

Boston Crop Sprayers Limited Standard Terms and Conditions for Supply of Goods and Services (application of agrochemicals)

1. Definitions

1.1 When the following words with capital letters are used in these Terms, this is what they will mean:

Authorised Signatory: means a person authorised by Us to sign on Our behalf

Contract: means the contract for the purchase and sale of the Services and/or Goods in accordance with these Terms.

Events Outside Our Control: means an event beyond Our reasonable control including but not limited to strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, or failure of public or private telecommunications or electricity networks.

Goods: means any agrochemical products supplied by Us to You which are used by Us in the performance of that Service

Job Card: the written individual specification for the Services and Goods provided by Us to You and referred to in Our invoice to You

Metam 510®: means Metam 510® MAPP 09796, a concentrated broad spectrum soil sterilant

Metam 510® Rules: the additional terms which will apply to Your contract with Us when You purchase a Metam 510® Service.

Metam 510® Service: means a service agreed by Us to be supplied to You which involves the application of Metam 510® by Us.

Order: Your order for the supply of Services and Goods in accordance with these Terms and as set out in the written recommendation by Your BASIS qualified agronomist.

Services: Services agreed by Us to be supplied to You; including Specialist Services and spraying and other applications of agrochemicals (but not including the servicing or maintenance of agrochemical spraying equipment or in field breakdown service).

Terms: the terms and conditions set out in this document as amended from time to time as set out in clause 13

We/Our/Us/the Company: Boston Crop Sprayers Limited a company incorporated and registered in England and Wales with Company Number 03187863 whose registered address is Little Field, Fen Road, Frampton West, Boston, Lincolnshire PE20 1RZ

You/Yours: the customers whose offer to purchase Services and Goods has been accepted by Us.

1.2 When We use the words "writing" or "written" in these Terms, this will include e-mail unless We say otherwise.

2 Our Contract with You

2.1 Please ensure that You read these Terms carefully, and check that the details on the Order and in these Terms are complete and accurate, before You submit the Order. If you think that there is a mistake, please contact Us to discuss it, and please make sure that You ask Us to confirm any changes in writing to avoid any confusion between You and Us.

2.2 The Order constitutes an offer by You to purchase Services and/or Goods in accordance with these Terms.

2.3 All the terms, requirements, obligations and conditions contained in the Metam 510 ® Rules form part of the Contract between You and Us when You purchase Metam 510 ® Services and are incorporated into these Terms as if they were set out in full.

2.4 The Contract constitutes the entire agreement between You and Us. You acknowledge that You have not relied on any statement, promise, representation, assurance or warranty made or given by Us or on Our behalf which is not set out in the Contract.

2.5 Any variation or addition to the Contract must be in writing and signed by both You and an Authorised Signatory.

2.6 These Terms apply to the Contract to the exclusion of any other terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.7 All descriptions and illustrations of Services and Goods contained in any of Our websites, advertising matter or other literature are intended merely to present a general idea of the Services and Goods shown and none shall form part of any Contract.

2.8 All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified

2.9 Quotations given by Us for the supply of Services and Goods are only valid for a period of 7 days from date of issue.

2.10 Your Order must include the following information: product(s) to be used, rates to be applied, Lerap category of product, field names or reference numbers, size of fields, a field or farm map including the watercourses, details about the surrounding crop and properties (in particular organically grown crops and to assist decision making on potential drift problems), Your name, address, e-mail address and contact number.

- 2.11 If We are unable to supply You with the Services set out in Your Order, We will not accept Your offer and will inform You of this either orally or in writing.
- 2.12 We have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and We shall notify You in such event.

3 Goods

- 3.1 You may purchase Services alone or both Services and Goods from Us. We will only supply the quantity of Goods required to perform the Service and no additional or spare or "left over" agrochemicals may be purchased from Us.
- 3.2 The Goods are as described in the Job Card.
- 3.3 We give no warranty as to fitness for purpose for any Goods which have been selected by You or Your agronomist.

4 Prices and Charges

- 4.1 We shall invoice You for Goods and Services on or any time after completion of delivery.
- 4.2 The price for the Services shall be calculated at the standard application rate applied by Us at the time for providing the level of Service chosen by You, plus the costs of the Goods supplied by Us to You and any VAT.
- 4.3 Any prices quoted are net of VAT and any government duty, levy or tax applicable, which will be charged at the appropriate rate ruling at time of performance of the Services.
- 4.4 Payment for Goods and Services must be made in full to Us within 14 days of the date of the invoice.
- 4.5 The time for payment shall be of the essence and no payment shall be deemed to have been received until We have received cleared funds.
- 4.6 You shall make payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 4.7 If You fail to pay any sum due to Us under the Contract by the due date for payment, You will be liable to pay interest to Us on such sum from the due date for payment at the annual rate of 4% above the base lending rate of Barclays Bank Plc, accruing on a daily basis until payment is actually made of the overdue amount together with interest.

