

# FEDGROUP IMPACT FARMING TERMS AND CONDITIONS

**EFFECTIVE DATE: 21 November 2018**

## **1. INTRODUCTION**

- 1.1. The application (Fedgroup Impact Farming) and micro-site web URL: <https://www.fedgroup.co.za/impactfarming> , which includes the electronic online e-Commerce platform ("Fedgroup Platform") to which these terms and conditions ("Impact Farming Terms") relate, is made available, managed and owned by Fedgroup Financial Holdings (Pty) Ltd in association with Fedgroup Ventures (Pty) Ltd (collectively, "we", "our", "us").
- 1.2. These Impact Farming Terms apply to any person who uses our services, purchases any assets or uses, accesses, refers to, views or downloads any information made available on the Fedgroup Platform for any purpose ("you", "your").

## **2. ADDITIONAL TERMINOLOGY AND INTERPRETATION**

- 2.1. The following terminology applies to these Impact Farming Terms:
  - 2.1.1. "**Agency Agreement**" means the agency agreement concluded between you and the Managing Agent, automatically entered into as a condition of sale under these Impact Farming Terms, the Impact Farming Terms and conditions of which are set out in clause 7 below.
  - 2.1.2. "**Assets**" means (i) the individually identifiable and numbered assets purchased by you through the Fedgroup Platform for deployment at a Site, or (ii) the right, title and interest purchased by you in the Products for the productive lifetime of Third Party Assets to be deployed at a Site, as detailed in the Information Manual. "Products" and "Assets" are in certain instances used interchangeably in these Impact Farming Terms and must be interpreted as the context requires.
  - 2.1.3. "**Asset Purchase Price**" means the purchase price paid by you for an Asset (by electric funds transfer, once off debit against or collection from your cheque or current account or redemption of a Voucher).
  - 2.1.4. "**Fedgroup Financial Holdings**" means Fedgroup Financial Holdings (Pty) Ltd (Registration Number 2015/412407/07), a private company duly

incorporated in accordance with the company laws of the Republic of South Africa, situated at 89 Bute Lane, Sandton, Johannesburg, South Africa.

- 2.1.5. **"Information Manual"** means the electronic document, containing relevant detail and information relating to these Impact Farming Terms and the Assets, Sites, Returns and so on, published on the Fedgroup Platform.
- 2.1.6. **"Managing Agent"** means Fedgroup Ventures (Pty) Ltd (Registration Number 2012/167478/07), a private company duly incorporated in accordance with the company laws of the Republic of South Africa, situated at 89 Bute Lane, Sandton, Johannesburg, South Africa.
- 2.1.7. **"Fedgroup Account"** means your unique account created on the Fedgroup Platform for the purchase of an Asset and detailing all fees, charges, interest and Returns applying to you.
- 2.1.8. **"Net Asset Value"** means the value referred to as such in the Information Manual.
- 2.1.9. **"Net Replacement Value"** means the value referred to as such in the Information Manual.
- 2.1.10. **"Products"** means the products produced by the Assets or Third Party Assets (as the case may be), as detailed in the Information Manual.
- 2.1.11. **"Returns"** means the returns payable to you on sale of the Products (net of all expenses relating to the Assets, Products and Services), as detailed in the Information Manual.
- 2.1.12. **"Site"** means the property on which the Works will be executed, the Assets or Third Party Assets deployed and the Products produced, as detailed in the Information Manual.
- 2.1.13. **"Site Owner"** means the owner or operator of the Site, as detailed in the Information Manual.
- 2.1.14. **"Service Fees"** means the fees payable to us or the Managing Agent out of the proceeds of the sale of the Products, as detailed in the Information Manual.
- 2.1.15. **"Services"** means the services rendered by us, the Managing Agent or any Third-Party Suppliers under or in connection with these Impact Farming Terms, the Assets, the Third Party Assets, the Products or the Sites.
- 2.1.16. **"Third Party Assets"** means the assets owned by Third Party Owners from which Products are produced, as detailed in the Information Manual.
- 2.1.17. **"Third Party Supplier Agreements"** means the agreements concluded between us or the Managing Agent and Third Party Suppliers in connection with the Assets, the Third Party Assets, the Products and the Sites.
- 2.1.18. **"Third Party Suppliers"** means any third-party supplier of goods, data or services to us or the Managing Agent or any of our or the Managing Agent's designated and duly authorised sub-contractors.
- 2.1.19. **"Third Party Owners"** means the owners of Third Party Assets, as detailed in the Information Manual.
- 2.1.20. **"Voucher"** means a voucher purchased from us for the purchase of a particular type of Asset, identifiable by means of and redeemable by submission of the quick response code ("QR Code") on the Voucher.

