agreement that both parties can either accept or reject. Then, it encourages dialogue between the parties with a view toward finding a solution acceptable to all. The mediator/conciliator gives consideration to the circumstances surrounding the dispute including the relationship's technical, economic and social dimensions, which contributes to assisting the parties in understanding the other party's perspective. Then, the parties may choose a mediator/conciliator with qualities corresponding to their particular situation provided and with both parties' trust.

The parties can include an express clause in their contract bounding themselves to the mediation /conciliation. Two elements should be considered in such clauses: the first is an express determination to submit disputes to mediation/conciliation. The second, if parties intend to be bound by the clause, they have to make clear that mediation/conciliation is set up as a precondition to be fulfilled prior to resorting to arbitration or litigation⁴⁹.

⁴⁵ Steven M. Auster miller Alternative Dispute Resolution: Cambodia A Textbook of Essential Concept(USAID, 2010).

⁴⁶ Raquel Z. YRIGOYEN FAJARDO, Kong Rady, and PHAN Sin Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples. (UNDP-Ministry of Justice, 2005) p.33.

⁴⁷ Introduction to Cambodian Law, Hor Peng, Kong Phallack, Jorg Menzel, Konrad Adenauer Stiftung, 2012.

⁴⁸ Set by the Sub-decree No 36 on Contract Farming.

⁴⁹ For example, parties can establish the place and language of the procedure or a time frame in which the mediation has to take place.



IF BOTH PARTIES INTEND TO USE A MEDIATION OR CONCILIATION PROCESS TO SOLVE AN EVENTUAL DISPUTE, THEY SHOULD EXPLICITLY INDICATE THIS IN THEIR CONTRACT FARMING AGREEMENT (IN THE SECTION OF THE CONTRACT REFERRING TO DISPUTE RESOLUTION — SEE SECTION 4.13 PAGE 90 IN THE PRESENT MANUAL). IT IS RECOMMENDED THAT THE CLAUSE IN THE CONTRACT INDICATES THE PLACE WHERE THE MEDIATION/CONCILIATION SHOULD TAKE PLACE, THE LANGUAGE USED FOR THE MEDIATION/CONCILIATION, THE PROCEDURE AND TIME-FRAME, AND IDENTIFY THE MEDIATOR/CONCILIATOR OR INDICATES HOW IT SHALL BE CHOSEN AND THE NECESSITY FOR BOTH PARTIES TO AGREE (BY WRITTEN) ON THE SELECTION OF THE MEDIATOR/CONCILIATOR.

IT IS POSSIBLE ALSO TO USE THE MEDIATION/CONCILIATION ONLY TO SOLVE A DISPUTE OVER CERTAIN SPECIFIC ASPECTS OF THE CONTRACT: FOR INSTANCE TO ADDRESS A DISAGREEMENT OVER THE EVALUATION OF THE QUALITY OF THE PRODUCE DELIVERED.

Then, the mediation/conciliation proceedings involve a number of elements that can be included in specific provisions of the contract such as: the scope of the dispute covered by the mediation/conciliation process, the appointment and role of the mediator/conciliator, the implementation of the proceedings, the exchange of communication between the parties, the adducing of evidence, disclosure and confidentiality issues, the drafting and enforceability of the settlement agreement, the allocation of mediation/conciliation costs and the right to initiate arbitral or judicial proceedings. The obligation to resort to mediation/conciliation based on the contract binds the parties but however, by entering into mediation/conciliation, the parties do not commit to reach an agreement. General principles should therefore govern the parties' conduct in particular to act in good faith. When mediation/conciliation does result in an agreement between the parties, it is advisable that they sign a settlement agreement. In all cases, the settlement is contractually binding and parties would be expected to comply voluntarily.

Mediation and conciliation have then several benefits: parties are free to organize the procedure according to their particular situation, with limited formality. Furthermore, mediation/conciliation generally takes place over a short period, has low cost implications and can be implemented both for small disputes and large conflicts that the parties would prefer not to bring before a court.

C) ARBITRATION

Arbitration is the third major Alternative Dispute Resolution method to be discussed.

Arbitration is a process involving a neutral third party, to settle the parties' (usually called the "arbitrator" or if more than one, then called the "arbitration panel" or "tribunal"). The neutral third party can be either an arbitrator or an arbitration panel ⁵⁰.

⁵⁰ Steven M. Auster miller Alternative Dispute Resolution: Cambodia A Textbook of Essential Concept (USAID, 2010) p. 137 accessed from http://www.americanbar.org/content/dam/aba/directories/roli/cambodia/cambodia_adr_book_english_01_19_09.authcheckdam.pdf.

Arbitration is different from court litigation as parties can choose between binding (very common) and non-binding arbitration (less common) because arbitration advantage is holding in the decision enforcement. The parties have also a lot of flexibility that does not exist in the litigation process and choose the place and time for the proceedings. In addition, arbitration tends to be faster and less expensive than litigation.

Parties have significant autonomy to agree on the arbitration's modalities and to choose their arbitrator in the same manner than for mediation/conciliation. But the main difference between arbitration and mediation or conciliation is that the arbitrator, after considering the evidence, **makes a decision and has the power to award damages** to a party as the mediator has no such power and can merely suggest possible resolutions.

To choose arbitration, **parties should express their intent either in an arbitration clause contained in the agricultural production contract or under a separate agreement generally concluded after a dispute arises**. For the arbitration clause or arbitration agreement to be valid and enforceable, it has to fulfill some prerequisites that may vary depending on the applicable law. One important requirement establishes that the arbitration agreement should be in writing in order to ensure that the parties consented to arbitration.

To obtain an enforceable arbitration clause, parties should also pay special attention to the clause's drafting. The clause should demonstrate a clear intention to arbitrate and to provide for certain specifications such as nominating the seat of arbitration. However the degree of detail contained in the clause will depend on whether the parties agree on ad hoc or institutional arbitration. In fact, there are different types of arbitration: ad hoc arbitration set up by the parties or arbitral institution which generally provides arbitration rules, supervises the process and offers certain assurances regarding its quality and the award's enforceability⁵¹.

In addition, arbitral procedures are executor as a matter of public justice when it is not the case when parties resort to others alternative dispute resolution methods where the parties are expected to abide the settlement agreement on a voluntary basis.

To conclude, it is important to note that the parties are still entitled to process the case to court, in case a party is not satisfied with the decision made by negotiation, mediation, conciliation or arbitration.

⁵¹ Arbitral institution is developed in Section 6.1.2. Management of dispute resolution of this Manual, page111.

6.1.3. OTHER OPTIONS TO MANAGE DISPUTE RESOLUTION

Resolution of disputes outside the court system has a long tradition in Cambodia⁵². Seeing the important rewards of remedies outside the judicial system and in order to improve the access to justice for all Cambodian citizens, the government has set up different non-judicial bodies to manage dispute resolution at different levels: at the Commune and district level: MAFF's Contract Farming Coordination Committee (CFCC) (already presented in Section 6.1.1. page 110) a) the « *Maisons de Justice* » (a) and at the National Commercial Arbitration Center (NCAC) (b).

A) COMMUNE AND DISTRICT LEVEL: « *MAISONS DE JUSTICE* »

The « *Maisons de Justice* » were established through inter-ministerial Prakas in 2006⁵³ and has the tasks to provide training and/or technical advice to commune councils on conciliation and certain legal matters regarding disputes⁵⁴:

- To assess the demand for legal information at the district and commune level;
- To disseminate necessary legal information to the public in the district;
- To conciliate and mediate disputes at the request of the parties; and
- To provide referral services to disputants whose cases cannot be resolved at the local level.

The « *Maisons de Justice* » officers have to comply with the professional code of conduct elaborated by the Ministry of Justice (MoJ) and the Ministry of Interior to ensure that the officers are accustomed with the code and how to apply it. The officers have to achieve their task with honesty, integrity, accountability, confidentiality, transparency, and no conflicts of interest. The « *Maison de Justice* » of each district is directed by a chief appointed by the MOJ and one secretary if it is necessary⁵⁵.

In 2006, the « *Maisons de Justice* » were implemented in four districts as a pilot and were extended to 31 districts in 2013. Currently, there is a significant demand for services provided by Maisons and CDRCs especially from the targeted disadvantaged groups⁵⁶. The most frequent type of disputes referred to the « *Maisons de Justice* » are cases of contract disputes or debts, and cases of land disputes (See Figure 6.1.A., next page). It is then important to note that the Maisons de la Justice are very entitled to received and provide conciliation and mediation to contract farming issues that include land, debt and contract issues.

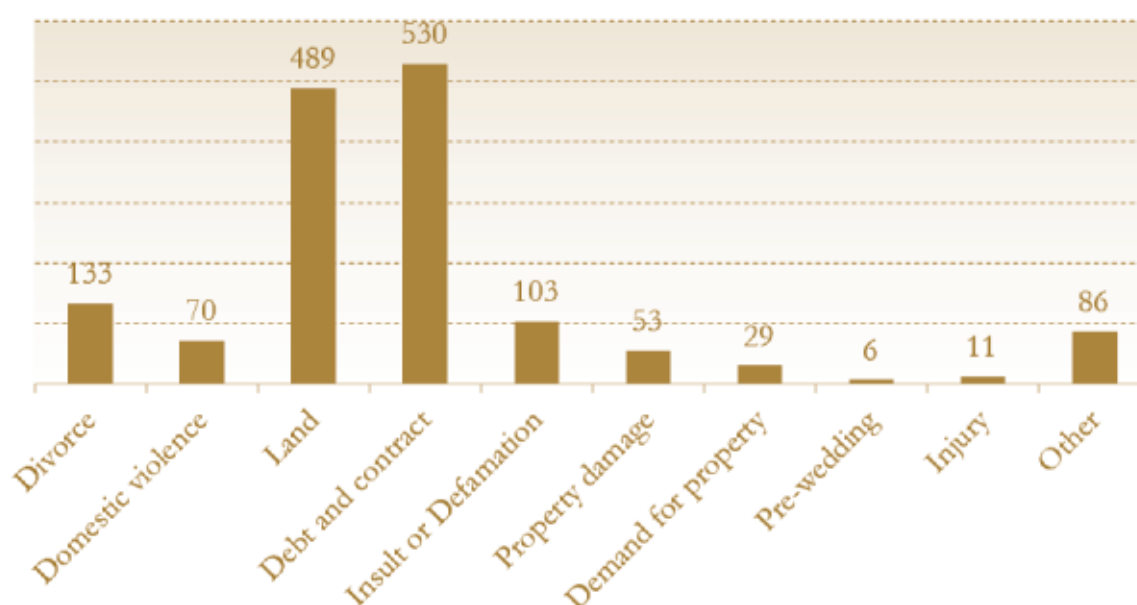
⁵² Kong Phallack, "Overview of the Cambodian Legal and Judicial System and Recent Efforts at Legal and Judicial Reform", in The Introduction to Cambodian Law, (Konrad-Adenauer-Stiftung, 2012) p. 12.

⁵³ Prakas No. 85Rbk/MOJ/MOI/2006.

⁵⁴ Inter-ministerial Prakas, No. 85Rbk/MOJ/MOI/2006, Article 3.

⁵⁵ Dispute Resolution Outside the Judicial System at the National and Sub-National Levels, Hisham Mousar, The Parliamentary Institute of Cambodia, June 2015.

⁵⁶ Cambodia Country Assessment, UNDP 2009.

Figure 6.1.A.: Statistics of cases received by the « *Maisons de Justice* »

Source: Ministry of Justice, Report to the Minister of the Ministry of Justice No. 02 STY/14 dated January 14, 2014.

B) NATIONAL LEVEL: NATIONAL COMMERCIAL ARBITRATION CENTER (NCAC)

Following the Law on Commercial Arbitration⁵⁷ dated March 6th, 2006 establishing a framework for the private arbitration of business disputes that follows international practices; it also envisages a National Arbitration Center (NAC), established under the auspices of the Ministry of Commerce⁵⁸.

Then, the National Commercial Arbitration Center (NCAC) was implemented by Sub-Decree No. 124 ANKR/BT on the Organization and Functioning of the National Arbitration Center of Cambodia, dated August 21, 2009 but was officially launched in January 2013.

