

# PURCHASE AGREEMENT (DRAFT)

THIS PURCHASE AGREEMENT (the "**Agreement**") is made this March \_\_\_\_\_, 2023 by and between Winrock International, \_\_\_\_\_, United States of America (the "**Seller**") on the one part and \_\_\_\_\_ (the "**Buyer**"). Each of Seller and Buyer are sometimes referred to herein individually as a "Party" and collectively they are sometimes referred to as the "**Parties**."

## Recitals:

a. Seller has entered into a Master Agreement with the Government of the United States ("**USG**") for the Supply of Agricultural Commodities under Food for Progress Act of 1985 (the "**Master Agreement**"), pursuant to which the USG, acting through the Commodity Credit Corporation, has agreed to provide 35,000 (+/-15%) metric tons of soybean meal (the "**Commodities**") to Seller for sale into Thailand.

b. Seller has engaged Cantera Partners, LLC ("**Cantera**"), acting as an independent contractor, and not agent, to assist in arranging for the sale of the Commodities to one or more buyers for Thailand on terms consistent with the Master Agreement.

**NOW, THEREFORE**, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. The Purchased Commodities.** Subject to the terms and conditions of this Agreement, Buyer agrees to purchase from Seller, and Seller agrees to sell and arrange to deliver to Buyer, \_\_\_\_\_ (+/- 15%) metric tons of U.S. origin soybean meal (the "**Purchased Commodities**"). Seller shall have the option of shipping 15 per cent more or less than the specified quantity, at the contract price per metric ton (total payment due will be adjusted according to the final bill of lading, either higher or lower).

The Purchased Commodities have been represented by USDA to the Seller to conform to the following specifications:

USA Soybean Meal in bulk as defined in standard specifications of the National Oilseeds Processing Association (NOPA) trading rules per the latest revision of October 2012.

Protein of 46.5 percent; Moisture 12.5 percent; Fat minimum 0.5 percent; Fiber maximum 4.0 percent; in bulk.

Quality discounts for protein level below 46.5 %, but not less than 45.5 %, 1 :1 ratio down to 45.5 %.

Quality Discounts for moisture above 12.5 %, but not to exceed 13.0 % (1 :1 ratio).

All claims to be settled on analysis rounded to the nearest tenth of a percent. Fives (5s) are rounded up.

Conformity of the SBM with the above specifications will be determined by INDEPENDENT LABORATORY ANALYSIS Inspection at loading, as provided below.

**2. Purchase Price.** The Purchase Price to be paid by Buyer to Seller for the Purchased Commodities is USD \_\_\_\_\_ per metric ton [in words: \_\_\_\_\_ United States Dollars per metric ton] for a total Purchase Price of USD \_\_\_\_\_ [in words: \_\_\_\_\_ United States Dollars] Cost & Freight (CFR per Incoterms 2010) Free Out 1SB 1SP ports at Thailand port. The Purchase Price includes the cost of freight by a carrier designated by Seller to the port of discharge.

The Purchase Price shall not include, and Buyer shall be responsible for, any and all formalities, customs, duties, import costs, taxes, levies, consular fees, surcharges, licenses, certificates, inspections or documentation or other requirements of Thailand for importation of the Purchased Commodities into Thailand or otherwise; and all other costs and expenses relating to importation, discharge, stevedoring, handling, marshaling, terminal charges, demurrage, detention, shall be at Buyer's sole expense and risk.

### **3. Payment:**

(a) Immediately after signing the purchase agreement, but not later than within five business days in Buyer's country, Buyer pays to Seller ten percent (10%) of the contract value, i.e. USD \_\_\_\_\_ [in words: \_\_\_\_\_ United States Dollars], in cash by a bank transfer (wire) to Seller-designated bank account in the US. If the purchase agreement would have to be cancelled, this down payment will be immediately (within five days) returned to Buyer by the Seller.

