



# CULTIVATING A NEW ASPIRATION

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# PAAMA

## OEM Supply Agreement

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PAAMA Agrico Pvt. Ltd.



# OEM Supply Agreement

between

PAAMA Agrico Pvt Ltd

&

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(here in after referred to as the SUPPLIER)



## **Preamble**

PAPL has approached THE SUPPLIER for the supply of ..... products for use in its ..... machines. The SUPPLIER represented that it has all the requisite approvals and licenses to manufacture and supply such products. Acting on the representation made by SUPPLIER and various discussions, both the parties mutually sign the Contract for the supply of ..... at the terms and conditions detailed herein below:

### **1 Scope of the Agreement**

Under this Agreement and its terms and conditions, THE SUPPLIER shall supply ..... products for the use in the combine harvester machine, model (track/wheel) as per the description provided in **Annexure-1**. The relevant drawings with specifications regarding material, workmanship, model, quality parameters, etc., will be issued from time to time. . Addition or deletion of products, if required to be done during the term of Agreement, in the scope of agreement will be done by way of addendum.

### **2 Term**

This Agreement commences from the date of signing of this Agreement and unless terminated earlier or extended in accordance with the clauses detailed later in this Agreement, will end on the Expiry Date which is .....

### **3 Extension of term**

PAPL may elect, by notice in writing to the Supplier not later than three months prior to the expiry of the current Term, to extend the Term of this Agreement for one or more further periods at same or such amended terms and conditions as may be mutually decided by the parties.

### **4 Price for the Product(s)**

- (a) The Unit Price for each of the Products is set out in **Annexure 2. (Price Contract)**
- (b) Except as expressly provided otherwise in this Agreement or any Purchase order, the Unit Prices for the Products include, but not limited to all packaging, transport, insurance, loading, unloading and storage costs, up to the point of delivery of the Products, including unloading of the Products at the Delivery Point.

## 5 Specifications of product(s)

- (a) The Products supplied under this Agreement must comply in all respects with the Specifications including quality, material, labour, etc. as detailed in **Annexure 1**  
(Drawing & specification sheet)
- (b)
  - (i) In case of proprietary products, without limitation to anything else in the Specifications, the products supplied under this Agreement must Comprise the most recent model or version of the relevant products that is available at the time of supply.
  - (ii) In case of products manufactured as per designs made available by PAPL, the SUPPLIER must refer to the latest drawings provided by PAPL.

## 6 Request for Products

### 6.1 **Submission of requirements to the Supplier**

- (a) PAPL, shall provide the schedule of requirement of products in 3<sup>rd</sup> week of previous quarter for the next quarter.
- (b) At the time of presentation, confirmed requirement shall be communicated for the 1<sup>st</sup> month of the quarter and tentative requirement for second and third month. The variation for second and third month will not be more than 80% and 60% for second and third month respectively.
- (c) The supplier shall plan his production schedule accordingly.
- (d) The supplier is strictly required to stick to the requirements forwarded. The excess and short supply of products shall not be accepted.

### 6.2 **Issuance of demand for products (Schedule line) to supplier**

- (a) During the Term, the Authorised Representative of PAPL shall request the Supplier to supply Products. The requirement of the parts & the schedule of delivery via mail from time to time
- (b) Every such requirement submitted must, as a minimum, specify the following details:
  - (i) The identity of the PAPL and the order number;
  - (ii) Supplier code
  - (iii) The required Products (including the quantity of each item required);
  - (iv) The Time for Delivery

#### **In case of variation in budgeted numbers and actual demand more than variation mentioned above**

In case of variation is more than 80% and 60% for second and third month: In such cases, the situation shall be mutually understood and recourse will be decided accordingly.



### 6.3 Inconsistency

Where there is any inconsistency between the provisions of this Agreement and any Purchase order/Price Contract, the provisions of this Agreement will prevail to the extent of that inconsistency.

## 7 Delivery

The products are per scheduled plan to be delivered by the Supplier at any of following locations as per the requirement of PAPL and communicated by Price contract/Purchase order:

- (i) PAPL's plant situated in Bangalore,
- (ii) Or any other place as may be communicated by PAPL.