- 2.1.21. "**Works**" means the works carried or to be carried out at a Site for the operation of Assets and production of Products, as detailed in the Information Manual.
- 2.2 The provisions of clause 1 above and any substantive provisions contained in any definition in this clause 2 (or any other clause of these Impact Farming Terms) form part of these Impact Farming Terms and effect will be given to them.
- 2.3 Any reference in these Impact Farming Terms to any legislation will be to that legislation as amended from time to time.

### **3. YOUR AGREEMENT TO THESE IMPACT FARMING TERMS AND ANY UPDATES OR AMENDMENTS**

- 3.1. By continuing to access the Fedgroup Platform or using our Services in any way after purchasing an Asset, you agree that you have entered into a legally binding agreement with us on the Impact Farming Terms and in the conditions contained in these Impact Farming Terms and agree that the Managing Agent is authorised to act on your behalf in the limited circumstances provided for in the Agency Agreement.
- 3.2. These Impact Farming Terms, the Third Party Supplier Agreements, the Information Manual and any additional agreements and documents referred to in these Impact Farming Terms, constitute the complete and sole record of the agreement between you, us and the Managing Agent.
- 3.3. If you do not agree with any term or condition of these Impact Farming Terms and the other agreements and documents referred to in clause 3.2 above or you become dissatisfied with us or the Fedgroup Platform, you must discontinue your use of the Fedgroup Platform and the Services and notify us of the discontinuation in writing (to the support team email specified in the Information Manual). In the absence of such notification, your continued use of the Fedgroup Platform or the Services will be construed as your consent to these Impact Farming Terms and the other agreements and documents referred to in clause 3.2 above.
- 3.4. These Impact Farming Terms may be updated or amended by us at any time in our sole discretion and with prospective effect without prior notice to you and any updates or amendments will take effect when posted on the Fedgroup Platform unless a later date is stated in the update or amendment. Each time you use the Fedgroup Platform or our Services, it is your responsibility to review the Impact Farming Terms in case of any updates or amendments. If you do not agree to our updates or amendments, you must discontinue your use of the Fedgroup Platform and our Services and notify us of the discontinuation in writing (to the support team email address specified in the Information Manual).
- 3.5. The limited, revocable, non-transferable license granted to you to access and use the Fedgroup Platform is subject to these Impact Farming Terms and the various policies and agreements which may govern such use and access, as indicated on the Fedgroup Platform.
- 3.6. You may print a copy of these Impact Farming Terms and any updates or amendments - if you have any difficulty printing any of them or require assistance in obtaining hard or electronic copies, you should contact our support team by email to the address specified in the Information Manual.

#### **4. FEDGROUP PLATFORM GENERALLY**

- 4.1. The Fedgroup Platform offers for sale certain assets and the infrastructure necessary to facilitate, agreements for their deployment and the production of Products at Sites with Site Owners who have unutilised space which is suitable, in the Managing Agent's sole discretion, for these purposes.
- 4.2. We conduct an audit of each potential Site to determine its suitability, utilising all reasonable care and due diligence and compile the Information Manual by utilising the latest technology available for simulating the potential performance of the Assets and Third Party Assets.
- 4.3. Once we have determined a Site's suitability, we populate an Information Manual which includes information and data relevant to the Site to assist potential Asset purchasers to determine whether the purchase may be suitable for them.
- 4.4. While all reasonable care is taken in ensuring the accuracy of the information contained in the Information Manual, the information is based on information supplied to us by Third Party Suppliers. Accordingly, we cannot and do not provide any guarantee as to the accuracy and completeness of all or any part of the information provided in the Information Manual, or of the anticipated Returns and all details are indicative and not guaranteed.
- 4.5. The Fedgroup Platform and the information contained on it does not constitute a recommendation or endorsement of the quality, suitability for purchase or purpose of any Asset, its performance or any anticipated Returns. By purchasing an Asset, you accept that there is some risk of loss, including (without limitation) the loss of the Asset itself or the Asset Purchase Price.
- 4.6. We cannot be held responsible for any inaccuracies, errors or misspellings or for impartial, inaccurate or misleading information and are not liable for any damages flowing from them/it.