(b) Within ten business days after signing the Purchase Agreement, but not later than the end of business on \_\_\_\_\_, 2023, Buyer agrees to establish an irrevocable letter of credit (the "Letter of Credit"), which shall:

(i) be in favor of the Seller;

(ii) be in English;

(iii) be in U.S. dollars

(iv) be for ninety (90%) contract value

(v) be payable at sight upon presentation of the Documents (defined below);

(vi) be valid for not less than 120 days and shall allow for extensions, if the shipment extends beyond 120 days;

(vii) permit partial deliveries and pro rata payments;

(viii) be issued by a mutually agreed first-class bank (the "**Issuing Bank**") in Thailand or elsewhere, which may, at Seller's option, be confirmed by a confirming bank designated by the Seller (the "**Confirming Bank**")

(ix) allows the Seller to review the draft Letter of Credit before a final version is issued; and

(x) allocate any and all costs associated with the Letter of Credit, including but not limited to, all bank charges, fees, conversion costs, and other associated costs assessed by either the Issuing Bank or the Confirming Bank (the "**Costs**") between the Parties as

follows: (1) Buyer shall be responsible for all Costs incurred by either Party in Thailand, or in another L/C-issuing country or elsewhere by the Issuing and/or Reimbursing bank; and (2) Seller shall be responsible for all Costs incurred in the US by the Confirming Bank.

Subject to the foregoing sentence, the terms of the Letter of Credit shall be on commercially reasonable terms to be agreed upon by the Parties. If Buyer fails to establish the Letter of Credit within 10 business days after the Agreement has been signed, this Agreement becomes voidable at the election of the Seller.

(c) Seller will provide following documents:

**Documents necessary for Letter of Credit payment negotiation:**

- Complete set (3/3) clean on board ocean Bill of Lading marked “Freight Payable as per Governing Charter Party”
- Commercial Invoice in one original and two copies

**Additional Documents:**

- Certificate of Origin
- Weight Certificate issued by USDA/FGIS or its appointed NOPA independent laboratory/inspection company
- Quality Certificate issued by USDA/FGIS or appointed NOPA independent laboratory/inspection company
- Phytosanitary Certificate issued by USDA/APHIS
- Fumigation Certificate

Buyer will waive any and all discrepancies in the above documents that are typographical or clerical errors; or are not prejudicial to the Buyer in relationship to the specifications and or contractual rights, obligations and terms of the Commodity and this Sales Agreement.

**4. Shipment Period.**

Seller and Buyer agree and acknowledge that the Purchased Commodities shall be shipped in one or more shipment(s) of \_\_\_\_\_ metric tons (+/- 15%). Estimated timing from US port for the shipment is May-June 2023, with estimated arrival to ports in Thailand about 25-40 days later. Seller will exert its best efforts to ensure timing and performance. However, shipments are subject to rules and regulation of the U.S. Government procurement and cannot be guaranteed. Seller does not guarantee the timing of delivery to ports in Thailand. Any delay in arrival at the discharge port will not be grounds for a claim by the Buyer against the Seller or any adjustment to the purchase price.

**5. Vessels.**

The performing vessels will be determined as a result of a freight tender procedure. Partial shipments permitted. Performing vessel(s) may be US Flag or non-US flag vessels. Seller shall advise the Buyer of the particulars of the performing vessel(s), including the demurrage/despatch rates, once approval from USDA has been received. Non-US flag vessels must not be older than 15 years and must be classed highest in Lloyd’s Register or its equivalent. There is no age restriction for U.S. flag vessels.

## 6. Delivery.

The sale is Cost and Freight Free Out (CFR, per Incoterms 2010), 1 Safe Port, 1 Safe Berth, or 1 Safe Anchorage, Thailand.

(a) The cargo is to be discharged by the Buyers free of risk and expense to the vessel (Free Out discharge) at the average rate of \_\_\_\_\_ MT of 2204.6 lbs. for Bulk Carriers and \_\_\_\_\_ MT of 2204.6 lbs. for Tween/Multi deckers per weather working days of 24 consecutive hours, Sundays, and holidays excepted, even if used (WWDSHEX EIU) on the basis of the bill of lading quantity. Time from 1700 hours local time Saturday (or on a day preceding a holiday) through 0800 hours local time Monday (or day after holiday) shall not count against laytime, even if used.