The NCAC has been not dealing with arbitration related to contract farming yet, as for the end of the year 2015. However as contract farming is considered as a business matter, it is within the scope of the NCAC.

Moreover with a view to enhancing the confidence of the parties and security in contract farming, it is recommended to develop contract enforcement mechanisms, in particular through arbitration proceedings and the enforcement of arbitration decisions as the CFCC is a mediation mechanism but not an arbitration mechanism. **A party can refer a dispute to the NCAC only if it has been agreed by both disputing parties that they would use the NCAC as an arbitrator to address their dispute if any.** Such mechanism would be specify via a provision clause in the initial contract (see model below) or by a specific agreement signed when the conflict is occurring. In addition, we can note that the NCAC or/and its Arbitral Tribunal resolves a commercial dispute submitted to the Center primarily based on the agreement of the disputing parties, and strictly based on applicable legal rules (laws) chosen by the parties.

⁵⁷ http://www.cambodiaip.gov.kh/DocResources/372a361b-7a97-44b3-9810-79e5e6ea85f4_c786a043-b88d-4f64-9429-60a330efdc5f-en.pdf

⁵⁸ Law on Commercial Arbitration, Chapter 3.

MODEL OF NCAC ARBITRATION CLAUSE THAT CAN BE INSERTED IN THE CONTRACT FARMING AGREEMENT:

"ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, INCLUDING ANY QUESTION REGARDING ITS EXISTENCE, VALIDITY, PERFORMANCE OR TERMINATION, SHALL BE REFERRED TO AND FINALLY RESOLVED BY ARBITRATION IN THE KINGDOM OF CAMBODIA IN ACCORDANCE WITH THE ARBITRATION RULES OF THE NATIONAL COMMERCIAL ARBITRATION CENTER (NCAC) BEING IN FORCE AT THE TIME OF COMMENCEMENT OF ARBITRATION AND BY REFERENCE IN THIS CLAUSE THE NCAC RULES ARE DEEMED TO BE INCORPORATED AS PART OF THIS CONTRACT.

*THE TRIBUNAL SHALL CONSIST OF _____ * ARBITRATOR(S).*

**STATE AN ODD NUMBER (BY DEFAULT, IT WOULD BE 3).*

THE LANGUAGE OF THE ARBITRATION SHALL BE _____.

APPLICABLE LAW

THIS CONTRACT IS GOVERNED BY THE LAWS OF THE KINGDOM OF CAMBODIA

The NCAC adopted its Internal Rules and its Arbitration Rules on 11 July 2014 establishing the following proceedings⁵⁹.

In order to commence arbitration proceedings, the claimant must submit a notice of arbitration to the NCAC⁶⁰. The General Secretariat of the NCAC will then send notice to the respondent. The arbitration proceedings commence on the date that the respondent receives the notice from the General Secretariat⁶¹.

After the commencement of the arbitration proceedings, the tribunal must be appointed. The tribunal shall consist of 3 arbitrators unless the parties have agreed otherwise⁶². Consequently if the parties fail to agree on the number of arbitrators to be appointed, then three arbitrators will be appointed under the NCAC Rules⁶³.

Once the tribunal has been appointed, it will hold a preliminary hearing in which it will set a timetable for the proceedings⁶⁴. The tribunal will also determine whether or not the proceedings should be conducted through the submission of documents only, or oral hearings should be held⁶⁵.

At any point during the arbitration proceedings, a party may seek protective relief from the tribunal through interim measures. Interim measures are necessary and urgent measures which do not prejudice the final judgment of the tribunal with regard to the merits of the case. Interim measures include⁶⁶, for example and without limitation, orders:

⁵⁹ Called « NCAC Arb Rules ».

⁶⁰ NCAC Arb Rules, Rule 7.

⁶¹ NCAC Arb Rules, Rule 7.7.

⁶² NCAC Arb Rules, Rule 9.

⁶³ NCAC Arb Rules, Rule 10.

⁶⁴ NCAC Arb Rules, Rule 20.2.

⁶⁵ NCAC Arb Rules, Rule 24.1.

⁶⁶ NCAC Arb Rules, Rule 28.2.

- a. To maintain or restore the status quo pending resolution of the dispute;
- b. To take action that would prevent, or to refrain from taking action that is likely to cause (i) current or imminent harm or (ii) prejudice to the arbitration process itself;
- c. To provide a means of preserving assets out of which a subsequent award may be satisfied; or
- d. To preserve evidence that may be relevant and material to the resolution of the dispute.

Once the parties have presented all of their evidence, the tribunal will declare the proceedings closed. From that point, the tribunal has forty-five days to submit a draft award to the NCAC General Secretariat for scrutiny⁶⁷. The NCAC will review the draft award and make suggested revisions regarding the form of the award, but will not review the merits of the case or the reasoning of the award. The purpose of submitting the draft award to the NCAC for scrutiny is to ensure that the form of the award meets the minimum requirements required for it to be enforceable in the event it is challenged in a court. Ultimately, the tribunal will decide whether or not to implement any of the suggested revisions.

Subsequent to the NCAC scrutiny of the award, the tribunal will issue the award to the parties, and the parties have thirty days to request any modification, correction, amplification, or interpretation of the award⁶⁸. If the tribunal considers the request to be warranted, it will execute the request. Thereafter, the arbitral award becomes final and binding on the parties.

The parties should be aware that under the NCAC Rules, after consultation with the parties, awards may only be issued in English or Khmer, regardless of the language(s) of the arbitration proceedings⁶⁹.

It is important to know that if the parties choose to submit their dispute to arbitration under the NCAC, the parties will be required to pay certain fees.

According to the Fee Schedule of the NCAC adopted on 11 July 2014, these fees include:

- a Registration Fee fixed at 250 USD per claim or counterclaim;
- an Arbitrator Appointment Fee fixed at 300 USD per arbitrator to be appointed, such fee applies to the appointment of an arbitrator required to be made by the Appointment Committee due to the failure of any party to appoint an arbitrator as required by the NCAC Rules;
- an Administration Fee based on a sliding fee depending on the sum in dispute for the service its renders;
- a Tribunal Fee which is charged based on a sliding fee depending on the sum in dispute and the number of arbitrators.

⁶⁷ NCAC Arb Rules, Rule 35.1.

⁶⁸ NCAC Arb Rules, Rule 38.

⁶⁹ NCAC Arb Rules, Rule 18.3.

6.2. JUDICIAL DISPUTE RESOLUTION: THE COURT SYSTEM

The Court has the authority to rule legal disputes by examining if the application and execution of laws are correct. The courts in Cambodia are organized with three levels which are:

At the first level: municipal or provincial courts. The provincial court has jurisdiction covering the entire territory of the provinces and the municipal court has jurisdiction over the municipality and in practice covers all areas. The Phnom Penh Municipal Court is currently weighed down with an abundance of commercial disputes⁷⁰. At the second level: the appellate court. There is only one Appeal Court which is based in Phnom Penh. And at the Highest level: the unique Supreme Court which is also based in Phnom Penh. The appeal court reviews both questions of law and fact, whilst the Supreme Court in most cases only hears questions of law.

The establishment of the Commercial Court is one of the key issues following on to Cambodia's membership to World Trade Organization⁷¹. The Ministry of Commerce is currently drafting a Law on Commercial Court in collaboration with the Ministry of Justice. According to the draft law, the Commercial Court will be a separate entity from all other Provincial or Municipal Courts. Despite not yet operational as planned, this court is assumed to be based only in Phnom Penh, and has jurisdiction covering the entire Cambodian territory⁷².

All Cambodian citizens according to the Constitution have the right to denounce, make complaints or claim for compensation or damages and those claims shall take place under the competence of the courts⁷³. Until the Commercial Court is operational, parties to contract farming should claim under the municipal or provincial courts.

It is important to note that the Cambodian Civil Procedure Code⁷⁴ explicitly emphasizes negotiated settlement throughout the litigation process⁷⁵ and will seek to find a compromise between the parties before and at any stage of the litigation. Under these articles, the court may encourage the parties to negotiate or may take a more active role. If the parties successfully complete their negotiations, the Civil Procedure Code provides that their settlement agreement can be treated as a judgment for enforcement purposes. The negotiated settlement agreement can be converted into a judicial compromise that is recorded in the court protocol (court record)⁷⁶. Once all required steps are completed, this judicial compromise can be enforced like a court judgment⁷⁷. This means that if one party fails to abide by the terms of the parties' agreement, the other party may petition the courts to

⁷⁰ BNG, Dispute Resolution in Cambodia, January 2006.

⁷¹ Cambodia has been a member of WTO since October, 13 2004.

⁷² BNG, Dispute Resolution in Cambodia, January 2006.

⁷³ Cambodian Constitution, Article 39.

⁷⁴ The new Cambodian Civil Procedure Code enters into force in September 2006.

⁷⁵ Articles 97, 220, 104 of the Civil Procedure Code.

⁷⁶ Article 222 of the Civil Procedure Code.

⁷⁷ Ibid.

enforce the agreement without having to re-litigate the merits of the dispute. This should contribute to enforcement efficiency⁷⁸.

Finally, judicial dispute resolution is rarely used in the contract farming context in developing countries. On this basis, obtaining redress from a judge is generally very lengthy, can be costly and thus is often avoided by parties⁷⁹. These factors discouraged the use of the formal judicial system. This coupled with the fact that the courts had high caseloads and a lack of human resources further discouraged people from using this system to settle disputes.

Moreover, in judicial proceedings, the parties may be required to act through legal representation in order to help them presenting their case and defend their rights but generally involves significant costs. However, the advantage of judicial procedures is the enforcement of the decisions which are executor. The execution of a decision is the phase which takes place after a dispute has been settled under a final decision.

⁷⁸ Introduction to Cambodian Law, Hor Peng, Kong Phallack, Jorg Menzel, Konrad Adenauer Stiftung, 2012.

⁷⁹ Legal Guide on Contract Farming, UNIDROIT, FAO, IFAD, Rome 2015.

6.3. SYNTHESIS TABLE

Synthesis: Comparisons between Dispute Resolution Systems

Table 6.3.A.: Comparison between Dispute Resolution System

Alternative Dispute Resolution	Negotiation	Mediation		Conciliation		Arbitration		Judicial Resolution
		Private Mediator	CFCC	Private Conciliator	Maison de Justice	Private Arbitrator	NCAC	
When?	First of settlement of Alternative Dispute Resolution	Usually the next step after a failure of the negotiations		Usually the next step after a failure of the negotiations		Usually the next step after a failure of mediation or conciliation		
Parties involved?	Parties in conflict only	Parties in conflict + Mediator		Parties in conflict + Conciliator		Parties in conflict + arbitrator		Parties in conflict + Judge + legal representation if requested.
Role of third party?		Mediator meets the parties jointly and tries to facilitate a solution considering interests and proposals of the parties. Parties decide the solution.		Conciliator meets the parties separately and brings proposals to the parties to resolve their conflict. Parties decide the solution with the help of conciliator.		Arbitrator brings the solution to the case. Parties must respect that decision.		Judges rule the solution to the case. Parties must respect that decision.
Initiation of the process?	Voluntary	Voluntary		Voluntary		Voluntary (or mandatory by law or previous agreement)		Voluntary
Result?	Depends on the parties alone.	Depends on the decisions of the parties.		Conciliator proposes a solution, but it depends on the acceptance of the parties.		Depends on the decision of the Arbitrator.		Depends on the decision of the Judge.
Enforcement of the result?	The agreement is like a contract. If one party does not fulfill the agreement, the other has to go to court.					Awards could be enforced through tribunals or by other direct means.		The decision is executor.
Cost of the process?	Lowest alternative dispute resolution cost.	Low cost. Less expensive than arbitration.	Unknown ?	Low cost. Less expensive than arbitration.	?	More expensive than mediation or conciliation	Medium costs	Most costly solution.
Duration of the process?	Short.	Short.	Probably long.	Short.	?	Medium (faster than litigation)	Short period of time	Very long process.

