



CARDEX	
B. DATOS	
DONACION	
CARGO	
COMPEN	
EMPRE	
NL	21
	2015

UNIDROIT | FAO | IFAD

Legal Guide on CONTRACT FARMING

International Institute for the Unification of Private Law (UNIDROIT)
Food and Agriculture Organization of the United Nations (FAO)
International Fund for Agricultural Development (IFAD)
Rome, 2015

CONTENTS

Foreword	iii
Members of the Working Group	v
PREFACE	xv
I. Overview and purpose	xv
II. Approach and how to use the Guide	xvi
INTRODUCTION	1
I. General introduction to contract farming	1
A. Various contract farming operations in practice	2
B. Benefits and risks of contract farming	6
1. Risk mitigation	7
2. Access to credit	9
3. Technology and know-how transfer	10
4. Economic, social and environmental development	11
II. Scope of the Guide	12
A. The agricultural production contract under the Guide	13
B. The contractor's involvement in production	13
C. Distinguishing agricultural production contracts from partnership and employment relationships	14
1. Agricultural production contract versus partnership	15
2. Agricultural production contract versus employment	15
CHAPTER 1 – THE LEGAL FRAMEWORK	17
I. The applicable private law regime	17
A. Legal treatment of agricultural production contracts	18
1. Special category of contract	19
2. Traditional contract types	20
B. Other domestic legal sources	22
1. Rules and principles of law	23
2. Customary rules and usages	24
3. Trade usages and practices	25
4. Standard terms and guidance documents	26
(a) Standard contract terms and contractual documents	26
(b) Technical standards	26
(c) Soft law	27

C. Contracts with an international element	28
1. Contractual obligations	28
2. Non-contractual obligations	30
II. The role of the regulatory environment	30
A. Agri-food trade	31
B. Production inputs	33
1. Seeds	33
2. Biosafety	34
3. Plant variety protection	34
4. Producers' right to genetic resources	35
5. Other agricultural inputs	35
C. Agricultural finance and support	35
D. Competition and antitrust	36
E. Human rights	36
F. Labour law	38
G. Access to natural resources	38
CHAPTER 2 – PARTIES, FORMATION AND FORM	40
I. Parties to the contract	40
A. The agricultural producer	41
1. Distinctive features	41
2. Legal status	42
3. Forms for conducting an agricultural production activity	43
(a) Individual producers	43
(b) Producer organisations	45
B. The contractor	49
1. Private corporate structures	50
2. Public entities	51
C. Other parties	52
1. Supply chain participants	52
(a) Linkages between participants	53
(b) Types of participants	54
2. Other interested third parties	56
II. Contract formation	57
A. Offer and acceptance	58
B. Capacity and consent	62
C. Role of those who intervene or assist in contract negotiation	64
1. Producer organisations	65
2. Facilitators	65
3. Public authorities	65
4. Intermediaries	66
III. Contract form and content	67
A. Contract form	67
B. Contract content	69
C. Consequences of breach of required form or content	73

CHAPTER 3 – OBLIGATIONS OF THE PARTIES	75
I. Risk allocation	76
A. Production risk allocation	77
B. Commercial risk allocation	78
C. Exclusivity	80
II. Core obligations of the parties	81
A. The product	81
1. Quantity	82
(a) The whole production is purchased	82
(b) Only part of the production is purchased	84
2. Quality	86
(a) Determining quality	87
(b) Quality standards	88
(c) Product safety	91
(d) Link with certification requirements	92
B. Production process	92
1. Provision and use of inputs	92
(a) General obligations	93
(b) Specific obligations related to certain types of inputs	95
(c) Obligations related to intellectual property rights	101
2. Production methods, compliance and control	104
(a) Specified production methods	105
(b) Monitoring and control	109
C. Delivery	110
1. Time and place	112
2. Acceptance	113
D. Price and payment	116
1. Price determination	116
2. Price mechanisms	117
(a) Fixed prices	118
(b) Price scales	118
3. Time and method of payment	120
III. Additional obligations	122
A. Insurance obligations	122
B. Record keeping and information management	123
C. Community interests	124
IV. Transfer of obligations	124
CHAPTER 4 – EXCUSES FOR NON-PERFORMANCE	126
I. <i>Force majeure</i> and change of circumstances in agricultural production contracts	126
A. Supervening events affecting the performance of the parties	126
B. <i>Force majeure</i> versus change of circumstances	127
C. Contractual allocation of risks through <i>force majeure</i> clauses	129