(b) Notification of vessel's readiness (NOR) to discharge must be provided to the Buyer/Receiver or its agent within the period of 0900 hours to 1700 hours (local time), Monday through Saturday (except Sundays and Holidays), whether the vessel has been customs cleared or not (WCCON); whether vessel has been granted Free Pratique or not (WIFPON); whether the vessel is in port or not (WIPON), whether the vessel is in berth or not (WIBON). Laytime to commence at 0800 hours on the next working day after the NOR has been tendered, WCCON, WIFPON, WIPON, WIBON. At the vessel's option the NOR may be tendered in writing by cable, telex, facsimile or email. Furthermore, at the Vessel's option, the NOR may be tendered if the vessel is at anchorage waiting for a berth. Waiting time (inside or outside commercial port limits) for anchorage or berth will count as laytime. Laydays will commence at 0800 AM (local time) on the next working day after the NOR has been tendered, WCCON, WIFPON, WIPON, WIBON. All time and expenses used in the Vessel shifting from one anchorage or berth or place of cargo operations to another are for the Buyer's account and will count as laytime, even if such Vessel shifting was ordered by the relevant authority at the discharge port.

(c) Owners are responsible for vessel arriving at the discharge port within allowable draft. Lightening is permitted. Lightening (if applicable) must be performed in the territorial waters of the country of the discharge port. Lightening daughter vessel must be single deck bulk carriers meeting port's vessel restrictions. Vacuators are not permitted. Daughter vessel must be classed highest in Lloyds or equivalent and certified fit for receipt and carriage of bulk cargo under this charter party by first class independent surveyor. If full lightening performed then, each daughter vessel, after completion of lightening operations applicable to that vessel, must tender its Notice of Readiness to discharge to consignees/receivers of their agents during regular business hours (as per (b) above) and laytime shall commence at 0800 hrs on next business day and prior time is not to count as laytime used. Laytime shall not count on daughter vessel(s) waiting for discharge berth while another daughter vessel is occupying the discharge berth. Laytime shall recommence on daughter vessel awaiting discharge berth once the daughter vessel at discharge berth has departed. If partial lightening performed then, after mother vessel has completed lightening operations and reached required safe arrival draft for the discharge port, the mother vessel may tender its Notice of Readiness to discharge to consignees/receivers or their agents during regular business hours (as per (b) above) and laytime shall commence at 0800 hrs on next business day and prior time used is not to count as laytime used.

(d) Laytime calculations and settlement of demurrage and despatch will be directly between Buyer and Vessel Owner. Neither Seller nor USDA will be responsible for settling matters of laytime calculation or settlement of demurrage/despatch. Any disputes in settlement of laytime issues between Buyer and Vessel Owner, to be arbitrated in the State of New York under Society

of Maritime Arbitrators, Inc. Any additional laytime terms shall be as per the governing Charter Party.

(e) Prior to calling forward commodity, Buyer must provide and guarantee maximum arrival draft, length overall (LOA), vessel width (Beam), airdraft, and any other pertinent restrictions on the vessels at the intended berth(s) or port(s) where the vessel is to discharge. Buyer must provide specific vessel gear requirements to complete the Free Out discharge. The Buyer is fully responsible for any costs incurred by the Seller or vessel for not providing accurate port/berth/vessel restrictions and gear requirements.

(f) Buyer shall arrange, and is responsible for providing all insurance, including marine insurance against cargo loss and damage during the ocean voyage of the Purchased Commodities, for an amount not less than the landed value. Buyer shall furnish Seller with evidence of such insurance coverage prior to any shipment of Purchased Commodities. Buyer is responsible for any claims on loss/shortage reported in the Buyer's hired discharge survey report. The Buyer's marine insurance coverage must include General Average Losses.

(g) Buyer shall appoint and pay stevedores at the discharge port. The Buyer shall nominate the vessel agent at the discharge port, and Owner appoint, at Owner's expense, which is not to exceed usual and customary levels.

**7. Weights and Grades.** Weights and grades (specifications) of the Purchased Commodities will be final at the U.S. load port. Final weights as per the Bill of Lading quantity and USDA's appointed independent laboratory/inspection company's Weight Certificate.

**8. Inspection at Port of Loading.** Quantity, quality, condition, and inspections final at port of loading as per certification from USDA or USDA nominated agency.

Buyer is responsible for setting up, and all costs associated with, the Pre-Shipment Inspection (PSI) or Pre-Verification of Conformity (PVoC), if required, and provide full details to the appointed freight forwarder a minimum of 14 days prior to vessel's Estimated Time of Arrival at load port. If an Electronic Cargo Tracking Note (ECTN) is required by Thailand, the Buyer is fully responsible for the costs to obtain and provide the ECTN.