### Order acknowledgment & dispatch plan

The supplier upon receipt of scheduled requirement to do the following:

- (i) Acknowledge the order the same day by email.
- (ii) In next two working days supplier will confirm the dispatch plan via e mail. However non receipt of such confirmations will be treated as suppliers consent to stick to the schedules time line & quantities given by PAPL.
- (iii) Deviation after two working days will not be entertained by PAPL & schedule given by PAPL becomes the base for calculating the delivery performance.

The Supplier must deliver the Products to the Delivery Point at the Time for Delivery, or by such other date and time as is agreed in writing between the PAPL and the Supplier.

(iv) Delivery will not be taken to have occurred unless and until the delivery is acknowledged in writing by the Authorised Representative of PAPL.

(v) PDI of each batch/Lot as per jointly agreed quality Plan

### Delivery Reliability

On 1<sup>st</sup> week of every month PAPL will share the delivery & quality related performance report of last 2 months & One year.

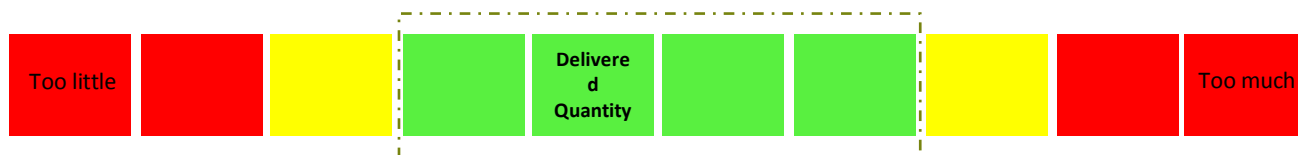
### Basis of calculating date reliability

>6 days	>5 days <= 6 days	>2 days <= 5 days	> 0 days <= 2 days	0 days	>0 days <= 1 days	>1 days <= 4 days	> 4 days <= 5 days	>5 days
1	40	60	80	100	60	50	40	1



### Basis of calculating quantity reliability

> 14.99 %	11 – 14.99 %	6 – 10.99 %	1 – 5.99 %	0 – 0.99 %	0 – 4.99 %	5 – 9.99 %	10 – 14.99 %	15 – 19.99 %	> 19.99 %
1	40	60	80	100	100	80	60	40	1



Delivery reliability is 60% of Date reliability & 40% of quantity reliability

Net minimum acceptable level is 80%. In case the acceptance level is lower than 80%, the supplier shall present detailed corrective action plan for next month within 7 days of receipt of report from PAPL.

**Late Delivery**

**Suspected Late Delivery of products**

In case where supplier suspects that there could be delay in supply of products, following actions to be taken :

1. Supplier to write an application immediately upon becoming aware of such delay, requesting an extension of time for delivery of the relevant Products.
2. The request must set out in reasonable detail the circumstances giving rise to such delay, and the likely length of such delay (and provide such other information as the PAPL may reasonably request).
3. PAPL may agree to extend the Time for Delivery of the Products if, in the reasonable opinion of the PAPL, the circumstances giving rise to the delay are legitimate and warrant an extension of time for completion of the relevant Purchase order. The PAPL will promptly notify the Supplier in writing of any agreed revised Time for Delivery.

**Penalty Clause**

If the Supplier fails to deliver any Products ordered in accordance with **clause 6** by the Time for Delivery (or any revised Time for Delivery agreed pursuant to Later delivery **clause**, such failure or delay will constitute a breach by the Supplier of the relevant Purchase order and the

relevant PAPL may take either of following recourse:

A) Require the Supplier to pay to the PAPL liquidated damages at the rate stated below

Time	Delivery Rating >80%	Delivery Rating >50% but < 80%	Delivery Rating < 50%
1 <sup>st</sup> Month from Agreement	Nil	Nil	Nil
2 <sup>nd</sup> Month of Agreement	Nil	2.5% of the value of the goods ordered in that month	5% of the value of the goods ordered in that month
3 <sup>rd</sup> month of Agreement 7 Onwards	Nil	5% of the value of the goods ordered in that	10% of the value of the goods ordered



		month	in that month
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- B) Terminate the relevant Purchase order.
- C) Any other action as may be decided by PAPL.