D. Risk allocation and title transfer	130
E. Insurance and other risk mitigation and allocation schemes	130
II. Events qualifying as <i>force majeure</i> and change of circumstances	131
A. General notion of <i>force majeure</i> in contractual practice	131
1. Natural events (“Acts of God”)	133
2. Governmental acts	134
3. Other disturbances: strikes, wars, social unrest and market disruptions	134
B. Relevant change of circumstances in contractual practice	135
C. Burden of proof	135
III. Consequences of the recognition of <i>force majeure</i> and change of circumstances	136
A. Effects on the parties’ obligations	136
1. Excuse from non-performance	136
2. Suspension of performance	137
3. Compensation and indemnities	138
4. Additional obligations: notice and mitigation requirements	138
B. Effects on the contract as a whole	140
1. Termination of the contract	140
2. Right or duty to renegotiate	141
3. Judicial adaptation	142
CHAPTER 5 – REMEDIES FOR BREACH	143
I. Overview of remedies	143
A. Different types of remedies	146
1. Remedies in kind	147
2. Withholding performance	148
3. Price reduction	149
4. Termination	150
5. Restitution	152
6. Damages	154
7. Interest and late payments	157
B. The role of the aggrieved party’s conduct	157
C. The breaching party’s right to cure	158
D. Renegotiation	159
II. Contractor’s remedies for producer’s breach	160
A. Remedies in kind	161
1. Breach of process-related obligations	161
(a) Right to performance	162
(b) Corrective actions	162
2. Product non-conformity	163
(a) Corrective measures	165
(b) Repair	167
(c) Replacement	167
3. Failure to deliver the product	168

B. Product withdrawal and product recall	168
C. Withholding performance	170
D. Price reduction	171
E. Termination	171
1. Breach of process-related obligations	172
2. Product non-conformity	172
3. Failure to deliver the product	173
F. Damages	173
1. Breach of process-related obligations	174
2. Product non-conformity	174
3. Failure to deliver the product	176
G. Penalties, fines and blacklists	176
H. Contractor’s conduct and claims for remedies	177
III. Producer’s remedies for contractor’s breach	180
A. Right to performance	180
1. Delay in price payment	180
2. Failure to provide (conforming) inputs	181
3. Failure to take delivery of conforming goods	183
B. Withholding performance	183
C. Termination	185
1. Failure to pay	185
2. Failure to provide (conforming) inputs	187
3. Failure to take delivery of conforming goods	187
4. Failure to purchase the whole production (or a percentage of it)	188
D. Damages	188
1. Delay in payment	188
2. Failure to provide (conforming) inputs	189
3. Failure to take delivery of conforming goods	189
4. Liquidated damages and penalty clauses	190
E. Producer’s conduct and claims for remedies	191
CHAPTER 6 – DURATION, RENEWAL AND TERMINATION	193
I. Duration	193
A. “Short-term” contracts versus “long-term” contracts	194
B. Maximum and minimum duration imposed by law	194
II. Renewal of contracts	195
A. Renewal by express agreement	195
B. Tacit or automatic renewal	196
C. Renewal at the option of one party	197
III. Termination of contracts	197
A. Scope	197
B. Termination clauses	198
C. Notice requirement for termination	198
D. Grounds for termination	199
1. Automatic termination	199
2. Consensual termination	199

3.	Termination by one of the parties in accordance with special termination clauses	199
(a)	Clauses providing for termination by either party	199
(b)	Clauses providing for termination by one party	200
(c)	Termination for loss of trust	201
E.	Effects and consequences of termination	202
CHAPTER 7 – DISPUTE RESOLUTION		203
I.	Disputes and dispute resolution in agricultural production contracts	204
A.	Addressing disputes in agricultural production contracts	204
1.	The importance of addressing dispute resolution in the contract	204
2.	Preventing disputes through negotiations and cooperation	204
3.	Parties' access to a fair and effective dispute resolution method	205
B.	Considerations regarding the various dispute resolution methods available for the parties	206
1.	Nature of the dispute, time factor, interim relief	206
2.	Fairness, confidentiality	207
II.	Non-judicial dispute resolution methods	208
A.	Common features	208
B.	Mediation and conciliation mechanisms	210
1.	Alternative amicable dispute resolution methods	210
2.	Benefits of mediation	210
3.	Organising mediation proceedings	211
(a)	Mediation clauses	211
(b)	Institutional versus ad hoc mediation	212
(c)	Elements of mediation proceedings	212
(d)	Outcome of mediation proceedings	213
C.	Arbitration	214
1.	A binding (adjudicatory) dispute resolution	214
2.	Organising arbitration proceedings	215
(a)	Arbitration agreements	215
(b)	Institutional versus ad hoc arbitration	215
(c)	Procedural guarantees	216
(d)	Arbitration and interim relief	216
(e)	Outcome of arbitration proceedings	217
III.	Judicial dispute resolution	217
A.	Access to justice	217
B.	Jurisdiction grounds	218
1.	Domestic contracts	218
2.	International contracts	219
IV.	Enforcement of settlements or decisions resolving a dispute	219
1.	Enforcement by public authorities	219
2.	Private enforcement mechanisms	220
INDEX		221