**9. Transfer of Title and Risk.** Seller shall retain title to the commodities until Seller has been paid in full in accordance with the terms of the Letter of Credit. However, it is acknowledged and agreed that risk of loss and insurance costs shall pass to Buyer upon passing the ship's rail at the U.S. load port, as provided in Section 4 of this Agreement. Any marine insurance to cover specified loss or damage during the ocean voyage of the commodities shall be at buyer's sole responsibility and cost, including without limitation the cost of the Seller Endorsement.

**10. Importation/Prohibition on Re-Exportation.** Buyer shall be solely responsible for clearing the Purchased Commodities through customs in Thailand and shall obtain on a timely basis and maintain any required import license or any other Thailand governmental authorization required of it for the contemplated transactions. All shipments hereunder shall at all times be subject to the export control laws and regulations of the United States and any amendments thereto.

Buyer agrees that it shall not make any disposition of the Purchased Commodities by way of trans-shipment, re-export, diversion or otherwise, or knowingly permit any purchaser, user or distributor to re-export any of the Purchased Commodities outside of Thailand.

**11. Warranties.** EXCEPT AS SET FORTH IN SECTION 1 OF THIS AGREEMENT, SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE, REGARDING THE PURCHASED COMMODITIES, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF FITNESS FOR ANY PURPOSE, QUALITY, MERCHANTABILITY OR OTHERWISE. TO THE EXTENT PERMITTED BY APPLICABLE LAW, ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY THE PARTIES.

**12. Limitation of Liability; Indemnity.** In no event shall Seller be liable for consequential, special, indirect, incidental, punitive or exemplary loss, damage (including without limitation lost profits) or expense relating to this Agreement or the transactions contemplated herein, regardless of whether buyer has been apprised of the likelihood of such damages occurring. The provisions of this Section 10 shall apply to the fullest extent of the law, whether in contract, statute, tort (such as negligence) or otherwise. Buyer shall indemnify and hold harmless (including by way of reimbursement) Seller and its Representatives, from and against any and all claims, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of, or related to, Buyer's importation, distribution, sale or use of the Purchased Commodities or any negligent or willful act or omission in connection therewith by Buyer. Seller's total liability on any and all claims under this Agreement shall not exceed the Purchase Price. As used herein, "**Representatives**" shall mean a Party's Affiliates (defined herein) and its and its Affiliates' respective directors, officers, employees, agents, and advisors (including its and its Affiliates' advisors, attorneys, accountants, and other consultants). For purposes of clarity, Cantera shall be deemed a Representative of Seller. As used herein, "**Affiliate**" means, with respect to a specified entity, (i) any entity directly or indirectly controlling, controlled by or under common control with the specified entity, or (ii) any entity owning or controlling 10% or more of the outstanding voting securities or beneficial interests of the specified entity. As used herein "**control**" (including the terms "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. The provisions of this Section 10 shall survive termination of this Agreement to the extent required to give them their proper and intended effect.

**13. Force Majeure.** Seller shall not be liable for delays in delivery or failure to perform due directly or indirectly to (i) causes beyond Seller's reasonable control; (ii) acts of God/force majeure, act (including failure to act) of any governmental authority (de jure or de facto), wars (declared or undeclared), governmental priorities, port congestion, riots, revolutions, strikes or other labor disputes, fires, floods, sabotage, nuclear incidents, earthquakes, storms, epidemics; or (iii) inability due to Buyer's failure to obtain governmental authorizations or instructions, material or information required from Buyer under this Agreement.

**14. Termination.** This Agreement may be terminated as follows:

i. by either Party, if the other Party commits any material breach of this Agreement (other than nonpayment by Buyer which shall be governed by Section 10 and, in the case of a material breach capable of being remedied, does not remedy the same

within thirty (30) days after the receipt of notice in writing from the other party requiring it so to do;

ii. by Seller, immediately if Buyer defaults in the payment of any sum due from Buyer to Seller under this Agreement; or

iii. by Seller if the Master Agreement with USG shall be terminated for any reason.