## 8 Invoicing and payment

### Invoicing

- (a) The invoicing and payment terms shall be as per the Price contract/Purchase order.
- (b) If the Authorised Representative of the PAPL disputes the invoiced amount (whether in whole or in part) the PAPL must pay the undisputed amount of such invoice (if any), and notify the Supplier of the amount the PAPL believes is due for payment. If PAPL and the Supplier are unable to agree on the balance of the invoiced amount, the dispute will be referred for determination in accordance with this Agreement.
- (c) Payment shall be subject to TDS and all taxes in force.
- (d) Payment of an invoice is **not** to be taken as:
  - (A) Evidence or an admission that the Products have been supplied in accordance with the Specification;
  - (B) Evidence of the value of the Products supplied;
  - (C) An admission that the Products were satisfactorily supplied;
  - (D) An admission of liability; or
  - (E) Acceptance or approval of the Supplier's performance, but must be taken only as payment on account.

## 2 Non-conforming Products-Issues related to Quality, material, etc.

Without limiting any other clause of this Agreement or any other remedy that the PAPL may have, if Products supplied pursuant to a Purchase order do not meet or exceed the standards required under this Agreement (including the Specifications), either upon delivery or at any time during their agreed useful life under warranty agreement the PAPL will not be required to pay for those Products (**Non-conforming Products**) and the Supplier must, at the Suppliers' cost, if PAPL requires it to do so, promptly remove those Non-conforming Products from PAPL's premises, and at the election of the PAPL, either:



- (a) Replace the Non-conforming Products with Products that do meet the relevant standards and Specifications or rework, at its cost, (if agreed and approved by PAPL) on the products which are acceptable to the PAPL
- (b) In case rework is not possible or agreed/approved by PAPL, the supplier will refund to the PAPL all money paid in respect of the Non-Conforming Products or replace the non-confirming products. The Supplier should ensure to scrap/destroy the non-confirming material so that the same non confirming products are not supplied to PAPL in future.
- (c) Submit Root cause analysis report within 7 Days of reporting by PAPL.
- (d) Submit the Containment Action within 2days of reporting by PAPL.

PAPL should ensure to report to Supplier about non confirming parts to the Supplier within 3 months of receipt of products.

### **3 Contract management**

#### **3.1 Responsibility Chart**

- (a) The parties will, promptly following the entry into this Agreement, prepare a Responsibility Chart identifying the key tasks and obligations under this Agreement, and the party responsible for completing or otherwise performing the relevant task or obligation.
- (b) To assist with the management and successful implementation of the tasks and obligations contained in this Agreement, the parties agree to regularly review and update the Responsibility Chart throughout the Term.
- (c) This clause sets out the intentions of the parties with respect to its subject matter but does not create any binding obligations on the other parties.

#### **3.2 “Value adding” initiatives**

- (a) The parties agree that they will, to the extent that it is commercially feasible to do so, work together for optimization of resources available during the Term to identify and implement new measures or initiatives for mutual value enhancement in connection with the supply of Products under this Agreement. The benefit of cost optimization to be shared by the Service provider with PAPL. The measures include the following:
  - (i) Identification of efficiencies in the supply chain;
  - (ii) Implementation of any applicable technological improvements; and
  - (iii) Utilisation of any applicable industry-wide productivity gains,  
With a view to achieving year on year improvements in value for both parties.
- (b) Without limitation to the obligations of the parties if, at any time during the Term, the Unit Prices:
  - (i) Are not commercially competitive; or



- (ii) Are not as favourable as those offered to other PAPLs of products that are equivalent or similar to the Products

Then the Supplier must promptly notify PAPL of that fact, detailing the reasons why that is the case. Promptly following such notification, the parties will meet to discuss those matters, with a view to identifying what (if any) steps the parties could take to ensure that the Unit Prices applicable to the provision of the Products are commercially competitive in the manner.

## **4 Price review**

- (a) If the Supplier wishes to propose any change in the Unit Prices of the Products, the same shall be governed by the market forces. The Price will be worked upon in case where the change is +/-5%.
- (b) PAPL and the Supplier will discuss in good faith any changes to the Unit Prices proposed. However PAPL will be under no obligation to agree to any such proposed change. If the parties do agree to a change in the Unit Prices of the Products, such agreement must be in writing, and will take effect from the date of signing of Addendum/Supplementary Agreement.

## **5 Access to records**

### **5.1 Supplier to retain records**

The Supplier must, for a period of seven years after the Expiry Date (or, if the Agreement is extended in accordance with **clause 3**, Five years after the date on which such extension of the term concludes) keep true and particular accounts and records of:

- (a) All Products supplied under this Agreement and any Purchase order; and
- (b) All associated records including:
  - (i) Records of purchase of Products by the Supplier; and
  - (ii) All supporting materials used to generate and substantiate invoices submitted in respect of Products supplied under this Agreement.

### **5.2 Right to access and audit**

- (a) PAPL or its duly authorised representatives will have the right, after giving reasonable notice at any time during business hours, to inspect and/or audit the quality & production systems, accounts and records of the Supplier relating to the supply of Products, and of all other matters relevant to the calculation of the Unit Price and the Purchase Price. Such representatives will be entitled to take copies of or extracts from any such records.
- (b) The right of access and audit (Finance, Quality & Process audit) may be exercised by PAPL at any time during the Term or in the seven year period following the expiry of the Term.

## **6 Conflict of interest**

- (a) The Supplier warrants to PAPL that it does not, and will ensure that its employees, agents and contractors do not, hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are or might be created in conflict with or might appear to be created in conflict with their duties and interest under this Agreement.
- (b) The Supplier must promptly inform PAPL of any matter which may give rise to an actual or potential conflict of interest at any time during the Term.
- (c) The Supplier acknowledges and agrees that failure to comply with this provisions of this Agreement will constitute a breach of a fundamental term of this Agreement.

## **7 Change in Control**

The Supplier must notify PAPL in writing of any proposed or impending change in Control of the Supplier (or of the ultimate holding company of the Supplier) of which it becomes aware and obtain PAPL's prior written consent to such change in Control.

## **8 Termination**

Agreement may be terminated by parties, at convenience, by giving 3 months' notice in writing.

### **8.1 PAPL can terminate the Agreement by giving one month notice in writing in following circumstances:**

PAPL may terminate this Agreement and any or all Purchase orders by notice in writing to the Supplier if:

- (a) The Supplier in the opinion of PAPL consistently fails to supply the Products in accordance with the Specifications or otherwise in accordance with the requirements of this Agreement;
- (b) The Supplier fails to remedy, to the satisfaction of PAPL, any breach of this Agreement (which in the reasonable opinion of PAPL is able to be remedied);
- (c) The Supplier breaches any material provision of this Agreement and in the reasonable opinion of PAPL such breach cannot be remedied;
- (d) The Supplier or any of its employees, agents or sub-contractors are guilty of fraud, dishonesty or any other serious misconduct in relation to this Supply Agreement
- (e) During the Term there is a change in governmental policy that affects PAPL's ability to perform its obligations under this Agreement or which, in the reasonable opinion of PAPL, has the effect of making the supply of Products under this Agreement unviable,
- (f) If the Supplier:



- (i) being a partnership, company or other composite body undergoes a change in its structure which, in the reasonable opinion of PAPL, limits the capacity of the Supplier to supply the Products or otherwise preclude or adversely affect the Supplier's ability to carry out its obligations and duties under this Agreement or under a Purchase order; or
- (ii) goes into liquidation or a receiver and manager or mortgagee's or charge's agent is appointed or becomes subject to any form of insolvency administration or arrangement, or in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors.

## **8.2 Grounds for termination by the Supplier by giving one month notice in writing**

The Supplier may immediately terminate any Purchase order by notice in writing to the relevant PAPL (with a copy to the Category Manager) if:

- (a) PAPL fails to remedy, to the satisfaction of the Supplier, any breach of this Agreement (which in the reasonable opinion of the Supplier is able to be remedied); or
- (b) The PAPL breaches any material provision of this Agreement and in the reasonable opinion of the Supplier such breach cannot be remedied.

## **8.3 Consequences of termination or expiry**

- (a) Termination or expiry of this Agreement will not prejudice any right of action or remedy which may have accrued to either party prior to termination or expiry (as the case may be).
- (b) Upon termination or expiry of this Agreement, the supplier must finish the orders placed till the date of issuance of termination notice and PAPL must pay to the Supplier all amounts owing in respect of Purchase orders that have been completed but not billed as at the date of termination or expiry (provided that such Products have been supplied in accordance with the Specifications, any applicable performance standards and otherwise in accordance with the terms of this Agreement and the relevant Purchase order).

## **8.4 Transitional assistance**

The Supplier acknowledges and agrees that on termination or expiry of this Agreement the Supplier will provide all such transitional assistance as may be reasonably necessary or requested by PAPL to facilitate the smooth transition of any relevant information, knowledge, systems or assets from the Supplier to PAPL (or to a third party nominated by PAPL) to enable PAPL to continue to obtain the benefit of such information, knowledge, systems or assets for the business purposes of PAPL, following the termination or expiry of this Agreement. PAPL will pay fair compensation to the Supplier in respect of any physical assets which have not been fully amortised by the Supplier and which are required to be provided to PAPL under this **clause 8.4**.

## 9 **Confidentiality and privacy**

The Supplier shall sign separate Non-Disclosure Agreement with PAPL and submit confirmation of compliance of Non-Disclosure Agreement on quarterly basis.

## 10 Non competition clause

The supplier shall not supply the products agreed to be supplied to PAPL by way of signing this Supply Agreement to any other party in same line of business.

## 11 **Disputes**

### 11.1 Parties to meet

If any dispute arises under or in connection with this Agreement or any Purchase order (**Dispute**) which Dispute is not able to be resolved the management level officials will promptly meet and discuss in product faith with a view to resolving such Dispute.

### 11.2 Courts

Under circumstances, the dispute is not resolved, the parties may refer to the Court of appropriate jurisdiction in India.

## 12 **Compliance with Law**

The Supplier must, in performing its obligations under this Agreement and under any Purchase order, comply with all Laws affecting or applicable to the provision of Products by the Supplier.

## 13 **Code of Conduct**

The Supplier shall submit signed copy of the code of Conduct which forms part of this Agreement as **Annexure-3** and adhere to the same.

## 14 **Sub-contracting**

- (a) The Supplier must not sub-contract to any third person any of its obligations under this Agreement or Purchase order without the prior written consent of PAPL, which consent may be given or withheld by PAPL in its absolute discretion.
- (b) The Supplier must ensure that any sub-contractor engaged by it complies with all obligations imposed on the Supplier by this Agreement. The Supplier will not, as a result of any sub-contracting arrangement, be relieved from the performance of any obligation under this Agreement or a Purchase order and will be liable for all acts and omissions of a sub-contractor as though they were the actions of the Supplier itself.
- (c) PAPL reserves the right to inspect the sub-contractor for quality checks.



## 15 Access and safety

### 15.1 Obligations

When the Supplier enters the premises of PAPL, the Supplier must ensure that its employees, agents and sub-contractors use reasonable endeavours to:

- (a) Protect people and property;
- (b) Prevent nuisance and unnecessary noise and disturbance; and
- (c) Act in a safe and lawful manner and comply with the safety standards and policies of the PAPL (as notified to the Supplier).

### 15.2 No occupier's liability

- (a) A PAPL and its officers, employees, agents and invitees will not be responsible for any damage done to the Supplier's property or to that of any of the Supplier's employees, agents or sub-contractors or for any personal injury sustained by any of the Supplier's employees, agents or sub-contractors occurring on the PAPL's premises as a result of:
  - (i) The negligence or recklessness of such employee, agent or sub-contractor; or
  - (ii) If such employee, agent or sub-contractor has failed to comply with the occupational health and safety and security policies of the PAPL (as notified to the Supplier).
- (b) The Supplier unconditionally and irrevocably releases PAPL and its officers, employees, agents and invitees from all such responsibility and agrees to indemnify each PAPL, its officers, employees, agents and invitees (**Indemnified Party**) against any loss that the Indemnified Party may suffer as a result of any third party bringing an action against that Indemnified Party in relation to any such circumstances, except to the extent that such circumstances were caused directly as a result of the Indemnified Party's negligence.

## 16 Notices

### 16.1 Giving a communication

A Purchase Order, notice, demand, certification, process or other communication relating to this Agreement must be in writing in the English language, and may (in addition to any other method permitted by law) be sent by pre-paid post, pre-paid courier or by electronic mail as follows:

Ms. Sandhya Kamisetty	.....
Managing Director	.....
PAAMA Agrico Pvt. Ltd.	.....
E 109, Townsend, Avalahalli	.....
YElahanka	.....
Bangalore 560064	.....

## **17 General**

### **17.1 Amendment**

- (a) This Agreement may only be varied/modified or replaced by an executing Addendum/Supplementary Agreement in writing.
- (b) A Purchase order may only be varied or replaced by a document executed by the relevant PAPL and the Supplier.

### **17.2 Assignment of rights**

A party cannot assign any right under this Agreement with the prior written consent of the other party.

### **17.3 Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

### **17.4 Entire understanding**

- (a) This Agreement, together with:
  - (i) The requirements submitted by PAPL
  - (ii) The offer document submitted by the Supplier; and
  - (iii) Any other documents or representations, contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) Each Purchase order formed pursuant to this Agreement contains the entire understanding between the parties as to the subject matter of that Purchase order.
- (c) Except as otherwise provided in this clause:
  - (i) all previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement or Purchase order (as the case requires) are merged in and superseded by this Agreement or Purchase order (as the case requires) and are of no effect; and
  - (ii) no oral explanation or information provided by any party to another:
    - (A) affects the meaning or interpretation of this Agreement or Purchase order (as the case requires); or
    - (B) constitutes any collateral agreement, warranty or understanding between any of the parties.

### **17.5 Relationship of parties**

This Agreement is not intended to create a partnership, joint venture or agency relationship between the parties. The Agreement is signed on principal to principal basis.

#### **I. ARBITRATION**

In the event of any dispute or difference between the Parties hereto arising out of this agreement, the same shall be referred for resolution to a mutually acceptable arbitrator appointed by both the parties. The arbitration shall be governed by the provisions of The



Arbitration & Conciliation Act, 1996 and the jurisdiction will be Pune. Arbitration proceedings will be conducted in the English language.

**II. INDEMNITY**

The Supplier hereby undertakes to indemnify PAAMA, its directors, employees, representatives and agents against all losses, damages, actions, claims and demands (including the cost of defending or settling any action, claim or demand), suits and other proceedings which may be instituted against the PAAMA arising out of a breach of this Agreement by Supplier or the negligence, misconduct, misuse, misrepresentation, abuse of position, dishonest or criminal behaviour of the Supplier its agents, employees or sub-contractors or of any other person for whose acts or omissions the Supplier is liable or any deficiency in service by Supplier.

**(1) Jurisdiction of Courts**

The Courts at Bangalore shall have the jurisdiction to adjudicate any dispute between the parties under the agreement.

**17.6 Quality Assurance Agreement- As per Annexure**

General Guidelines for Quality as per Annexure 4

Annexure 1- Part list containing part no, drawing no, Description & special specification (if any)

Annexure 2- Price contract

Annexure 3- Code of conduct

Annexure 4- General Guidelines for Quality

**Signatures**

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Place, Date

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PAAMA Agrico Pvt. Ltd.



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Place, Date

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SUPPLIER