SECTION 7: ENSURING THE SUPPLY FOR FARMER ORGANIZATIONS / COOPERATIVES INVOLVED IN CONTRACT FARMING

7.1. A CASE OF “INTERMEDIARY MODEL”: THE FO IS NOT THE PRODUCER BUT ACT AS AN INTERMEDIARY BETWEEN INDIVIDUAL FARMERS AND THE BUYER

In case the contract farming made between a Farmer Organization and a buyer (company), in general the FO plays a role as the intermediary. In the current Cambodian context Agricultural Cooperatives (or more broadly Farmer Organizations) are not the producers themselves. Their members (farmers) are the producers and the FO/AC plays a role of intermediary between the producers and the buyer. It can be considered as an “intermediary model” as per the typology of contract farming shown in Section 1.1.2. (in particular in Table showing IFAD typology in that section). Thereof, while signing a contract with its client (the buyer), the Farmer Organization should also secure (possibly via sub-contracts or letter of engagements) its ability to actually collect the produce from its members.

7.2. ENSURING THE COMMITMENT AND SUPPLY BY FO MEMBERS

In case of the contract farming made by a Farmer Organization to supply large volume and work with the wide range of members of the FO, the FO leaders should well understand in advance the capacity of production and commitment of their members in supplying products according to the requirement of the buyer before signing the contract. Meetings with all FO members should be organized by FO leaders to present the requirement of the buyer and the benefit that each member will get from this collaboration. The members have to express their idea during the meeting to be sure that they will join or not with the group to produce according to the condition required. The collaboration with the buyer will be built in the long run period. Members shall have their long term commitment for this collaboration if they agree to go forward.

While the members accept to have contract with buyer, it is recommended that the Farmer Organization’s leaders proceed with individual surveys with each member to verify again the commitment of each household member to produce the product according to the condition and quality required, to know clearly the production capacity of each member, especially the quantity that can be produced and sold by each member, the constraint during the production period, the support needed (both technical and financial) and other problems that might happen regarding the production process. FOs leaders have to be sure that all members understand in the same ways and committed to apply the condition and the requirement proposed.

It is highly recommended to develop internal contracts (or letters of commitment) between individual members and the cooperative / FO to formalize the commitment to deliver the products as required by the contract between the FO and the buyer. FO leaders may require local authorities to acknowledge these contracts or commitment as a witness, which can be helpful to informally mobilize the same local authorities to help to address conflicts with the members in case of non-respect the commitment. The commitment contract shall be clear about the types of products, volume and quality that each member shall commit to fulfill as well as about the timing of delivery. Internally, the FO can elaborate and endorse a system of incentives/penalties as part of its internal regulations, in order to encourage members to fulfill their commitments (i.e. to make necessary efforts to reach the volume of production and the expected quality, and to avoid side selling). FO leaders shall make sure that the internal commitment contracts are clear well understood by members in order to avoid misunderstanding.

Case Illustration 7.2.A.

A form of contract between AC management committee and AC members on organic paddy rice production

AC leader in Preah Vihear didn't prepare the contract between AC and members to produce organic rice for AMRU Company. But they prepare a simple table describing the name of each household, their surface of production, seed variety and quantity estimated for selling to company for fragrant rice and white rice. Each member has to have their thumbprint in this table. The table was used as annex to the contract with AMRU. The AC leader uses this table as commitment contract of their members to produce paddy rice for company. The template of this table is as follow:

បញ្ជីឈ្មោះកសិករផលិតស្រូវសរីរក្នុងសហគមន៍ក្រុមប្រឹក្សាភិបាល ២០១៥											
ភូមិក្របៅ ឃុំគូលែនក្នុង ស្រុកគូលែន ខេត្តព្រះវិហារ											
Name List of Organic Rice Producer for Agricultural Cooperative of Krobao Prumtep 2015											
Krabao Village, Kulen Thong commune, Kulen district, Preah Vihear Province.											
ល.រ NO	លេខកូដ Code	Name of farmer	ឈ្មោះកសិករ Farmer Name	Village	ភូមិ Village	ពូជ (Variety)	ប្រភេទស្រូវក្រអូប (Fragrant Rice)		ប្រភេទស្រូវសរ (white Rice)		ហត្ថលេខា/ស្នាម មេដៃ/Signature/ Thumbprint
							ទំហំផ្ទៃដី(ហិកតា) Land size (ha)	បរិមាណស្រូវ វិគីលក់(តោន) Estimated quality for sale (Ton)	ទំហំផ្ទៃដី(ហិកតា) Land size (ha)	បរិមាណស្រូវ វិគីលក់(តោន) Estimated quality for sale (Ton)	
1	AC001-1-5-223-1	Noun Vandy	នួន វណ្ណឌី	2 Kro bao	2 ក្របៅ	ទូរៀស	0.00	0.00	1.50	1.00	
2	AC001-2-3-021-1	Sok Poeun	សុខ ហៀន	2 Kro bao	2 ក្របៅ	វិជ្ជុល	2	2	0	0	
3	AC001-2-3-192-1	Til Sam An	ទិល សំអាន	2 Kro bao	2 ក្របៅ	វិជ្ជុល	1.5	3	0	0	
4	AC001-2-3-091-1	Pom Nhim	ពន់ ហ្លឹម	2 Kro bao	2 ក្របៅ	វិជ្ជុល	1.5	2	0	0	

This kind of table is already a good tool. Yet, it could be recommended to had a sentence above the table (or a note for the column "Signature/Thumbprint") to state that, by signing (or putting their thumbprint) in the table, each producer is taking a firm commitment to deliver the products indicated (conform with quality required) to the FO in the timing defined in the Contract Farming agreement between the FO and the buyer.

Before harvest time, FO leaders have to meet and verify again each member ability to supply the agreed quantity of product. This can help leader to fine-tune the estimation of the actual production in regard to the commitment signed in the contract. The FO leaders might adjust the quantity to sell by each member according to the real case to meet the quantity and quality signed in the overall contract with buyer. This change must be informed to members during harvesting period to prevent them, especially for members who have surplus product, to keep their product for selling through the Farmer Organization.

During the transaction period, all members shall be clearly informed about the place, the date and the time to deliver products. FO leaders have to prepare a check list to verify that each member has supplied the product according to his commitment (for each collection operation). If it is not the case, the member shall receive prompt alert from FO leaders.

If, as part of the contracts, farmers are receiving inputs via the Farmer Organization, it is also very important for the FO to ask its members to sign receipt for each input received, indicating clearly the nature and quantity of inputs received, and possibly the value of the input received (in particular if this value has to be deducted from the amount that producers will receive as payment of their products). FO leaders may prepare a table to sum-up all the input received by each member and the total value they are expected to reimburse when products are delivered. If interest rates apply, they should also be calculated and indicated on this summary sheet.

7.3. THE ISSUE OF QUALITY MANAGEMENT WITHIN THE FARMER ORGANIZATION

The quality management of the products is often an important concern of FOs engaged in Contract Farming. In Cambodia, smallholder farmers have experience in producing agriculture product for their own consumption or for local market, but not always for more demanding high-end domestic markets or export markets (which are often the target of buyers involved in Contract Farming). They are not always aware about specific quality or standard, and they may apply traditional practices to harvest and store their agriculture products.

FO leaders(who have been directly in contact with the buyer representatives and therefore know better about the quality requirements) have to pay attention to the capacity of the FO to supply the required quality, and should make significant efforts to:

- Communicate clearly the quality requirements to the members and promote the production practices and method that farmers should comply with to reach the quality requirements;
- Follow-up, during the production stage, the implementation of production practices by the members;
- And, at the time of product collection, check the quality of product delivered by each members before to collect and deliver to the final buyer.

If the buyer requirements regarding quality and/or production process are foreseen to be challenging, the Farmer Organization may negotiate, as part of the Contract Farming agreement, a technical support from the buyer to help producers to reach the required standards. (See § 4.2.4. page 46)

7.3.1. IDENTIFY AND PROMOTE THE NECESSARY PRACTICES TO GET THE LEVEL OF QUALITY IN THE CONTRACT

The quality of products is the sensitive issue of both producers and the buyer because it is determined the price of products. Hence, building trust and loyalty among members and the buyer is essential.

FO leaders should have meetings with all members to inform them about quantity and quality needed by buyer. The variation of price according to quality grade should be clear for members even before starting the production, so members are encouraged to follow the recommendations that will lead to the expected quality grade, and thereof to high price at selling time.

Good practices (regarding production methods) that lead to the desired quality should be well identified [Note that the contract farming agreement may even impose some specific practices regarding production – See § 4.5. page 53] and conveyed to members of the FO (by FO leaders, or by the buyer himself if the contract indicates that the buyer will provide training / extension to the members of the FO).

Trainings to members on production technique improvement and quality standard should be provided by FOs management committee or by its technical partners before or during the production cycle⁸⁰. Thus, the members start to apply the technique to improve the production and quality since the beginning of their production. The content of technical training module should be checked and reviewed by relevant experts (possibly technical team of the buyer, or alternately experts from extension services, or other technical partners). All members and management committee should make sure that all production means and inputs used (land, seed, fertilizer, pesticide, irrigation system...) fit well with the standards of quality required in the contract.

7.3.2. FOLLOW-UP THE IMPLEMENTATION OF FARMERS

If the compliance with technical recommendations on the production methods are compulsory as part of the contract, then after the end of technical training, a recording book should be provided to the members. So members can (or have to, if the contract states so) keep records of their practices, technique applied and inputs used to testify of their compliance with the agreed production methods. This book will serve as the evidence to show to buyers or external auditor about practices of each farmer in their production field. Of course the truthfulness of records may also be subject to an external auditing.

An internal control system (ICS) team should be created to verify the compliance of each member to the internal rule set or standard required. ICS team should follow-up these at least two times per year⁸¹ : during production phase and harvesting and storage phase. ICS team should be recruited from FOs management committee or from active members. The recording book of each member is the first document to check before finding further additional information. ICS teams have to come and visit production site of all members. They observe and ask additional information to each member in the

⁸⁰ Timely support during the production cycle is ideal, but advise should always be provided on time at relevant stage of the production cycle.

⁸¹ Depending on the type of production and on the technical requirements.

field to cross check information already wrote by members in recording book and to get some missing information.

If some practices are clearly prohibited by the terms of the contract with the buyer (for instance if the use of a certain type of pesticides is prohibited), the ICS team should be in position to apply strict sanctions to members in case of non-compliance. They might immediately exclude the non-compliant member from the Contract Farming scheme if they don't apply internal rule or standard required, and communicate to the buyer an up-dated list of authorized producers.

In case members need further support to improve their production, ICS team should provide applicable advice during the field visits. Some missing information in farmer's recording book will be filled directly by ICS team. Thus, farmers have all information required in their booklet. During the visit, ICS team will identify further constraints that might be met by members later on: soil fertility, irrigation system, labor force, cash flow... ICS team will discuss with FOs management committee to find the appropriate ways to support members to solve some of those problems for next day.

7.3.3. CONTROL DURING HARVEST TIME /PRODUCT COLLECTION

Before harvesting/collection time, if needed⁸² training on harvest and post-harvest technique should be provided to members. Farmer will prepare all necessary tools and means to improve quality of their product to get good price. In some cases, the FOs management committee should coordinate and provide support to members to get additional means to improve product's quality: harvester machine, truck for transportation, dryer and others storage facility.

FO leaders and ICS team should receive support from expert on basis of quality assessment before harvesting/collection time. They should know clearly about the different quality of the products to ensure that the FO pays the right price to its members and do not lose money by over-ranking quality of products delivered by their members.

Therefore, the FO shall set up the team within the FOs to control or assess the quality of products in order to compare with an assessment of the buyer.

The different quality set by FOs members and by buyers should be the same. The method of quality assessment should be approved by the buyers.

⁸² i.e. if it the way to harvest/collect the product and handle it after harvest is a key factor to ensure or maintain a good quality: this is definitely the case for rice or for fresh fruits products for instance. It might less be the case for animal productions (such as poultry) that might be delivered alive.

It is desirable that the buyer trains by himself the FO leaders on quality assessment methods, to make sure that methods of quality evaluation are aligned between FO and the buyer.

*Training on quality check by staff of buyer ▷
Case of Contract farming for organic paddy between
AMRU rice and cooperatives in Preah Vihear province
(Photo: SCCRP)*



Depending on the local conditions (logistic and time available), FO leaders may decide:

1. Either to do the pre-assessment the quality of product of each member at their house/storage place before letting them transport the product to the collection point for selling.
2. Or to check the quality only at the collection point.

If products are perishable and FO leaders have no time to visit several members (who may be in quite distant location from one to another), then it might be preferable to check only at the collection point (option 2), even if it might mean that rejected products will have to be taken back by the producers.

But if it is possible (for instance for the case of dried product that can be kept for a while without depreciation), then option 1 might be preferred. So if the product does not meet the quality required, FOs leader can inform the member who will save the time and cost to transport its product to the collection point for nothing (and to have to bring the product back, at his own costs). Thus, members don't waste time and money for transportation cost.

In case the quality assessment made internally by the FO leaders is not accepted by the member, other ICS team member and/or the controller from buyers might be called to double check and arbitrate.

The result of quality assessment will be crosschecked again by the agents of the buyer at the collecting point. Both results of quality assessments shall be compared in order to demonstrate accuracy and impartiality.

7.4. THE ISSUE OF CASH FLOW / DELAY FOR PAYMENTS WITHIN THE FARMER ORGANIZATION

Farmers often need money urgently after bringing their products for selling to FO or buyer in order to swiftly pay for harvest costs and reimburse loans they might have contracted for inputs and other production costs...

Sometime the buyer brings the cash for payment at the collection point and producers who bring their products get their payment directly on the site of collection. But this is not always the case. It depends on what has been agreed in the contract (which, as indicated in § 4.9. in this Manual – pages 74 to 78– should clearly indicate the modalities and timing of payment). If the buyer pays immediately at the delivery of the product there might not be any difficulty with the cash flow management for the FO.

But frequently, especially if significant amount of money is involved, payment by check or bank transfer to the FO bank account might be preferred. And in that case, payment from the buyer to the FO might be done only a few days after delivery of the products, and delay for payment from the FO to its member can be even a bit longer.

On the other hand, for farmers, pressure to quickly reimburse loans is sometime such that, even if higher prices are offered under the Contract Farming agreement, members of the FO may prefer to sell to another buyer to get immediate cash in hand, which can jeopardize the capacity of the FO to actually deliver the quantities committed in the contract.

If delays for the payment by the buyer to the FOs are foreseen, solutions should be considered to allow the FO to have enough cash in hand to pay its members immediately or soon after the product is delivered.

There are three possible options to cope with this issue:

- 1) FO could negotiate from the buyer a cash advance just before starting the product collection period. The amount of the advance shall be adapted to the needs (See Box 7.4.A. below). With the advance, the FO can pay farmers on delivery of product. Invoice is produced by the FO for the exact quantities delivered and paid in the following days to the FO, which renew this revolving working capital for the FO to continue to pay further deliveries from member. At the end of the collection period, the advance is settled by deduction on the last invoices corresponding to last deliveries.
- 2) The FO can negotiate with its members for them to accept a delay between the delivery of the products by farmers to the FO, and the payments of those products delivered to farmers, in order to leave the time for the FO to receive the payment from the buyer. Generally, this can be acceptable if this delay for payment is short (only few days) and if the price obtained when selling to the FO is significantly higher than what farmer would get from selling to another buyer. Otherwise the risk of side selling is very high.
- 3) Third option is for the FO to negotiate a short term loan for the time of harvest⁸³. As for option one, the loan does not require to be for the full value of all the products to be delivered to the buyer. It should cover just the cash-flow needed for the volume to be purchased from farmers within the delay between delivery and payment by the buyer (See Box 7.4.A. below).

⁸³ With the support of SCCR project, the Rural Development Bank has developed a credit mechanism dedicated to Agricultural Cooperatives (or other legally registered Farmer Organizations) that could possibly be mobilized for this purpose.

Box 7.4.A. Calculation of working capital needed to pay farmers at delivery whereas the buyer pays the FOs after some delays

In case farmer need urgent payment after selling products to FO or to buyer, FOs leader should have at least 3 key information in hand to calculate the working capital needed to pay their members: unit price of product to pay to member, quantity of product that members can deliver (at the peak of delivery time), and the delay between delivery of product and payment received from the buyer.

A clear planning of delivery is needed in order to identify the peak of delivery, i.e. the maximum volume the FO will have to pay to member within the duration of the delay for payment applied by the buyer.

Example:

A Farmer Organizations deliver fresh product at harvest time to the buyer on a daily basis. Products are paid to members on the day of delivery. But payment is received from the buyer **after five calendar days**.

In order to calculate the cash flow needed, the FO leaders have to look at the planning of harvest and identify the **maximum quantity of product that can be delivered in 5 consecutive days**.

Plan of harvest													
Date	06	07	08	09	10	11	12	13	14	15	16	17	18
Quantities	8 t	10 t	12 t	12 t	15 t	18 t	15 t	13 t	10 t	10 t	8 t	8 t	6 t
5 days cumul	8 t	18 t	30 t	42 t	57 t	67 t	72 t	73 t	71 t	66 t	56 t	49 t	42 t

In the example above, the highest cumulated deliveries of five consecutive days is 73 tons. So the FO needs the working capital to pay for the value of 73 tons of products.

The average unit price (still for example) is 0.28 US\$ per kilogram (equal to 280 US\$/ton).

So the required cash flow is $280 \text{ US\$/t} \times 73 \text{ t} = 20,440 \text{ US\$}$.

With a short term cash advance or loan of 20,440 US\$, the FO should be able to handle the issue of cash-flow for the payment of its members (provided that the planning of harvest is respected and that the buyer also respect the agreed delay of 5 calendar days for payments!).

In Cambodian context, FOs often have a very limited working capital for their business. If a FO has enough own capital and can provide collateral, the FO may apply for a loan from a Financial Institution, accompanied by a suitable business plan and all documents that the Financial Institution may require. But borrowing money will generate financial costs (interest on the loan) thus the FO shall take these costs into consideration and integrate these costs in the calculation of its margin.

FO leader should well estimate the cash flow needed to be able to pay members on time after product collection, in order to be in position to negotiate a cash advance from the buyer or to apply for a loan from a Bank or MFI. If only a part of the members need money urgently and some other can wait, the amount needed for cash flow shall be adjusted accordingly, and the FO can decide if it can cope with its own capital or if it needs to borrow money from the buyer or from a financial institution.

⁸⁴ Such as the Rural Development Bank, for instance, as mentioned above.

7.5. COVERAGE OF FARMER ORGANIZATION OWN COSTS

FO leaders should take into account the coverage of cooperative own cost when they start to invest in new activity. For the case of contract farming, there are a lot of involvement of FOs leaders in organization and negotiation with buyers. They may have to communicate and travel to joint meetings with several buyers to identify the potential buyers and to negotiate the contract farming deal. They have also to survey their members to assess precisely the FO supplying capacity. Once the contract signed, the leaders have to support members to fulfill the commitment signed with buyers (+ possibly cover the costs of an Internal Control System to monitor farmers practices and quality, as seen in § 7.3. pages 125-128). At the time of product collection, the FO management will have to manage the logistic of the collection and organize delivery at collection points, which also require time and involve costs. Thus FOs shall have the budget to cover the costs of all those functions. These costs should come from the benefit of contract farming signed with buyer (either directly: margin on the sales of products, or indirectly: service fee paid back by the members to the FO or by the buyer to the FO, additional to the agreed product price).

7.5.1. COSTS TO BE COVERED AT FO/COOPERATIVE LEVEL

FOs leaders should well analyze the costs of the proposed Contract Farming for producers, but also for the FO itself as an economic entity. Below is a list of possible costs that the contract farming activity may generate at the FO level. It is important to assess these costs in details and try to come up with a comprehensive budget of costs that the FO will have to cover:

- Travelling cost, per diem and accommodation of FOs leaders to join meetings for contract negotiation with buyers;
- Cost of FOs leader to disseminate information to members and mobilize them to join the contract farming;
- Cost of FOs leader to list needs for input supply and monitor the delivery of inputs, if the contract include this;
- Trainers cost from services provider to improve production and quality (if not covered by the buyer);
- Cost of documents, tools, equipment needed to provide to members and to record the information;
- Communication cost with buyers and others services providers;
- Cost for FOs leaders or internal control team to follow-up during the production and harvesting period;
- Cost for FOs leader and others services to check the quality, then to collect the product, drying, possibly package or ensure some processing, transitory storage, handling and transportation to the collection point agreed with the buyer.
- Financial costs if the cooperative need to take a loan to cover cash flow needs;
- Administrative cost for documents (for example if signature of local authority is required).

In case FOs signed contract with buyer to supply products with certification requirement from external auditor (organic product, fair-trade product...), some additional variables should take into account:

- Cost of ICS team to check application of members to the requirement set;
- Cost of certification of external auditor (if not directly covered by the buyer).

Box 7.5.A. Example of budget (costs and income) of a Cooperative for collection and selling of paddy

Operational Costs	Units	Amounts (\$)
FIXED COSTS		
Services provided by leaders AC and additional staff		
Services of leaders AC (8 members) for mobilizing 20 tons of product	8	25
Accountant (one person) for working on 20 tons of product	1	4
Quality assessment and procurement (two persons)/20 tons	2	10
Labors (load & unload) for working on 20 tons	time	50
Estimate cost for foods for all staff incl. labors per working in 20 tons		20
Interest rate (1% per month) for loan of \$ 7,000 for cash flow	month	70
TOTAL FIXED COSTS		179
VARIABLE COSTS		
Estimate cost of delivering 20 tons of product in once time to the buyer	1	110
Papers, bank checks, invoices, receipts (aprox.)		3.00
Payment to members for 20 tons of product (eg. at price USD 0.284 per kg)		5,680.00
TOTAL VARIABLE COSTS		5,793.00
Total Costs		5,972.00
Total Income from selling 20 tons of product to the buyers		
Estimate price USD 0.3 per one kilogram		6,000.00
Net Profit of AC per 20 tons of products		28.00

AC* Agricultural Cooperative

Some other variables should be taken into account following the specification of the contract signed with buyers. FOs leader should calculate and analyzed all this cost to be sure that the incomes (margin for the FO) from this contract farming can at least cover the functioning cost and hopefully leave some profit to the FO to allow further business development.

7.5.2. RESOURCES TO COVER THE COSTS

We develop below three possible ways for the FOs to get incomes in order to cover the costs they have to face for the implementation of the contract:

- **Option 1: Commercial margin on the collection and selling of products:**

In this case the price paid by the FO to producers is a bit lower than the price received by the FO from the buyer. The difference generates margin per unit. This margin per unit multiplied by the total quantity of product sold determines a total gross margin. This gross margin should at least cover the costs engaged by the FO to manage the activity. Based on the estimation of these costs (see § 7.5.1. above) and based on the expected volumes of products to be collected and sold, the FO leaders should calculate the margin that they need to apply on the product they collect from members and sell to the buyer. It is recommended to be a bit conservative on the hypothesis of volumes sold: if the contract is made for a range of volume⁸⁵ (between x tons and y tons), then it's preferable to take the lowest hypothesis to calculate the margin per unit to be applied by the FO. If the contract is made for a fixed quantity but there is a risk that the actual volume supplied might be lower, also it is preferable to reduce the hypothesis of volumes sold.

Last, from the beginning (and even before signing the contract) the margin of the FO and the price received by producers should be clearly defined and agreed.

- **Option 2: Commission/service fee paid directly by the buyer to the FO**, in addition to the negotiated price of product:

The FO can negotiate with the buyer to cover the cost of services provided by the leaders in term of coordination, facilitation, meeting with members and to manage the gathering of products at the collecting points. The service fee for the FO shall be discussed with the buyers and agreed upon during contract farming negotiation. The services fee could be a fixed price (not depending on the volumes delivered) or can be an additional amount per unit of product delivered to the buyer. The service fee of the FO will be paid directly by the buyer to the FO according to the term of agreement signed. Note that it is important that the payment of this service fee is transparent: members of the FO shall be fully aware of this is part of the agreement (so it is not seen as an occult commission) and it is recommended that the payment is made to the FO as a legal entity (preferably on the FO bank account) and not to individual leaders.

- **Option 3: Service fee paid by the producers involved in the Contract Farming scheme to the FO.**

In this last option, each member involved in the contract farming shall pay a service fee to the FO to contribute to the costs that the FO needs to engage for the operation. In this case this shall be clearly stated in the internal commitment contract made between the FO and each of its members.

⁸⁵ See § 4.3.2. pages 47 to 50 in this Manual.

BIBLIOGRAPHY / USEFUL REFERENCES

Agronomes et Vétérinaires Sans Frontières (2014): “L’agriculture sous contrat peut-elle contribuer au renforcement des agricultures paysannes et à la souveraineté alimentaire des populations du Sud?”, Coordination Sud, série « Les Notes de la C2A – Agriculture et Alimentation en question » No 16, Paris (France), Mars 2014.

Agronomes et Vétérinaires Sans Frontières (2014): “Under what conditions can contract farming be favourable to peasant farming in countries of the South?”, Coordination Sud /C2A, Paris (France), December 2014.

Austermiller, Steven M. (2010): “Alternative Dispute Resolution: Cambodia; A Textbook of Essential Concept”, American Bar Association, USAID, Cambodia, 2010.

Available online at: http://www.americanbar.org/content/dam/aba/directories/roli/cambodia/cambodia_adr_book_english_01_19_09.authcheckdam.pdf

BNG legal Cambodia (2006): “Guide to doing business in Cambodia”, BNG Legal 2010-2016, Phnom Penh Cambodia, 2006.

Available online at: <http://realestate.com.kh/wp-content/uploads/sites/8/2016/03/BNG-Guide-to-Doing-Business-in-Cambodia-2016-Update.pdf>

Cai, Junning; Ung, Luyna and al. (2008), “Rice Contract Farming in Cambodia: Empowering Farmers to move beyond the Contract toward independence”, Asian Development Bank Institute, Tokyo (Japan), 2008.

Available online at: <http://www.fao.org/uploads/media/ADBI%20contract%20farming%20rice%20cambodia.pdf>

Da Silva, Carlos Arthur B. (2005), “The growing role of contract farming in agri-food systems development: drivers, theory and practice”, FAO, Rome (Italy), July 2005.

Available online at: http://www.fao.org/fileadmin/user_upload/ags/publications/AGSF_WD_9.pdf

Dani, Selvie (2014): “Étude sur les Pratiques de l’Agriculture Contractuelle pour la Culture du Riz au Cambodge”, Gembloux Agro Bio Tech, Université de Liège, Gembloux (Belgium), 2014.

Eaton, Charles and Andrew W. Shepherd (2001): “Contract Farming – Partnership for growth: a guide”, FAO, Agricultural Services Bulletin 145, Rome (Italy), 2001.

Available online at: <http://www.fao.org/docrep/014/y0937e/y0937e00.pdf>

FAO (2012): “Guiding principles for responsible contract farming operations”, FAO Rural Infrastructure and Agro-Industries Division, Rome (Italy), 2012.

Available online at: <http://www.fao.org/docrep/016/i2858e/i2858e.pdf>

Fullbrook, David (2014): “Contract Farming: What works & what might work better”, Department of Agriculture Extension and Cooperatives (DAEC), Laos Extension Agriculture Project (LEAP), Vientiane (Laos), May 2014.

Goldberg, Jordan (2014): “Online Alternative Dispute Resolution and Why Law Schools should prepare Future Lawyers for the Online Forum”, *Pepperdine Dispute Resolution Law Journal*, 2014.

Available online at: <http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1261&context=drlj>

Hor Peng, Kong Phallack, MenzelJorg (2012): “Introduction to Cambodian Law”, Konrad Adenauer Stiftung Cambodia, Phnom Penh (Cambodia), 2012.

Available online at: http://www.kas.de/wf/doc/kas_31083-1522-2-30.pdf?120720080516

IFC (2013), “Working with Smallholders: a handbook for firms building sustainable supply chains”, International Finance Corporation, Wahington (United States of America), July 2013.

Available online at: <http://www.ifc.org/wps/wcm/connect/8dc5628042112fdbba2ff494779b2ad/Handbook+-+Working+with+Smallholders.pdf?MOD=AJPERES>

Minot, Nicholas and Ronchi Loraine (2014): “Contract Farming: Risks and Benefits of Partnership between Farmers and Firms”, World Bank, View Point, Note Number 344, Washington (USA), October 2014.

Available online at: https://www.wbginvestmentclimate.org/advisory-services/investment-generation/agribusiness/upload/VP_344-Contract-Farming.pdf

NAFES (2012): “Guidelines for Facilitating Fair Contract Farming”, National Agriculture and Forestry Extension Services (NAFES), Laos Extension Agriculture Project (LEAP), Vientiane (Laos), June 2012.

Prowse, Martin (2012): “Contract Farming in developing Countries: A review”, Institute of Development Policy and Management, University of Antwerp, Agence Française de Développement (AFD), A Savoir No 12, Paris (France), February 2012.

Available online at: <http://www.afd.fr/webdav/site/afd/shared/PUBLICATIONS/RECHERCHE/Scientifiques/A-savoir/12-VA-A-Savoir.pdf>

Rehber, E. (2007), *Contract Farming : Theory and Practice*, ICFAI University Press, Hyderabad(India).

Sexton, Danièle (2014): “A quelles conditions l’agriculture contractuelle peut-elle favoriser les agricultures paysannes du Sud ?”, Coordination Sud, Paris (France), Décembre 2014.

Available online at: www.coordinationsud.org/wp-content/uploads/Rapport-agriculture-contractuelle.pdf

Sou, Sorphea and Tith Sideth (2015): “Dispute Resolution Outside the Judicial System at the National and Sub-National Levels”, Parliamentary Institute of Cambodia, Phnom Penh (Cambodia), 2015.

TechnoServe and IFAD (2011): “Outgrower schemes: Enhancing profitability”, Technical Brief, IFAD, Rome (Italy), September 2011.

Available online at: <http://www.ifad.org/ruralfinance/pub/technoserve.pdf>

Ton G. and van der Mheen-Sluijer J. (2009): “Contract farming checklist: a tool for reflection on critical issues in contract farming arrangements in developing countries”, EVD, ICCO, Wageningen University, Wageningen (Netherlands).

Available online at: <http://library.wur.nl/WebQuery/wurpubs/378589>

UNIDROIT, FAO and IFAD (2015): “Legal Guide on Contract Farming”, UNIDROIT/FAO/IFAD, Rome (Italy), 2015.

Available online at: <http://www.fao.org/3/a-i4756e.pdf>

Will, Margret (2013): “Contract Farming Handbook: a practical guide for linking small-scale producers and buyers through business model innovation”, Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH (Germany), June 2013.

Available online at: <https://www.giz.de/fachexpertise/downloads/giz2013-en-handbook-contract-farming-manual-low-resolution.pdf>

Yi Prasnar (Association Henri Capitant Cambodia) (2014): “The legal dimension of contract farming”, Consultation Workshop on the UNIDROIT / FAO Legal Guide on Contract Farming, Bangkok (Thailand), 2014.

Available online at: <http://www.henricapitant-cambodia.org/wp-content/uploads/2014/09/AHCC-Prasnar-Yi-Overview-of-the-Legal-framework-of-contract-farming-in-Cambodia-2014-09-26-FINAL.pdf>

Yrigoyen Fajardo Raquel Z., Kong Rady, Phan Sin (2005): “Sin Pathways to Justice: Access to Justice with a focus on the poor, women and indigenous peoples”, Ministry of Justice Phnom Penh (Cambodia), 2005.

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ANNEX 1: SUB-DECREE 36 ON CONTRACT FARMING

Kingdom of Cambodia

Nation - Religion - King

Royal Government of Cambodia

Sub-decree No: ...36.....

Sub-Decree

on

Contract Farming

The Royal Government

- Having seen the Constitution of the Kingdom of Cambodia
- Having seen the Royal Decree No. NS/RKT/0908/1055 dated 25 September, 2008 on the Appointment of the Royal Government of Cambodia
- Having seen the Royal Kram No. 02/NS/94 dated 20 July, 1994 promulgated the Law on the Organization and Functioning of the Council of Ministers
- Having seen the Royal Kram No. NS/RKM/0196/13 dated 24 January, 1996 promulgated the Law on the Establishment of the Ministry of Agriculture, Forestry and Fisheries
- Having seen the Royal Kram No. NS/RKM/0802/006 dated 15 February, 2008 promulgated the Law on Bio-safety
- Having seen the Royal Kram No. NS/RKM/0508/015 dated 13 Mar, 2008 promulgated the Law on the Management of Crop Species and the Rights of Crop Breeders
- Having seen the Sub-decree No. 17 ANKr/BK dated 07 April, 2000 on the Organization and Functioning of the Ministry of Agriculture, Forestry and Fisheries
- Having seen the Sub-No. 105 ANKr/BK/ dated 22 August, 2005 on Additional Roles to the Ministry of Agriculture, Forestry and Fisheries and the Establishment of the Internal Audit Department, the Planning and Statistics Department, the Internal Cooperation Department, and Information and Documentation Centre subordinated to the Ministry of Agriculture, Forestry and Fisheries
- Having seen the Sub-decree No. 188 ANKr/BK/ dated 14 November, 2008 on the Restructuring of General Departments of the Ministry to become General Secretariat, promoting Forest Administration and Fisheries Administration to the level of General Department, promoting the Department of Agronomy and Agricultural Land Improvement to become the General Department of Agriculture, and the Restructuring of the General Department of Rubber Plantation to become General Department of Rubber under the supervision of the Ministry of Agriculture, Forestry and Fisheries
- Pursuing to the Approval of the Council of Ministers' Meeting on the 11th of February, 2011

UNOFFICIAL TRANSLATION

Decides

Chapter I General Provisions

Article 1

This Sub-decree has the objective to define the implementation framework of Contract-based Agricultural Production/Contract Farming in the Kingdom of Cambodia.

Article 2

This Sub-decree has its objective as the following:

- Strengthening the responsibility and trust between producing and purchasing parties based upon the principles of equality and justice.
- Ensuring the accuracy of the prices, purchases, and supply of agricultural crops, both on quantity and quality
- Increase purchasing, processing and exporting of agricultural crops
- Contribute to national economic development and poverty reduction pursuant of the policies of the Royal Government

Article 3

This Sub-decree has its scope that applies on all types of Agricultural Production Business under the Contract-based Agricultural Production.

Article 4

Key terms used in this Sub-decree are defined as follows:

“Contract-based Agricultural Production/Contract Farming” refers to an Agricultural Production that ensures the prices, quantity and quality of the products includes various agreed conditions prior to the production.

“Contract Farming agreement (or Agricultural Production Contract)” refers to an Agreement on Agricultural Production Business made by two parties or more which is legal binding and shall specifically inscribe in advance all necessary conditions.

“Agricultural Production Business” refers to any production business, sales and buying of Agricultural products:

- Cultivation of all kinds of crops;
- Sericulture, arboriculture, aquaculture, animal husbandry, etc.
- Production of crop seeds, livestock breeds, aquatic animal species, and vegetation species;
- Agricultural produce processing;
- Contract-based Agricultural Production purchase to supply the markets, for processing factories, or for export.

“Producing Party/Farmers” refers to physical or legal person who has occupation in agricultural production.

“Purchasing Party/Contractor/Buyers” refers to physical or legal person who legally conducts purchasing business of agricultural products in compliance with the existing legal procedures.

“Agriculture Cooperatives” refers to Agricultural Cooperatives, Union of Agricultural Cooperatives, and Pre-Agricultural Cooperatives.

Chapter 2

Institutions and Coordination Mechanism

Article 5

The Ministry of Agriculture, Forestry and Fisheries shall be the Lead Institution in communicating, coordinating, and providing expertise services in order to facilitate the Contract-based Agricultural Production Development. Ministry of Agriculture, Forestry and Fisheries shall monitor and evaluate all of these functions and reports to the Royal Government.

Article 6

The Ministry of Agriculture, Forestry and Fisheries shall collaborate with relevant Ministries and Institutions and implement the role as inscribing below:

- Bridging the relationships between investors and farmers, producers and processors in the framework of Contract-based Agricultural Production/Contract Farming
- Strengthening, promoting and encouraging the formation of the associations, agricultural communities, or agricultural organizations which are the bases for the development of the contact-based agricultural production/Contract Farming.
- Enhance the standard, classification, and quality of agricultural products to conform with the markets demands and international norms
- Involve in addressing conflicts and other problems pertaining to the implementation of the Contract-based Agricultural Production/Contract Farming on the basis of the existing laws
- Facilitate the access of legitimate right on land in accordance with the existing law(s) for producing parties, farmers in conducting agri-business and agro-industry
- Facilitate the access to the technical supports, crop seeds, aquatic animal species, vegetation species, good animal breeds, means of production, fertilizers, high quality of pesticides
- Enhance the intensive production and agricultural diversification and competitiveness in response to the domestic market demands and exports
- Facilitate agri-business, agro-industry, and exporting
- Strengthen and expand the capacity in sanitary and phytosanitary inspection

Article 7

A mechanism shall be established which is called Contract Farming Coordination Committee.

The organizing and functioning of this Committee shall be defined by the decision of the Royal Government.

The composition of this committee is as follows:

- 1.Minister of the Ministry of Agriculture, Forestry and Fisheries
- 2.Secretary of State of the Ministry of Interior
- 3.Secretary of State of the Council of Ministers
- 4.Secretary of the Ministry of Economy and Finance
- 5.Secretary of State of the Ministry of Commerce
- 6.Secretary of State of the Ministry of Environment
- 7.Secretary of State of the Ministry of Land Management, Urbanization and Construction
- 8.Secretary of State of the Ministry of Water Resources and Meteorology
- 9.Secretary of State of the Ministry of Rural Development
- 10.Secretary of State of the Ministry of Justice
- 11.Secretary of State of the Ministry of Public Works and Transports
- 12.Secretary of State of the Ministry of Mines, Industry and Energy
- 13.Secretary General of the Council for the Development of Cambodia
- 14.Secretary General of the Council for Agricultural and Rural Rehabilitation
- 15.Governor of the Board of Governors of the Capital – Provinces
- 16.Director General of the Rural Development Bank
- 17.President of the Cambodia Chamber of Commerce
- 18.Representative of the Professional Chamber and Micro Enterprise

The Committee shall have the duties as follow:

- To develop policy, strategic plan aim at the promotion of Contract Farming;
- To facilitate and strengthen the harmonization between parties regarding the Contract Farming Agreement;
- To intervene or reconcile argument or conflict that might be occurred from the implementation of the Contract Farming Agreement that specialized institution is unable to settle or conflict which required settlement at inter-institutional level.

This committee shall include Department of Agro-Industry of the Ministry of Agriculture, Forestry and Fisheries as its assistant.

Chapter 3

The Obligations of Producers/Farmers and Purchasers/Buyers

Article 8

The producing party (/farmers) shall have rights and obligation:

- To comply with the conditions as inscribed in the Contract Farming agreement;
- To proceed production activities based on seasonal and required timeframe;
- To supply on time appropriate products in terms of grade, quality, and quantity and due timeline;
- To accept the payments of product value as set in agreement/Contract.

Article 9

The purchasing party (/buyers) shall have rights and obligation:

- To comply with the conditions as inscribed in the Contract Farming agreement;
- To determine the commodity items such as quantity, quality, place and the date of delivery and acceptance of the commodities;
- To provide agricultural material such as vegetation species, crop seeds, aquatic animal species, animal breeds, and provide credit advance, technical services, and other means or supports to producing party as agreed in order to ensure the process and achieve good results;
- To pay the agricultural products by specific unit-based products and the quality as the agreed prices;
- To pay the commodities to producing/farmers party as specifying under the conditions and at specific timeframe as agreed.

Chapter 4**The formality and the implementation of the Contract Farming Agreement****Article 10**

The Contract Farming Agreement shall be in writing under the facilitation of the coordination mechanism as stated in article 7 of this Sub-decree.

The Contract Farming Agreement shall be covered by provisions of the Civil Code, laws and existing regulations

Article 11

Whenever there is a conflict regarding the implementation of the Contract Farming agreement, the producing party and purchasing party should first address it by negotiating together following the terms and conditions stated in the contract.

In case that the conflict cannot be solved, the conflicting parties can implement the mechanism described in the article 7 of this Sub-decree.

Chapter 5**Final Provisions****Article 12**

Any provisions contradicting to this Sub-decree shall be null and void.

Article 13

The Minister in charge of the Office of the Council of Ministers, Minister of Economy and Finance, Minister of Agriculture, Forestry and Fisheries, Minister of Commerce, Minister of Interior, Ministers, Secretaries of State of the relevant Ministries and Institutions shall be responsible to implement this Sub-decree from the date of signing.

Phnom Penh, the 24th of February, 2011

Prime Minister

Samdech Akka Moha Sena Padei Techo Hun Sen

Receiving Places:

- *Ministry of the Royal Palace*
- *General Secretariat of the Constitutional Council*
- *General Secretariat of the Senate*
- *General Secretariat of the National Assembly*
- *General Secretariat of the Royal Government*
- *Cabinet of Samdech Prime Minister*
- *Cabinets of Deputy Prime Ministers*
- *Similar to Article 13*
- *Royal Compendium*
- *Archives*

UNOFFICIAL TRANSLATION

ANNEX 2: CONTRACT FARMING APPLICATION FORMS TO DAI

KINGDOM OF CAMBODIA NATION RELIONG KING

CONTRACT FARMING APPLICATION FORM

Applicant's name:..... Sex:..... Age.....Nationality:.....
 Current Address: House#..... St..... Group..... Village.....
 Commune/Sangkat..... District/Town/Khan.....Province/Capital:.....
 Tel:.....Fax:.....Email.....ID Card/Passport No.....
Current Occupation:(Buyer's Representative), hereafter referred
 to as "Buyer".

And

Applicant's name:..... Sex:..... Age.....Nationality:.....
 Current Address: House#..... St..... Group..... Village.....
 Commune/Sangkat..... District/Town/Khan.....Province/Capital:.....
 Tel:.....Fax:.....Email.....ID Card/Passport No.....
 Current Occupation:(Producer's Representative), hereafter referred to
 as "Producer".

TO

Director of Department of Agro-Industry

Attention: Municipal/Provincial Department of Agriculture of
 province.

Objective: To apply for agricultural production according to a contract to buy agricultural
 products of.....between.....and

Attachments: - Draft contract..... (1 copy)

- List of producer's members specifying the location, land area size, type of products and fingerprints (for the Producer) (1 copy)
- Copied ID card/Passport(1 copy)
- Resumes of both parties' representatives(1 copy)

According to the said information, I hereby inform the Director the agricultural that this contract farming is signed byand The designated location is situated invillage,commune,province. The type of products to be purchased is.....based on the quantity, quality and timeline as stated in the contract signed by both parties.

Therefore, please kindly authorize and support the implementation of agricultural production according to this contract.

Please accept the assurances of my highest consideration.

Date:.....

Name

Applicant's Signature and

Representative

Buyer's Representative Producer's

UNOFFICIAL TRANSLATION

ANNEX 3: CONTRACT FARMING APPLICATION FORM TO PDAFF

KINGDOM OF CAMBODIA

NATION RELIONG KING

CONTRACT FARMING APPLICATION FORM

Applicant's name:..... Sex:..... Age.....Nationality:.....
 Current Address: House#..... St..... Group..... Village.....
 Commune/Sangkat..... District/Town/Khan.....Province/Capital:.....
 Tel:.....Fax:.....Email.....ID Card/Passport No.....
Current Occupation:(Buyer's Representative), hereafter referred
 to as "Buyer".

And

Applicant's name:..... Sex:..... Age.....Nationality:.....
 Current Address: House#..... St..... Group..... Village.....
 Commune/Sangkat..... District/Town/Khan.....Province/Capital:.....
 Tel:.....Fax:.....Email.....ID Card/Passport No.....
 Current Occupation:(Producer's Representative), hereafter referred to
 as "Producer".

TO

Director of Department of Agriculture, Forestry and Fisheries

Attention: Municipal/Provincial Agro-Industrial Office of province.

Objective: To apply for Contract Farming to buy agricultural products
 of.....between.....and

Attachments: - Draft contract (1 copy)

- List of producer's members specifying the location, land area size, type of products and fingerprints (for the Producer) (1 copy)
- Copied ID card/Passport (1 copy)
- Resumes of both parties' representatives..... (1 copy)

According to the said information, I hereby inform the Director the agricultural that this contract farming is signed byand

The designated location is situated invillage,commune,province. The type of products to be purchased is.....based on the quantity, quality and timeline as stated in the contract signed by both parties.

Therefore, please kindly authorize and support the implementation of this contract farming.

Please accept the assurances of my highest consideration.

Date:.....

Applicant's Signature and Name

Buyer's Representative

Producer's Representative

Cc:

- Ministry of Agriculture, Forestry and Fisheries (Department of Agro-Industry)
- Archives-Chronicles

UNOFFICIAL TRANSLATION

ANNEX 4: CONTRACT FARMING MODEL FORMAT

Kingdom of Cambodia

Nation Religion King

—

CONTRACT FARMING

ON

.....

Between

Producer:.....

And

Buyer:.....

Date:

CONTRACT FARMING AGREEMENT

ON.....

Between

Mr./Mrs. Sex: Age:.....Occupation:.....
 Current Address:
 ID card/Passport No..... Dated
 Phone No..... E-mail: PO Box:
 Representing Registration No..... Dated.....
 Headquarters located, hereinafter referred to as “Producer”.

And

Mr./Mrs. Sex: Age:.....Occupation:.....
 Current Address:
 ID card/Passport No..... Dated
 Phone No..... E-mail: PO Box:
 Representing.....Cambodia’s Commercial Registration No.....
 Dated..... Headquarters located, hereafter referred to as
 “Buyer”.

REFERENCE:

Sub-Decree No. 36.អនក្រឹត្យលេខ ៣៦ ចុះថ្ងៃទី ២៤ ខែ កុម្ភៈ ឆ្នាំ ២០១១ លើកកម្ពស់ផលិតផលកសិកម្ម
 Circular 196 on the implement procedure of Contract Farming.

Both parties have agreed to the following terms and conditions:

Article 1. Objective of Contract

The Buyer agrees to buy from the Producer agricultural product with category.....
 quantity of....., location.....

Article 2. Term of Contract

The Contract Term commence from until (This Contract Term is short, medium or long, depending on the age of crops, plants or animals, or Buyer's demands).

Article 3. Rights and Obligations of Producer

- Agree to comply with the terms and conditions proposed by the Buyer as stipulated in this Agreement.
- Allow Buyer's employees to access and inspect the Producer's location in accordance with the agreed terms and conditions.
- Take responsibilities for the supply of products by category, quantity, quality and time limit as stipulated in Article 1, 5, 6, 7 & 8 of this Agreement.
- Provide information about the production process (harvesting time and change in the location ...)
- Prepare a list of farmers who participate in executing the contract (if more members join)
- Be liable to pay damages to the Buyer in case of his failure to comply with the terms and conditions set forth in this Agreement.

Article 4. Rights and Obligations of Buyer

- Provide support for the partiality or entirety of the production line (for example, credit, seeds, fertilizers, animal feed ...) for cultivation or raising in case of Producer's demands by ensuring the quality, quantity, type and duration to be implemented (stating the details about the inputs provided by the Buyer, who promises to support the Producer as shown in Appendix 2)
- The Buyer has the right to access and inspect the location of the Producer by giving the Producer a prior notice and provides guidance, technique and training according to the technical requirements (with attached technical documents) as agreed.
- Take responsibility for purchasing products by category, quantity, quality and time limit as stipulated in Article 1, 5, 6, 7 & 8.
- Be liable to pay damages to the Producer in case of his failure to comply with the terms and conditions set forth in this Agreement.