The termination of this Agreement shall not operate to discharge any liability that had been incurred by either Party prior to any such termination. In the event, Seller terminates this Agreement pursuant to clause iii above, Seller shall have no liability whatsoever to Buyer. Each Party acknowledges and agrees that any failure on the part of the other Party to enforce at any time, or for any period of time, any of the provisions of the Agreement shall not be deemed or construed to be a waiver of such provisions or of the right of such other Party thereafter to enforce each and every such provision.

Seller agrees that in the case of Termination of this Agreement, Seller will send back to the Buyer the 10% downpayment already paid by the Buyer, by bank transfer within five business days after the date at which the Agreement has been terminated.

**15. Relationship of Parties.** The Parties are independent contractors. Nothing in this Agreement or in the activities contemplated by the Parties shall be deemed to create an agency, partnership, employment, or joint venture relationship between the Parties or any of their representatives.

**16. Anticorruption.**

(a) Neither Party shall through any of its members, managers, officers, employees, agents, affiliates or representatives pay, promise or offer to pay, or authorize the payment of (or enter into any agreement whereby the same may or will at any time thereafter be paid) any commission, bribe, pay off, or kick back that violates the Foreign Corrupt Practices Act of 1977 of the United States, as amended, if applicable, or any similar law of Cambodia, if applicable, directly or indirectly in connection with the performance of this Agreement.

(b) Buyer represents and warrants that neither it nor any of its Affiliates is the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority (collectively, "**Sanctions**"), nor is Buyer or any of its Affiliates located, organized or resident in any country or territory that is the subject of Sanctions. Buyer represents and warrants that neither it nor any of its Affiliates will use this Agreement to fund or engage in any activities with any individual or entity ("**Person**") or in any country or territory, that, at the time of such funding or activity, is the subject of Sanctions, or in any other manner that will result in a violation by any Person of Sanctions.

(c) Each Party shall indemnify and hold harmless the other Party and each of its Affiliates in connection with any losses, claims, damages, liabilities or other expenses to which such indemnified person may be subject arising out of or relating to violations of the covenants set forth in this Section 14. The provisions of this Section 14 shall survive termination of this Agreement to the extent required to give them their proper and intended effect.

**17. Miscellaneous.**

(a) This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement (and its exhibits) contains the entire agreement between the Parties concerning the subject matter hereof and supersedes all previous agreements, written or oral, relating to the subject matter hereof. This Agreement may be modified or waived only by a separate writing between the Parties expressly so modifying or waiving such agreements. No failure or delay by either Party in exercising any right, power or privilege shall operate as a waiver thereof, nor will a partial exercise of any right, power or privilege precludes any other or further exercise thereof. If and to the extent that any provision of this Agreement is determined to be in whole or in part invalid or unenforceable, such provision or part thereof shall be deemed to be surplusage and, to the extent not so determined to be invalid or unenforceable, each remaining provision hereof shall remain in full force and effect. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute the same agreement.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri, U.S.A., and Incoterms 2010, without regard to the United Nations Convention on the International Sale of Goods. As used in this Agreement, “**Incoterms 2010**” means that the “Incoterms 2010” standard trade definitions, as devised and published by the International Chamber of Commerce, and will govern the Parties’ respective rights and obligations with respect to the shipment of the goods, except to the extent (and only to the extent) that they conflict with an express provision of this Agreement in which case the express provisions of this Agreement shall govern. All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. Judgment may be entered on the award by any court of competent jurisdiction. Each of the Parties hereby irrevocably waives any present or future objection to any such venue, and irrevocably consents and submits unconditionally to the non-exclusive jurisdiction for itself and in respect of any of its property of any such arbitration court for claims brought pursuant to this Agreement. Arbitral awards shall be rendered within nine (9) months of the commencement of the arbitration unless such time limit is extended by the arbitrator. Consistent with the expedited nature of arbitration, pre-hearing information exchange shall be limited to the reasonable production of relevant, non-privileged documents explicitly referred to by a Party for the purpose of supporting relevant facts presented in its case, carried out expeditiously. The place of the arbitration shall be the District of Columbia. The language of the arbitration shall be English. The fees for arbitration shall be borne by the losing Party unless otherwise awarded by the arbitrator.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first referenced herein.

\_\_\_\_\_ (SELLER)

\_\_\_\_\_ (BUYER)

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name:

Name:

Title:

Title: