



**IRISH CATTLE BREEDING FEDERATION SOCIETY LIMITED (“ICBF”)**  
**TERMS AND CONDITIONS (SUPPLY)**

**1. INTERPRETATION**

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (**Conditions**).

**Contract:** any contractual arrangement between ICBF and the Customer in relation to the supply of the Services by ICBF to the Customer entered into pursuant to condition 2.2.

**Customer:** the person, firm or company who purchases Services from ICBF.

**Customer’s Application:** an application by the Customer made in a form acceptable to ICBF to purchase Services from ICBF (including, without limitation, an Application to Have a Bull Performance Tested under the Gene Ireland Breeding Program [*insert others*]).

**Customer's Equipment:** any equipment, machinery, systems or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

**Deliverables:** all Documents, products and materials developed by ICBF in relation to the Services in any form, including computer programs, data, reports and specifications (including drafts).

**Document:** includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**In-put Material:** all Documents, information and materials provided by the Customer relating to the Services including computer programs, data, reports and specifications.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications

for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Pre-existing Materials:** all Documents, information and materials provided by ICBF relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

**Services:** the services to be provided by ICBF under the Contract as described in the Customer's Application together with any other services which ICBF provides or agrees to provide to the Customer.

**ICBF's Equipment:** any equipment, including tools, systems or facilities, provided by ICBF or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

**VAT:** value added tax chargeable under Irish law for the time being and any similar tax.

- 1.2 Condition, schedule and paragraph headings shall not affect the interpretation of these Conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The schedules form part of and shall have effect as if set out in full in the body of these Conditions and any reference to the Contract includes the schedules.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.8 Where the words **include(s)**, **including** or **in particular** are used in these terms and conditions, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.9 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.10 References to conditions and schedules are to the conditions and schedules of the Contract.

## **2. APPLICATION OF CONDITIONS**

2.1 These Conditions shall:

- (a) apply to and be incorporated into the Contract; and
- (b) prevail over any inconsistent terms or conditions contained, or referred to, in any communication from the Customer or implied by law, trade custom, practice or course of dealing.

2.2 The Customer's Application constitutes an offer by the Customer to purchase the Services specified in it on the terms and conditions of the Customer's Application and these Conditions. No offer placed by the Customer shall be accepted by ICBF other than:

- (a) by a written acknowledgement issued and executed by ICBF; or
- (b) (if earlier) by ICBF starting to provide the Services,

when a contract for the supply and purchase of those Services on the terms and conditions of the Customer's Application and these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any communication from the Customer or other Document shall not govern the Contract.

2.3 Quotations if given by ICBF are given on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that ICBF has not previously withdrawn it.

## **3. COMMENCEMENT AND DURATION**

3.1 The Services supplied under the Contract shall be provided by ICBF to the Customer from the date of acceptance by ICBF of the Customer's offer in accordance with condition 2.2

3.2 The Services supplied under the Contract shall be supplied for the term of the Contract unless the Contract is terminated in accordance with condition 12.

**4. ICBF'S OBLIGATIONS**

- 4.1 ICBF shall use reasonable endeavours to provide the Services, and to deliver the Deliverables (where appropriate) to the Customer, in accordance in all material respects with the Contract.
- 4.2 ICBF shall use reasonable endeavours to meet any performance dates specified in the Contract, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.3 ICBF shall use all reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises and that have been communicated to it under condition 5.1(e), provided that it shall not be liable under the Contract if, as a result of such observance, it is in breach of any of its obligations under the Contract.

**5. CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer shall:
- (a) co-operate with ICBF in all matters relating to the Services;
  - (b) provide, for ICBF, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's premises, lands, data and other facilities as requested by ICBF;
  - (c) provide, in a timely manner, such In-put Material and other information as ICBF may request and ensure that it is accurate in all material respects;
  - (d) be responsible (at its own cost) for preparing and maintaining the relevant premises, facilities and livestock for the supply of the Services, including identifying, monitoring and where appropriate removing and disposing of any hazardous materials or livestock from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing ICBF of all of its obligations and actions under this condition 5.1(d);
  - (e) inform ICBF, prior to ICBF entering the premises of all health and safety rules and regulations and any other reasonable health, safety and security requirements that apply at any of the Customer's premises;
  - (f) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used and conforms to all relevant Irish and European standards or requirements;

- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of ICBF's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to ICBF's Equipment in all cases before the date on which the Services are to start;
  - (h) keep, maintain and insure ICBF's Equipment in good condition and in accordance with ICBF's instructions as notified from time to time and not dispose of or use ICBF's Equipment other than in accordance with ICBF's written instructions or authorisation.
- 5.2 If ICBF's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, ICBF shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.
- 5.3 The Customer shall be liable to pay to ICBF, on demand, all reasonable costs, charges or losses sustained or incurred by ICBF (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to ICBF confirming such costs, charges and losses to the Customer in writing.

## **6. CHANGE OF SERVICES**

- 6.1 ICBF may, from time to time, without notice, change the Services in order to comply with any applicable safety or statutory requirements and/or provided that such changes do not materially affect the nature or quality of the Services, change the Services for other operational reasons after giving the Customer notice of any such changes.

## **7. CHARGES AND PAYMENT**

- 7.1 The price for the Services shall be the amount set out in the Customer's Application and shall be paid to ICBF (without deduction or set-off) as provided for in the Customer's Application. ICBF shall invoice the Customer for the charges that are payable, together with expenses, other costs and VAT, where appropriate.
- 7.2 Unless the Customer's Application provides otherwise (in which case the relevant provisions of the Customer's Application shall apply), the Customer

shall pay each invoice submitted to it by ICBF, in full and in cleared funds, within 30 days of receipt.

- 7.3 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay ICBF on the due date, ICBF may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of AIB Bank accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.
  - (b) suspend all Services until payment has been made in full.
- 7.4 All sums payable to ICBF under the Contract shall become due immediately on its termination, despite any other provision. This condition 7.4 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 7.5 ICBF may, without prejudice to any other rights it may have, set off any liability of the Customer to ICBF against any liability of ICBF to the Customer.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 As between the Customer and ICBF, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by ICBF. Subject to condition 8.2, ICBF licences such rights as are relevant to the Contract to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Contract is terminated this licence will automatically terminate.
- 8.2 The Customer acknowledges that, where ICBF does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on ICBF obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle ICBF to license such rights to the Customer.

## **9. CONFIDENTIALITY AND ICBF'S PROPERTY**

- 9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes, data or initiatives which are of a confidential nature and have been disclosed to the Customer by ICBF, its employees, agents or sub-contractors and any other confidential information concerning ICBF's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of

its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to ICBF, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 All materials, equipment and tools, drawings, specifications and data supplied by ICBF to the Customer (including Pre-existing Materials and ICBF's Equipment) shall, at all times, be and remain the exclusive property of ICBF, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to ICBF, and shall not be disposed of or used other than in accordance with ICBF's written instructions or authorisation.

9.3 This condition 9 shall survive termination of the Contract, however arising.

**10. LIMITATION OF LIABILITY (*THE CUSTOMER SHOULD SPECIFICALLY NOTE THESE PROVISIONS*)**

10.1 This condition 10 sets out the entire financial liability of ICBF (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions limits or excludes the liability of ICBF:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred as a result of fraud or fraudulent misrepresentation by ICBF; or
- (c) for any liability incurred by the Customer as a result of any breach by ICBF of the Sale of Goods and Supply of Services Act 1980.

10.4 Subject to condition 10.2 and condition 10.3

- (a) ICBF shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:

- (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill and/or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss of corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) ICBF's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

**11. DATA PROTECTION**

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data relating to the Customer will be processed by and on behalf of ICBF.

**12. TERMINATION**

12.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the other party; or
- (c) an order is made for the appointment of an examiner in relation to the other party; or
- (d) a receiver is appointed of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager



of the other party, or if any other person takes possession of or sells the other party's assets; or

- (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) the other party ceases, or threatens to cease, to trade; or
- (g) there is a change of control of the other party; or
- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

12.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to ICBF all of ICBF's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, ICBF may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, forthwith return all of ICBF's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then ICBF may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

**13. FORCE MAJEURE**

ICBF shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of ICBF or Customer or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, disease, storm or default of suppliers or sub-contractors.

**14. VARIATION**

Subject to condition 6, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

**15. WAIVER**

- 15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

**16. SEVERANCE**

- 16.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.
- 16.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.
- 16.3 The parties agree, in the circumstances referred to in condition 16.1 and if condition 16.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of the Contract shall be suspended while an attempt at such substitution is made.

**17. STATUS OF PRE-CONTRACTUAL STATEMENTS**

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

**18. ASSIGNMENT**

- 18.1 The Customer shall not, without the prior written consent of ICBF, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 18.2 ICBF may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

**19. NO PARTNERSHIP OR AGENCY**

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

**20. RIGHTS OF THIRD PARTIES**

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

**21. NOTICES**

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or registered post. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or registered post, 48 hours from the date of posting and, if deemed receipt under this condition 21 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.

**22. GOVERNING LAW AND JURISDICTION**

22.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of Ireland.

22.2 The parties irrevocably agree that the courts of Ireland shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.