5 Our Responsibilities

- 5.1 We will be mindful of health and safety requirements, the environment including crops and wildlife on surrounding fields and the weather conditions including wind speeds whilst We deliver Our Service to You. We reserve the right to leave an area unsprayed, delay or cease spraying in order to take reasonable precautions to prevent spray drift.
- 5.2 Lerap Scheme - We use low drift 3 Star nozzles on Our sprayers. Near watercourses We must use a 1 m buffer zone for category B products and a 5 m buffer zone for category A products. At Your request and subject to You paying an additional application charge, We may agree to apply a category B product to the part of the field adjacent to a watercourse, and after spraying the area in question, apply a category A product to the remainder of the field using the relevant prescribed buffer zones.
- 5.3 In circumstances where :
- a) the agrochemicals have been supplied by Us, We will transport the agrochemical to the location of application and following application will triple rinse and safely dispose of all Our empty agrochemical containers;
 - b) the agrochemical has been supplied by You, We will triple rinse empty containers but not remove any empty or partially filled containers..
- 5.4 Our machines have fitted washing out tanks that allow Us to run clear water through the machine in the field. We will record on the job card if machines have been washed out in the field or in the yard. When it is necessary to wash a machine in the yard We will do so in an area approved by the environmental agency.
- 5.5 We will apply all agrochemicals in accordance with the manufacturer's label recommendations. If You request ("Your Request") the application of agrochemicals other than in accordance with the manufacturer's label recommendations -
- a) any Service provided by Us will be provided at Your risk and We shall not be liable for any losses or damages incurred arising directly or indirectly from Your Request; and
 - b) We reserve the right to decline Your Request or propose such changes to Your Request which are necessary to comply with any applicable law or safety requirement.

6 Your Obligations

- 6.1 As a part of Your obligations You shall:
- a) ensure that the terms of Your Order and any information You provide to Us are complete and accurate;
 - b) co-operate with Us in all matters relating to the Services;
 - c) ensure that the performance of the Service does not involve the commission of a criminal or civil wrong or breach of rules and regulations governing the use and application of agrochemicals
 - d) supply Us prior to application with either a field map or OS map clearly identifying the area to be treated
 - e) make sure that access to the field identified in Your Order is passable and any permissions that are necessary for Our access are obtained from all the relevant third parties;
 - f) ensure that the agrochemicals supplied by You are in the manufacturer's original sealed containers (We will not use agrochemicals stored in containers which are partially full or have been opened), and
 - g) dispose correctly of Your empty agrochemical containers and store properly any partially filled agrochemical containers
- 6.2 When buying a Service from Us which includes Metam 510 it is Your obligation to read the Metam 510 Rules and which form part of Your contract with Us and to abide by the obligations, restrictions and regulations set out in the Metam 510 Rules.
- 6.3 If Our performance of any of Our obligations under the Contract is prevented or delayed by any act or omission by You or failure by You to perform any relevant obligation (**Your Default**):
- a) We shall without limiting Our other rights or remedies have the right to suspend performance of the Services until You remedy Your Default, and to rely on Your Default to relieve Us from the performance of any of Our obligations to the extent that Your Default prevents or delays Our performance of any of Our obligations;
 - b) We shall not be liable for any costs or losses sustained or incurred by You arising directly or indirectly from Your failure or delay to perform any of Your obligations as set out in this clause 6; and
 - c) You shall reimburse Us on written demand for any costs or losses sustained or incurred by Us arising directly or indirectly from Your Default.
- 6.4 When You buy a Service and or Goods from Us and You pass on or sell that Service and or Goods to Your customer You shall share these Terms with Your Customer and it will be Your responsibility to procure that Your customer complies with the obligations set out in Your Obligations.

7 Supply of Services and Goods

- 7.1 We will supply the Services to You using reasonable care and skill and in accordance with the Job Card in all material respects.
- 7.2 All dates and times given by Us for the completion of Our Services are given as a best time estimate, and if no times are given, the Services will be performed within a reasonable time. Due to the nature of the Services We provide, environmental factors including wind speeds, air and soil temperatures, soil moisture levels and general weather conditions will affect the timing for the performance of Our Services.
- 7.3 The Time for delivery of Our Services can not be made the essence of the Contract by Notice.
- 7.4 We may decline to perform Services if We believe that it would be unsafe, unlawful or unreasonably difficult to do so. In those circumstances We will notify You and either agree a variation to the Services or We will decline to perform the Service.

8 Events Outside Our Control

- 8.1 We shall not be liable to You as a result of any delay or failure to perform any of Our Services under this Contract as a result of Events Outside Our Control.
- 8.2 If the Events Outside Our Control prevent Us from providing any of the Services for more than 20 weeks, We shall, without limiting Our other rights or remedies, have the right to terminate this Contract immediately by giving written notice to You.
- 8.3 We shall not be liable for any delay in delivery of the Goods that is caused by Events Outside Our Control. If We fail to deliver the Goods, Our liability shall be limited to the costs and expenses incurred by You in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by Events Outside Our Control.

9. Metam 510®

- 9.1 The Metam 510® Rules provide important information and rules about Metam 510® which together with these Terms form part of the Contract.
- 9.2 Your attention is drawn in particular to clauses 10.3 and 10.4 below.

10. Limitation of Liability

- 10.1 Nothing in these Terms shall limit or exclude Our liability for
- a) death or personal injury caused by Our negligence, or the negligence of Our employees, agents or subcontractors;

- b) fraud or fraudulent misrepresentation;
 - c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or;
 - e) defective products under the Consumer Protection Act 1987.
- 10.2 Subject to the above We shall under no circumstances whatever be liable to You, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss, loss of profit or loss of use or production arising under or in connection with the Contract even if We are negligent.
- 10.3 In the event that You have failed to comply with the Metam510® Rules We shall have no liability to You or any third party for any losses suffered or damages incurred as a result of Your failure to comply with the Metam 510® Rules.
- 10.4 You shall indemnify Us against any liability whatsoever arising out of Your failure to follow the Metam 510® Rules.
- 10.5 Our total liability to You in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £5,000,000..
- 10.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 10.7 In the event that We are threatened with or involved in any legal action, whether civil or criminal (“the action”) concerning Goods or Services supplied to You under the contract:
- a) You will on receipt of a written demand from Us make any of the equipment available to Us for inspection at such times as We may reasonably request and deliver to Us copies of all documents in Your custody or possession or control relating to the Goods and Services concerned which are relevant to the action; and
 - b) You will assist Us in avoiding or defending the action or minimising the damage resulting from the action
- 10.8 This clause 10 shall survive termination of the Contract.

11 Indemnity by You

- 11.1 You shall indemnify Us against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Us arising out of or in connection with:
- a) Your or Your customer's breach or negligent performance or non performance of Your Obligations
 - b) any claim made against Us by Your customer or a third party arising out of or in connection with the provision of the Services and or the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this agreement by You, Your employees, Your agents, Your subcontractors or Your customer;
- any claim made against Us by Your customer or a third party for death, personal injury, damage to property or pollution or contamination of land or watercourses, arising out of or in connection with the Goods or Services, to the extent that any default in the Goods or fault in the Service is attributable to the acts or omissions of You, Your employees, Your agents or Your subcontractors or Your customer.
- 11.2 This indemnity shall apply whether or not We have been negligent or at fault.
- 11.3 If a payment due from You under this clause is subject to tax (whether by way of direct assessment or withholding at its source), We shall be entitled to receive from You such amounts as shall ensure that the net receipt, after tax, to Us in respect of the payment is the same as it would have been were the payment not subject to tax.
- 11.4 You shall be solely responsible for and shall keep Us indemnified against any loss, liability or expense arising directly from the use of the Goods other than in accordance with the label recommendations of Goods.

12 Cancellation/Termination Rights

- 12.1 Without limiting other rights or remedies, both You or We may terminate the Contract with immediate effect by giving written notice to the other if:
- a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 5 days after receipt of notice in writing to do so;
 - b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay his debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - c) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors

- other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - f) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1 (i) (inclusive);
 - k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - l) Your financial position deteriorates to such an extent that in Our opinion Your capability to adequately fulfil Your obligations under the Contract has been placed in jeopardy; or
 - m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 12.2 Without limiting Our other rights or remedies, We may terminate the Contract with immediate effect by giving written notice to You if You fail to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting Our rights or remedies, We may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between Us and You if You fail to pay any amount due under this Contract on the due date for payment, You becomes subject to any of the events listed in clause 12.1(b) to clause 12.1 m), or We reasonably believes that You are about to become subject to any of them.

13 Consequences of Termination

On termination of the Contract for any reason:

- a) You shall immediately pay to Us all of the outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, We shall submit an invoice, which shall be payable by You immediately on receipt; and
- b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13 Variation

Except as set out in these Terms, no variation of the Contract including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Us.

14 Other Important terms

- 14.1 We may transfer Our rights and obligations under these Terms to another organisation, and We will always notify You in writing if this happens, but this will not affect Your rights or Our obligations under these Terms.
- 14.2 You may only transfer Your rights or Your obligations under these Terms to another person if We agree in writing.
- 14.3 This Contract is between You and Us. No other person shall have any rights to enforce any of its terms.
- 14.4 Any notice given to a party under the Contract shall be in writing and addressed to that party at its registered office or principal place of business (if not a company) and shall be delivered and addressed as follows:
- a) by hand or commercial courier when left at the address ;
 - b) by prepaid first class post or registered post at 9.00am on the second working day after posting
- 14.5 Each of the paragraphs of these Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

- 14.6 If We fail to insist that You perform any of Your obligations under these Terms, or if We do not enforce Our rights against You, or if We delay in doing so, that will not mean that We have waived Our rights against You and will not mean that You do not have to comply with those obligations. If We do waive a default by You, We will only do so in writing, and that will not mean that We will automatically waive any later default by You.
- 14.7 These Terms are governed by English law. You and We both agree to submit to the non-exclusive jurisdiction of the English courts.

15 Contact Details:

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