Article 5. Harvesting Time, Place of Transportation and Storage of Products

Set the harvesting time and the place of transporting products

- Prepare and issue the bills evidencing delivery and receipt of products
- Set the cost of loading and unloading, transporting
- The Buyer shall provide convenience to the Producer to transport his products in a timely manner.
- The transportation of products to a factory may be carried out by a group or individual members (with the negotiations between the both parties)
- In case of problems on the transport, both parties shall notify the other party of the delay (within)
- The Buyer shall prepare producer membership cards for delivery of goods to his location. Once goods are transported to the location of the Buyer, the Buyer and the Producer shall sign three copies of bills of lading and keep them respectively. The designation of the location of delivery and receipt of goods in Article 5 of the Contract is shown in attached Appendix 5.

Article 6. Product's quality requirements/specifications

- The determination of product quality is based on actual examination carried out at the production location or at the factory setting as agreed by both parties.
- Defining the level of product quality is approved by both parties (as detailed in Appendix 3).

Article 7. Pricing

- The pricing depends on the level of product quality to be determined with mutual consent (as detailed in Appendix 4)
- Both parties shall agree to set the price in advanced or depending on the actual market value during harvesting. Generally, determining the actual market prices during the harvest is based in its region. The pricing formula is set according to a specific period of time.

Article 8. Payment Methods

- When goods are transported by the Producer to the location of the Buyer, the payment shall be made immediately or waiting for..... depending on the agreement. The payment can be made through a bank or by cash depending on the consent of both parties.
- If the payment is made through a bank, the Buyer shall issue spending vouchers and checks to the Producer as representative or to each member according to the agreement. The Producer shall open his own bank account.
- All costs of fund transfer shall be incurred by the Buyer.
- The currency shall be determined and approved by both parties of the contract.

Article 9. Force Majeure

- In case events beyond the control include fire or insect damage, severe epidemics, storms, earthquakes, floods, droughts, wars, robbery or acts of sabotage, and so on, the affected party must notify in writing the relevant authorities near the scene and the other party in less than 03 days.
- If the Force Majeure events have existed for more than (.....days), this Contract shall be terminated without holding any party accountable.
- After the Force Majeure events passed, both parties shall make a new agreement (as described in attached Appendix 6)

Article 10. Termination

- The Contract will be terminated after the terms and conditions of the Agreement have been fully implemented.
- Any party who fails to comply with the terms and condition therein shall pay damages to the other party according to actual damage.

Article 11. Dispute Resolution

- In the event a dispute arises, both parties shall work together to solve it first.
- In case the dispute can not be resolved, it will be referred to the Department of Agriculture, Forestry and Fisheries for resolution.
- In case it has remained unsettled, then the dispute will be submitted to the Committee for Coordinating Contracted Agricultural Production in order to resolve it. The decision of the Committee is final.

Article 12. Creation of Contract and Language

The Contract is signed and agreed by both parties voluntarily and with cohesion. This Agreement is made in Khmer and Khmer language shall prevail and be used for conflict resolution. The Contract is made for 05 (five) copies with the same legal effect; one copy shall be held by the Ministry of Agriculture, Forestry and Fisheries (Department of Agro - Industry); one copy by the Municipal/Provincial Department of Agriculture, Forestry and Fisheries; one copy by Commune /Sangkat Office; one copy by the Producers and one copy by the Buyer.

Appendix

All the appendix shall be considered as part of the Agreement:

Appendix 1: List of members and the ability of the Producer who executes the Contract Farming Agreement

Appendix 2: Technical requirements supported by the Buyer

Appendix 3: Quality Rating

Appendix 4: Procedures of Payment of Prices for Products

Appendix 5: Designation of the location for delivery and receipt of products in Article 5

Appendix 6: Execution in case of Force Majeure

Date:.....

Producer's Representative

Witness

Witness

Buyer's Representative

.....

.....

.....

.....

(Right Thumbprint)

(Right Thumbprint)

(Right Thumbprint)

(Right Thumbprint)

Having seen

**Director of Department of Agro-Industry/Director of Provincial Department of Agriculture,
Forestry and Fisheries**

Cc:

- Ministry of Agriculture, Forestry and Fisheries
(Department of Agro-Industry)
- Municipal/Provincial Department of Agriculture, Forestry and Fisheries
- Commune/Sangkat Office
- Producer
- Buyer

Appendix 1:
List of members and the ability of the Producer who executes the Agricultural Production Agreement

No	Name & Surname	Location	Products	Land Size	Sale Quantity (kg)	Thumbprint

Date
Producer's Representative

(Right Thumbprint)

No.:.....
 Having seen and confirmed
 Name.....belongs
of.....
 and is currently residing at house#.....
 St.....village/group.....
 Commune/Sangkat.....District/Khan.....
Province/City.....

Date:
 Signature and Seal
Commune/Sangkat Chief

Appendix 2
Technical Requirements supported by the Buyer

No.	Description (Input)	QTY	Price (Unit)	Total Price	Others

Date:
Producer's Representative

(Right Thumbprint)

Appendix 3

Quality Rating

Note: 1: Product quality and standards

.....

Note 2: Both parties have agreed to buy products as agreed in Article 6 of the Contract:

No.	Quality Rating	QTY (Kg)	Price (Riel/kg)	Total (Riel)	Others

Both parties have agreed to adjust product prices according to the market price at a rate not exceeding (%) () of the agreed price as stated in Note 1 of the Agreement.

Appendix 4

Procedures of Payment of Product Prices

- ☐ 1. Payment is made immediately after delivery and receipt of products.
- ☐ 2. Payment is made after delivery and receipt of products through
- 1.2 Setting the time for payment of prices

Phase of Delivery	Payment Schedule
1. The day of delivery of for a period of....) receipt of products after the date.....until.....	1.The first payment is (riel) Quality (1, 2, 3,) QTY (kg) on (Date).. 2.The second payment is (riel) Quality (1, 2, 3,) QTY (kg) on (Date).. 3.The third payment is (riel) Quality (1, 2, 3,) QTY (kg) on (Date)..
2. The day of delivery of for a period of....) receipt of products after the date.....until.....	1.The first payment is (riel) Quality (1, 2, 3,) QTY (kg) on (Date).. 2.The second payment is (riel) Quality (1, 2, 3,) QTY (kg) on (Date).. 3.The third payment is (riel) Quality (1, 2, 3,) QTY (kg) on (Date)..

2. Payment Methods

2.2.1 The payment of the prices for products is made as agreed (by cash or bank).

2.2.2 The Buyer can pay the prices of products to each member or representatives.

2.2.3 In the event that the Buyer pays into a bank account or cash to the farmer's organization, the representative of the farmer's organization shall be responsible for paying the prices of products to all farmer members.

2.2.4 If the Buyer refuses to pay into a bank account or cash for the amount of money owed, or fails to pay in full on the due date as described in Clause No. 2.1, the Buyer agrees to settle the payment of damages for the Producer at a rate or owed amount of percent (%) (... ..) until the Buyer can pay the full amount to the Producer.

Appendix 5:
Designation of the location for delivery and receipt of products in Article 5 of the Contract

Designation for delivery and receipt	Rating/Quality/Size	QTY (kg)	Place of Delivery	Others

Date:
Deliverer's Representative

(Right Thumbprint)

Receiver's Representative

(Right Thumbprint)

Appendix 6:

Execution in case of Force Majeure

If Force Majeure events occur before, during or after the delivery of products, both parties should implement the following terms and conditions:

Case 1: Force Majeure events happen to the Producer

The Producer should deliver as many products as he can produce, and the Buyer must agree to accept the products delivered by the Producer in accordance with the prices as agreed in Article 6 of the Agreement and detailing the agreement between the Producer and the Buyer.

Case 1: Force Majeure events happen to the Buyer

The Buyer should accept as many products as he can accept, and the Producer must agree to deliver the quantity of the products accepted by the Buyer in accordance with the prices as agreed in Article 6 of the Agreement and detailing the agreement between the Producer and the Buyer.

The following descriptions agreed by the Producer and the Buyer are as follows:

Phase of Delivery/Receipt	Quality Rating	Similar Quality of delivery and receipt of products	Price/kg (Riel)	Estimated Price (Riel)	Place of Delivery/Receipt	Price Payment
.....days of delivery and receipt of products from.....until... ..						<p>The first payment is (riel)</p> <p>Quality (1, 2, 3,)</p> <p>QTY (kg) on (Date).....</p> <p>The second payment is (riel)</p> <p>Quality (1, 2, 3,)</p> <p>QTY (kg) on (Date).....</p> <p>The third payment is (riel)</p> <p>Quality (1, 2, 3,)</p> <p>QTY (kg) on (Date).....</p>

The process of price payment shall comply with the requirements and methods as stated in Article 3 of the Agreement.

ANNEX 5: EXAMPLE OF CONTRACT FARMING AGREEMENT FOR ORGANIC PADDY

UNOFFICIAL TRANSLATION

KINGDOM OF CAMBODIA

NATION

RELIGION

KING



**Contract Farming agreement on
Producing and Supplying Organic Paddy**

between

AMRU RICE (CAMBODIA) CO., LTD

and

Agricultural Cooperative of Rohas Samaki Meanchey

Date of the Contract signed: July 11, 201

The Contract Farming agreement on producing and supplying organic paddy was made on 11th July 2016.

between

AMRU RICE (CAMBODIA) CO., LTD registered with the Ministry of Commerce of the Kingdom of Cambodia under the number of Co.0337 KH/2011, and its head office address locates in Borey Rith, #13A, A15, Sangkat Rusey Keo, Khan Rusey Keo, Phnom Penh capital, which is represented by **Mr. Song Saran**, Director General of AMRU RICE, telephone number: 012 303 016, email: chairman@amrurice.com hereafter named **"The BUYER"**.

and

Agricultural Cooperative of Rohas Samaki Meanchey registered with Provincial Department of Agriculture in Preah Vihear under number 003, and its head office locates in Thkaeng village, Rohas commune, Rovieng district, Preah Vihear province, which is represented by Mr. Bao Savath, chief of AC monitoring committee, has telephone number: 088 3366 422, email: N/A, hereafter named **"The PRODUCER"**.

Having seen and based on:

- The sub-decree number 36 អនក្រ.បក dated 24 February, 2011 on the contract farming,
- Memorandum of Understanding for sustainable organic rice supply chain development in Preah Vihear between AMRU RICE, Preah Vihear Mean Chey Union of Agricultural Cooperative, agricultural cooperatives in Preah Vihear and agricultural cooperatives.

Having agreed as follows:

Article 1: The Object of the Contract

- Producing and supplying both wet and dry jasmine organic rice varieties (Pkha Rumdom, Phka Malis, Pkha Rodeng), with total volume of 250.75 metric tons and 9.5 tons of white rice varieties by The PRODUCER which have 104 producers (farmer list is attached in Annex 1) to be submitted to The BUYER.
- Organic paddy Produce and supply have been made by the common willingness of both parties and without putting pressure and well understanding between the BUYER and the PRODUCER to enter into this contract on producing and buying organic paddy recognized by external certificate body with international recognition.
- The paddy volume planned to buy in this contract will be changed if the contracted farmers produce good paddy quality complied with the standards or the quality didn't meet the requirements of EU and USA organic rice standards.

Article 2: Duration of the Contract Implementation

This contract has been validated for 7 months from 11th July 2016 until 31st January 2017.

Article 3: Right and Obligation of the PRODUCER

- Produce jasmine rice varieties (Pkha Romdul, Pkha Malis, and Pkha Romdeng) and white rice varieties (Neang Am, Kra Chok Chea, Kra Chok Chies, Thnot, Tolvis, Kratie, Neang Chin, Chin Seuy and other seeds, which have big and long grain as attached in the annex of the contract) on the surface land of 204.15 hectares to be supplied to AMRU RICE (the BUYER) based on the contract and shall be responsible for all the costs of production.
- Sell the paddy produced to the BUYER in the quantity, quality and price as described in Article 6 and Article 7.
- Invite the contracted farmers to attend the technical training delivered by Preah Vihear Mean Chey Union of Agricultural Cooperative and the BUYER during the contract implementation.
- Provide a list of members and a farmer list in internal control system book that involved in the contract farming and also define the location and coverage which are attached in the annex of the contract farming for the BUYER.
- During paddy selling process, each member must keep individual receipt by themselves (paddy quantity, price and money obtain) as a reference document for traceability system.
- Manage internal control system in collaboration with Preah Vihear Mean Chey Union of Agricultural Cooperative.
- The cost of internal control system management will be paid by Preah Vihear Mean Chey Union of Agricultural Cooperative through the contracted farmers will be retroceded 50riel/kg based on organic paddy volume to be delivered to the BUYER.
- Be responsible to contribute to the 50% payment of the total cost for the certificate of EU and USA organic standards in inspecting the producers in 2016.
- Have the right to file a complaint during the contract implementation if the BUYER did not follow and comply with any articles in the contract.

Article 4: Right and Obligation of the BUYER

- Buy jasmine rice varieties (Pkha Romdul, Pkha Malis, and Pkha Romdeng) and white rice varieties (Neang Am, Kra Chok Chea, Kratie, Neang Chin and other seeds which have big and long grain as attached in the annex of the contract) based on quantity, quality and price as agreed in the Article 6 and Article 7 of the contract.
- Provide the technical assistance of primary paddy quality checking to committee members of AC before harvest.
- Provide sack to the PRODUCER free in charge before harvest.
- Be liable to fulfill the cost of certificate of EU and USA organic standards.
- As a person to be responsible to apply for and issue certificate from external certificate body which comply with EU and USA organic standards in collaboration with Preah Vihear Mean Chey Union of Agricultural Cooperative and the agricultural cooperatives as a partner in this contract.
- Have the right to file a complaint during the contract implementation if the PRODUCER did not follow and comply with any articles in the contract.

Article 5: The Harvest and Transportation

- The PRODUCER shall inform the BUYER within 10 days in advance before harvest. After receiving the notification from the PRODUCER within 3 days (working day), the BUYER must provide feedback to the PRODUCER.
- The PRODUCER shall provide specific information about the locations of paddy collection point where are near road so that truck (20 tons capacity) can go in and out safely.
- In case of wet paddy (moisture content is excess 19.5%) after harvest, the PRODUCER shall deliver the paddy to the defined paddy collection point no later than 1 day after harvest in order to assist the BUYER in be immediately transported.
- All cost of loading and transporting from paddy collection point to rice mill that is a responsibility of the BUYER. The PRODUCER shall collaborate and help to look for labor force for paddy loading to truck.
- During agreement and receiving paddy to be loaded to the truck, the BUYER and the PRODUCER must sign on the 2 copies of delivery note and shall keep one respectively. The delivery note shall be written about the volume of paddy rice handed over and received the specific quality and price in accordance with the quality offered by the BUYER to the PRODUCER.

Article 6: The Quality of Paddy

The quality of paddy is defined by actual checking with the consent of both parties. Quality checking is referred to purity of seed, color, moisture content and broken rate.

➤ Quality of Jasmine Paddy:

Grade Criteria	Purity (%)	Moisture content (%)	Broken rate (%)
A1	90%-100%	13%-14.9%	1%-24%
A2	90%-100%	13%-14.9%	25%-32%
A3	90%-100%	13%-14.9%	33%-36%
A4	90%-100%	13%-14.9%	40%-52%
B1	90%-100%	15%-19.4%	1%-24%
B2	90%-100%	15%-19.4%	25%-36%
B3	90%-100%	15%-19.4%	37%-40%
C1	90%-100%	19.5%-30%	N/A

➤ Quality of Jasmine Paddy:

Grade Criteria	Purity (%)	Moisture content (%)	Broken rate (%)
D1	90%-100%	13%-16%	1%-16%
D2	90%-100%	13%-16%	17%-24%
D3	82%-89%	13%-16%	1%-24%

Article 7: Pricing

➤ The price of jasmine paddy:

- The price of paddy is set based on the quality as described in Article 6.
- The price of jasmine paddy rice is defined based on the actual market price referred to the highest prices over the past 7 days, which was purchased by 3 big rice mills in Kompong Thom province or/and Siem Reap province (list of rice mills shall be agreed by both parties during harvest).
- The price of organic paddy recognized by the external certificate body shall be more expensive than conventional jasmine paddy in the market.

The premium price is over the paddy price in the market as determined in accordance with the Article 6 in the following table:

Grade Criteria	The premium price for organic paddy
A1	270 Riel/kg
A2	180 Riel/kg
A3	130 Riel/kg
A4	50 Riel/kg
B1	210 Riel/kg
B2	180 Riel/kg
B3	130 Riel/kg
C1	50 Riel/kg

➤ The price of jasmine paddy:

The price of organic paddy recognized by the external certificate body shall be more expensive than conventional white paddy in the market.

The premium price is over the paddy price in the market as determined in accordance with the Article 6 in the following table:

Grade Criteria	The premium price for organic paddy
D1	230 Riel/kg
D2	190 Riel/kg
D3	130 Riel/kg

- The percentage of damaged paddy is not over 3%.

Article 8: The payment

- The BUYER shall pay for the PRODUCER via bank account of the agricultural cooperatives no later than 7 working days after weighing paddy and completely loading to truck of each day.
- The BUYER shall issue the invoice of each money payment and delivery note. The payment for paddy selling-buying process is made in Riel currency.
- The BUYER shall pay the paddy bill via the bank account of the PRODUCER:
 - o Name: ACLEDA Bank PLC.
 - o Branch: ACLEDA Bank PLC. Krong Preah Vihear, Preah Vihear province
 - o Branch address: Sangkat Kompong Branak, Krong Preah Vihear, Preah Vihear province
 - o Account owner:
 1. Mrs. Heng Sopheap
 2. Mr. Bao Savath
 3. Mr. Thong Bunlanh
 4. Mrs. Saing Sophal
 5. Mr. Ream Sam Un
 - o Account number:xxxxxxxxxxxxxxxx
- All expenditure on cash transfer service is responsible of the BUYER.

Article 9: Case of Force Majeure

- Term "case of force majeure" includes fire, flood, storm, war, earthquake, social unrest, the activities of insurgence, riot and eruption, spread of outbreak diseases, and other events or circumstances that cannot be managed or facilitated by the two parties.
- In case, the paddy volume and quality agreed in the contract didn't achieve the objectives owing to case of force majeure so the contract will be automatically canceled and there was no claim of either party. However, the PRODUCER shall notify any case of the damages mentioned above to the BUYER, provincial department of agriculture, and local authorities no later than 7 days after getting affected.

Article 10: Termination

- The contract will end after all the commitment taken by the two parties have been fulfilled—after paddy supply and payments have completely been made by the both parties.
- In case, any parties have not fulfilled its commitment, it shall be compensated for the loss in liability limitation defined in Article 3 and Article 4 above.

Article 11: Conflict Resolution

In case, the conflict occurred, the two parties firstly shall solve the dispute together. In case the both parties cannot solve the dispute, secondly the conflict shall be sent to Provincial Department of Agriculture in order to continue to resolve the conflict. If the conflict still cannot be resolved, lastly this conflict will be sent to the conflict facilitation committee of contract farming to handle the last minute. So the two parties have to accept the decisions made by the conflict facilitation committee of contract farming.

Article 12: The Establishment and Language

- This contract made in the real agreement between the two parties, freely and under no threat. This contract is established in Khmer Language. Khmer language shall also be the language used for any further statement or dispute resolution under this contract.
- This contract can be amended in case there are the request from any parties and it must be agreed by the two parties.
- This contract has been printed and signed in five original copies and each copy having the same full value. This contract must be kept by the following institutions:

1. The PRODUCER	01 (one) copy
2. The BUYER	01 (one) copy
3. Commune office	01 (one) copy
4. Provincial Department of Agriculture	01 (one) copy
5. Department of Agro-industry	01 (one) copy

- The contract is valid from the date signed by both parties, and the parties involved.

PRODUCER PARTY**BUYER PARTY****Mr. BAO SAVAT**

Chief of monitoring committee of
Rohas Samaki Meanchey Coop.

Mr. SONG SARAN

Director of AMRU RICE

Witness

Witness

Having Seen

ANNEX 1

List of producers – Member code number - members of AC – surfaces, expected volumes – farmer thumbprint or signature

(Not provided here)

ANNEX 2**List of white paddy that the company agreed to buy**

The white paddy varieties with the big and long grain that the company agreed to buy as follows:

No.	Names of white paddy varieties	others
1	Neang Am	
2	Neang Ouk	
3	Bangkuoy	
4	Tnot	
5	Chin Seuy	
6	Neang Khon	
7	Tos Lvis	
8	Kratie	
9	Chres	
10	Ousey	
11	Phka Romdul	
12	Phka Romdeng	
13	Phka Malis	

UNOFFICIAL TRANSLATION

ANNEX 6: CIRCULAR ON PROCEDURE TO IMPLEMENT CONTRACT FARMING.

Kingdom of Cambodia

National Religion King

Ministry of Agriculture Forest and Fisheries

No. 196 SRNN.KSK

Circular

On

Procedure to implement Contract Farming

MAFF has noticed that the implementation of Sub-decree 36, dated 24 February 2011 on “Contract Farming” has face some challenges such as: Distrust, Price guarantee, Quality and Quantity to comply with the procedure, inactivity of involved organization, lack of information on file application to implement Contract Farming and lacks of communicate between buyer and producer. Etc.

To ensure efficiency of this Sub-decree with fruitful outcomes, MAFF would like to give advices as following;

- 1- Buyer and Producer, which wish to seek partner, have partner or have been contracted, please inform/be informed to/from Department of Agro-Industry of Department of Agriculture, Forest and Fisheries at their City/Province to file application on the implementing of Contract Farming.
- 2- Shall file application to implement Contract Farming to office of Agro-Industry of MAFF at their city/province for the parties that have partner or contracted for the contract amount below 200 million Riels.
- 3- Shall file application to implement Contract Farming to office of Agro-Industry of MAFF at their city/province for the parties that have partner or contracted for the contract amount of 200 million Riels up.

- 4- DAI of MAFF shall lead teamwork to review the implement of CF between two parties under elaborate with other expert unit if necessary.
- 5- DAI of MAFF shall elaborate with expert unit or relevant organizations will be in charge of the following:
 - Link between investor and farmers, producer and processor within the framework of Contract Farming.
 - Strengthening, pushing and encouraging to create cooperative, agriculture cooperative or farmer organization as fundament to develop Contract Farming.
 - Promoting standard, classification and quality of agriculture products following market demand and international norms.
 - Taking part in conflict resolution coordination and other dispute while implementing CF, based on the applicable law.
 - Make it easy to form Agri-business, Agro-Industry and exporting.
 - Makes it easy to obtain technical support services, seed varieties, crop varieties, plant varieties, animal breeds, different production methods, fertilizers, pesticides with high quality.
 - Promoting intensification, diversification and competitiveness, answer to local demand and exporting.
- 6- Each Office of Agro-Industry base in City or Province shall monitor, evaluate and report to DAI every three months, in order to prepare report to MAFF.
- 7- Allow DAI and Department of agriculture, forest and fisheries in city and province use sample for file application of CF. sample of Contract farming and permission letter to implement contract farming, enclosed in annexes.

Received this circular, all relevant organization under MAFF, shall apply efficiency and responsibility, then report the outcome to Ministry.

Made in Phnom Penh 17 March 2017

Minister

Ministry of Agriculture, Forest and Fisheries

Veng Sakhorn

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The following organizations have contributed to the writing of this Manual:



Association Henri Capitant
Des amis du droit cambodgien

សមាគម
ហង់រី កាប៊ីតង់
មិត្តភាពវប្បធម៌ប្រពៃណី
គតិយុត្តន៍វិស័យស្រូវកម្ពុជា