#### **5. PURCHASING AN ASSET AND CREATING A FEDGROUP ACCOUNT**

- 5.1. In order to purchase an Asset on the Fedgroup Platform and to receive the Returns, you will be required to create a Fedgroup Account, which results in you having the rights and obligations detailed in these Impact Farming Terms.
- 5.2. Once you have reviewed the Information Manual and made a decision to purchase an Asset, you must select the number of Assets you wish to purchase at the represented price and submit an order for them ("Order").
- 5.3. If you are paying for Assets by electronic funds transfer or once off debit against or collection from your cheque or current account, the represented price referred to in clause 5.2 above must be transferred by you to the Managing Agent's secure trust account (detailed on the Fedgroup Platform) within 48 (forty eight) hours of submission of your Order, where they will be held for your benefit until we have allocated your Assets to you.
- 5.4. If you are purchasing an Asset using a Voucher, the Voucher QR Code must be submitted with your Order and will be deemed redeemed on such submission.

## **6. VOUCHERS**

- 6.1 A Voucher may be redeemed, only for the purchase of the type and number of Assets to which it relates, at any time within 3 (three) years of the date of its issue.
- 6.2 The purchase of an Asset using a Voucher is subject to the availability of the type and number of Assets for which it was purchased. If such Assets are not available on submission of your Order, the price paid for the Voucher ("Voucher Value") will be refunded to you (net of our reasonable transaction and other fees, bank charges and other disbursements) or you may utilise the Voucher Value against the purchase of any other Asset within our then available range of Assets.
- 6.3 If you are redeeming a Voucher and the type and number of Assets for which it was purchased are available for allocation to you at the time of redemption, any price increase for the Assets will not be applicable to you.
- 6.4 If the type and number of Assets for which a Voucher was purchased are not available for allocation to you at the time of redemption and you choose to purchase other Assets within our then available range of Assets, the Voucher must be fully utilised (no change will be given to you) and any shortfall in the price for the selected alternative Assets must be transferred to the trust account referred to in clause 5.3 above within 48 (forty eight) hours of your purchase, where they will be held on the basis provided for in clause 5.3 above.

## **7. APPOINTMENT OF MANAGING AGENT AND AGENCY AGREEMENT**

- 7.1. By purchasing an Asset on the Fedgroup Platform, you agree and enter into the Agency Agreement constituted in this Clause 7.
- 7.2. The Agency Agreement will be valid for the period specified in the Information Manual, commencing on the date on which the Site is commissioned, unless these Impact Farming Terms are terminated earlier in accordance with the provisions of clause 10 below.
- 7.3. As a condition of the purchase of any Asset, you hereby expressly appoint, allow and authorise the Managing Agent as your special agent with authority to do all things as may be necessary on your behalf in respect of any Asset purchased by you, including:
  - 7.3.1. entering into an agreement with the Site Owner in respect of the use of the Site for the Works, the deployment of the Assets or Third Party Assets and production of the Products;
  - 7.3.2. entering into agreements with appropriately qualified Third Party Suppliers to operate and maintain the Assets or Third Party Assets, to market and sell the Products and for any other purposes as, in the sole and absolute discretion of the Managing Agent, are necessary or prudent;
  - 7.3.3. entering into insurance contracts to ensure that adequate insurance is in place to cover the Assets or Third Party Assets and the Products from any loss or damage. To the extent necessary, the Managing Agent may also enter into an insurance contract to mitigate against the loss of income as a result

of the reduced use of the Assets or Third Party Assets or reduced production of Products, arising from any reason.

- 7.3.4. retaining any funds paid in terms of clauses 5.3 or 6.4 above in a secure, annually audited trust account for your account and benefit until your Assets have been allocated to you.
- 7.3.5. initiating and continuing with legal, recovery or execution proceedings against any Site Owner, Third Party Supplier or insurer who does not honour its contractual obligations in Impact Farming Terms of the relevant agreements; and
- 7.3.6. varying any of the relevant agreements, only to the extent that the variation is communicated to you and that it is not, in the reasonable discretion of the Managing Agent, deemed to be material to you.

Copies of any of the agreements referred to in this clause 7.3 will be made available to you on written request to the support team email address referred to in the Information Manual.

- 7.4. The extent of the agency appointment constituted in Impact Farming Terms of this clause 7 is limited to the acts and activities referred to in this clause 6 and the performance of any acts necessary to render the Services.

## **8. FEDGROUP PLATFORM DATA**

Data collected and presented on the Fedgroup Platform is indicative only and it is the purchase price received from the sale of the Products which is used as the basis for calculating all Returns payable to you.

## **9. PAYMENT OF RETURNS**

- 9.1. At the end of each calendar month from the date on which the Works have been completed, a statement will be sent to you summarising the performance of the Assets, any Returns payable and the date of credit of Returns to your Fedgroup Account.
- 9.2. Credit balances on your Fedgroup Account will accrue interest at the same corporate base rate as is afforded to us by our bankers from time to time, calculated on an annual basis.
- 9.3. Once your Fedgroup Account reflects a minimum credit balance of R300.00 (three hundred Rand), the Managing Agent will, on your written request and provision of any documentation required in Impact Farming Terms of the Financial Intelligence Centre Act, 38 of 2001, transfer the credit balance to you.

## **10. REFUND AND PRICING POLICY**

- 10.1. Except as provided for in clause 6.2 above, refunds will only be permitted in our sole, unfettered and absolute discretion.

- 10.2 To the extent that the Consumer Protection Act 68 of 2008 applies to you, you accept that the period between purchase of an Asset and the commencement of the Works will be included in the calculation of any cooling off periods which may apply.
- 10.3 Refund requests may be initiated by email to the support team email address referred to in the Information Manual.
- 10.4. If you discover that you have made a mistake with your purchase after you have submitted your Order, please contact the support team (on the email address referred to in the Information Manual) immediately. You accept that we cannot guarantee that we will be able to remedy your mistake.
- 10.5 Any refunds agreed to by us will be net of our reasonable transaction and other fees, bank charges and other disbursements.
- 10.6 We will, at all times, do our utmost to ensure that the purchase price for the Assets given in the Information Manual is accurate, but it may need to be validated by us as part of our acceptance procedure. If the price for your Assets changes before we process your Order, we will contact you and ask you to confirm whether you wish to proceed at the new price or whether you wish us to effect a full refund of any amount already paid by you, subject to the provisions of Clause 10.5 above. Except as provided for in clause 6.4 above, the provisions of this clause 10.6 will not apply in respect of the purchase of Assets using Vouchers.

## **11. TERMINATION BY YOU**

Should you wish to terminate the agreement constituted by these Impact Farming Terms, you may do so subject to the following provisions:

- 11.1. You must give the Managing Agent 30 (thirty) calendar days' notice of termination;
- 11.2. Upon expiry of the period referred to in Clause 10.1 above, the Managing Agent will at its election:
  - 11.2.1. provide you with an Asset of the same value as that purchased by you, to be calculated as at the date of your notice of termination; or
  - 11.2.2. make the Asset available for collection at the Site, outside of ordinary business hours and subject to payment of a termination fee, which will be used to defray the costs associated with removing the Asset from the Site. In such case, the Assets will be removed from the Site with minimum inconvenience to the affected parties on the Site; or
  - 11.2.3. purchase the Asset at 70% (seventy percent) of its Net Asset Value or Net Replacement Value, whichever is the lower.
- 11.3. Once an Asset has been collected (if applicable), the Managing Agent will determine whether any Returns are payable to you and if so, pay them to you within 14 (fourteen) days.

## **12. ASSET END OF LIFE**

We will, when the productive lifetime of an Asset or Third-Party Asset has been reached (as indicated in the Information Manual), at our election and depending on the nature of the Asset:

- 12.1. purchase the Asset for the price specified in the Information Manual and pay the relevant amount to your Fedgroup Account within 30 (thirty) days; or

- 12.2. make the Asset available for collection at the Site, outside of ordinary business hours and subject to payment of a termination fee, which will be used to defray the costs associated with removing the Asset from the Site. In such case, the Asset will be removed from the Site with minimum inconvenience to the affected parties on the Site; or
- 12.3. dispose of the Asset subject to payment of a disposal fee, which will be used to defray the costs associated with disposing of the Asset.

### **13 CANCELLATION BY THE SITE OWNER**

- 13.1. Should the Site Owner cancel the agreement concluded with it by us or the Managing Agent, you will be entitled to:
  - 13.1.1. a full refund of the Asset Purchase Price or, in the case of redeemed Vouchers, the Voucher Value, subject to deduction of reasonable banking and transaction charges actually incurred by us; or
  - 13.1.2. depending on the nature of the Asset, relocation of the Asset or the production of Products to an alternative Site which, in the reasonable opinion and sole discretion of the Managing Agent, will achieve similar Returns.
- 13.2. You agree that any damages occasioned as a result of the Site Owner cancelling the agreement concluded with it by us or the Managing Agent, will lie against the Site Owner and not us or the Managing Agent.

### **14. RETURNS**

- 14.1. While every reasonable effort is made to ensure that the Returns are met, they are not guaranteed.
- 14.2. All risks associated with the Returns remain with you at all times.

### **15. TAX**

- 15.1. You are responsible for claiming any tax relief including (without limitation) any allowances contemplated in Section 12B or Section 11(e) of the Income Tax Act 58 of 1962.
- 15.2. All prices quoted on the Fedgroup Platform are stated exclusive of Value Added Tax.

### **16. INSURANCE**

- 16.1. The Managing Agent, as a material term of the relevant Third Party Supplier and other agreements referred to in these Impact Farming Terms, ensures that the Assets, Third Party Assets and Products are adequately and appropriately insured against all risks for the duration of those agreements and will ensure that all premiums are paid and that all insurance policies effected will have the full force of law.
- 16.2. In Impact Farming Terms of the forementioned agreements, we/the Managing Agent are/is entitled to:
  - 16.2.1. inspect, at any time, any related insurance document and to arrange any additional insurance cover which we/the Managing Agent may, in our/its sole



- and exclusive discretion, deem appropriate for the adequate protection and insurance of the Assets, Third Party Assets and Products; and
- 16.2.2. take out insurance cover, where the relevant Third Party Supplier is unable to obtain any or adequate insurance, or an insurer withdraws any cover during the currency of these Impact Farming Terms.

## **17. TRANSFER OF RIGHTS AND OBLIGATIONS**

- 17.1. We and the Managing Agent are entitled to cede, assign, delegate or otherwise transfer any of our rights or obligations under these Impact Farming Terms to any third party without your consent first being obtained.
- 17.2. We are entitled to substitute the Managing Agent at any time without your consent first being had and, should we do so, you consent to the substituted party as the new Managing Agent.
- 17.3. You are not entitled to cede, assign, delegate or otherwise transfer any of your rights or obligations under these Impact Farming Terms to any third party without our prior written consent, which will not be unreasonably withheld. You must notify the Managing Agent of any intended cession, assignment, delegation or transfer in writing.

## **18. DISPUTES**

- 18.1. Any dispute which may arise between you and us or the Managing Agent will be referred for consideration and resolution to our respective chief executive officers (if you are not a juristic person, then you personally will be involved) or their duly appointed representatives.
- 18.2. Should our respective chief executive officers (if you are not a juristic person, with your personal involvement) or their duly appointed representatives be unable to resolve the dispute within 14 (fourteen) days of referral, then the party who wishes to persist in the dispute may, at its option, either institute Court proceedings or refer the dispute for arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa ("AFSA"), or if AFSA is not in existence, in accordance with the provisions of the Arbitration Act 42 of 1965.
- 18.3. Should the dispute be referred to arbitration, the arbitrator will be appointed by the parties, and failing agreement within 14 (fourteen) days, will be nominated by AFSA. Should AFSA not be in existence, the nomination of the arbitrator will be by the Chairman of the Johannesburg Bar Council or its successor in title. The arbitration will be held in Johannesburg, conducted in English and concluded as expeditiously as possible after it has been demanded.
- 18.4. Nothing contained in this clause 18 will be deemed to prevent or prohibit a party from applying to the appropriate Court for urgent relief.

## **19. WARRANTIES**

- 19.1. To the fullest extent permissible pursuant to applicable law and except as otherwise stated in these Impact Farming Terms, we and the Managing Agent make no warranty, express, implied, statutory, or otherwise, with respect to the Assets, the

Third Party Assets, the Products or any of our or the Managing Agent's Services, and expressly disclaim, without limitation, any warranties of merchantability, fitness for any particular purpose, results or title, and any warranties implied by a course of dealing or performance.

- 19.2. We and the Managing Agent do not warrant the data, content, features information or quotations provided through the Fedgroup Platform, to be uninterrupted or accurate or free of errors, viruses or other harmful components.
- 19.3. You are solely responsible for any damage to your equipment, loss of data, or other harm which may result from your use of our or the Managing Agent's Services or the Fedgroup Platform.
- 19.4. We and the Managing Agent make no warranties and provide no assurances to you regarding the performance of any Sites, Assets, Third Party Assets, Products or Returns. Any information published on the Fedgroup Platform is indicative only and is the product of a computer simulation.
- 19.5. You release us and the Managing Agent from any liability in relation to or arising from your use of the Fedgroup Platform or our or the Managing Agent's Services, for any reason, including (without limitation) in relation to the Assets, the Third Party Assets, the Products or any failure on our or the Managing Agent's part in rendering Services, regardless of the degree of our or the Managing Agent's negligence. To the extent that applicable law may place any restriction on a release of liability such as the foregoing, you agree that we and the Managing Agent are liable for the minimum amount of damages which the law restricts, should such a minimum exist.
- 19.6. Any promotional material utilised by us and the Managing Agent should not be construed as a representation or warranty of any particular standards, the Assets, the Third Party Assets, the Products, the Returns, your expectations or service specifications and should only be regarded as promotional and educational in nature.

## **20. WAIVER**

Failure of a party to insist upon strict performance of any provision of these Impact Farming Terms or associated agreements, or the failure of a party to exercise any rights or remedies to which it is entitled under these Impact Farming Terms will not constitute a waiver of any of them and will not cause a diminution of the obligations under these Impact Farming Terms or any associated agreement. No waiver of any of the provisions of these Impact Farming Terms or any associated agreement will be effective unless it is expressly stated to be waived and signed by the parties affected by the waiver.

## **21. LIMITATION OF LIABILITY AND DAMAGES**

We and the Managing Agent will not, regardless of the circumstances or causes, be liable under these Impact Farming Terms for any consequential, special, indirect or other damages (including, without limitation, lost profits or punitive damages), whether based in contract, delict or otherwise, even if we have been advised of the possibility of such damages. This limitation will apply to the maximum extent permitted by applicable law. You expressly agree that if we or the Managing Agent are found liable to you, regardless of the foregoing limitations, our and the Managing Agent's maximum aggregate liability to you, whether arising from breach of warranty, breach of contract, negligence, or on any other legal basis,

will not exceed the Asset Purchase Price paid by you to us or, in the case of a redeemed Voucher, the Voucher Value.

## **22. EXPORT CONTROL LAWS AND EXCHANGE CONTROL REGULATIONS**

By using the Fedgroup Platform you expressly undertake to abide by any exchange control regulations which may be applicable to the purchase of any Assets or the payment of any interest or Returns and you undertake to comply with the relevant exchange control regulations.