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**Research paper for Chapter VI of the Legal Guide on Contract Farming**

***Review on contract duration, termination and renewal clauses***

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## 1. PREFACE

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Alike every other contractual agreement, an agricultural production contract may contain clauses concerning its duration, termination and renewal. Such provisions, which vary greatly depending on the specific case, are generally regarded as essential contract terms that should be closer defined by the parties. This, however, may set forth a number of key problems resulting from the special nature of agricultural production contracts.

The present paper is structured upon the analysis of a selection of clauses regarding duration, termination and renewal found in contract samples from different countries and legal systems. It comprises an overview on how these clauses can be designed as well as on the main issues and difficulties arising under the topic. Special reference will be given to relevant national and international legislation.

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## 2. DURATION OF CONTRACTS

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### 2.1. Introductory remarks

It is highly advisable for the parties to the agreement to clearly specify in the contract when their respective obligations are to begin and to end. In this respect, numerous provisions in national legislation – some of them mandatory – state that the duration of certain agricultural production contracts shall be specifically determined.<sup>1</sup>

However, it might prove to be difficult to settle an exact duration in the specific case.<sup>2</sup> The parties will have to take into account two groups of elements that are particularly relevant for the determination of the contract duration<sup>3</sup>: firstly, the biological cycle<sup>4</sup>, the production cycle and the nature of the goods, and secondly, the parties' financial obligations. The latter are of substantial importance especially in cases where long-term investments are made by the producer in view of a durable relationship, e.g. long-term loans or the purchase of specific equipments.

Duration clauses can be drafted in varied ways, but will usually contain “*from.....to*” or a similar expression:

- *The said agreement shall have duration of \_\_\_\_ months effective from \_\_\_\_ .*  
(Sample contract B20 Trinidad and Tobago)<sup>5</sup>
- *This agreement shall come into force on day/month/year and shall subsist until the day/month/year.* (Sample contract B8 Fiji)
- *This agreement will last for one growing season from the date of signing to the end of the harvesting and delivery of the contracted produce in line with the approved schedule.*  
(Sample contract B9 Grenada)

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<sup>1</sup> Art. 6 (1b) Cataluña law 2/2005 ; Art. 3 (3) Belgian law ; Art.11 (1) Italian law for the regulation of agrifoods markets; Art. 62 (1) Italian law on commercial relationships in the sales of agricultural and agro-food products ; Art. 3 (b) Spanish law 2/2000 ; Art. 6 Addendum on the Indian Contract Farming Agreement ; Art. 49 (3) Panama Agrarian Code ; Art. 9 Moroccan law; Art. L.326-6 French Rural Code; § 5-72 South Carolina Code of Regulations. *For all legislative references see Appendix II.*

<sup>2</sup> Cf. UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works (1987) p. 291.

<sup>3</sup> Cf. Report on First Meeting of the UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming, Rome, 28 – 31 January 2013, p. 15 § 76.

<sup>4</sup> Art. 45, Art. 51 and Art. 74 Panama Agrarian Code.

<sup>5</sup> *For all references to sample contracts see Appendix I.*

- *The period of the agreement is from the day of purchasing seed (..../..../....) up to the day of buying the last part of the crop. (Sample contract B18 Malawi)*

## 2.2. Long-term and short-term contracts

Depending on the case, the contracting parties will choose among the following options:

One is to establish a long contract duration with or without („long-term contract“) a specified ending term. This approach might be adopted when the parties to the contract are more interested in a solid and lasting relationship.<sup>6</sup>

- *The term of the present agreement is undefined and may be rescinded by either party [..]. (Sample contract B4 Brazil)*

The other option is to determine a fixed period of a rather short duration ( „short-term contract“).

- *The agreement will be valid for only six (6) months. (Sample contract B16 Indonesia)*
- *The term of this agreement is 22 months, starting on \_\_\_\_\_ and finishing on \_\_\_\_\_ [...]. (Sample contract B2 Brazil)*

The reasons for choosing one or the other option will mostly depend on the nature of the agricultural product and the parties' willingness to be bound over a long or short period of time. Contracts for short-term crops such as vegetables and field crops are usually concluded and renegotiated on an annual or seasonal basis, whereas crops such as tea, coffee, sugar cane and cocoa require long-term contracts that can be amended periodically.<sup>7</sup> Hog production and marketing contracts are generally stipulated to last for a period of 5 to 12 years.<sup>8</sup>

## 2.3. Maximum and minimum duration under law

In some legislation, agricultural production contracts are subject to minimum duration periods which are very often connected with the production cycle.<sup>9</sup>

On the EU level, principles of fairness in contractual relationships have been introduced in the milk and dairy sector, such as an obligation for purchasers to offer farmers minimum contract duration.<sup>10</sup>

Also, fixed-term contracts may be subject to certain time limits under national legislation. In Belgium for instance, such contracts can, as a rule, be concluded for no more than three years; a longer period will automatically be reduced to the term prescribed by the law.<sup>11</sup> The parties intending to stipulate an agricultural production contract will therefore have to ascertain if any applicable legislative provision provides for restrictions on the contract duration.

<sup>6</sup> Cf. Schauer, M.: „Comments on duration of contract and precautionary measures“, ERA Forum September 2008, Volume 9, Issue 1 Supplement, p. 157.

<sup>7</sup> Cf. Explanatory note from the Addendum on the Indian Contract Farming Agreement and its model specifications; UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming: *A preliminary outline of issues*, Rome, First Meeting 28 – 31 January 2013, p. 38 § 101.

<sup>8</sup> Rehber, E.: „Contract Farming: Theory and Practice“, Icfai University Press (2007). Available at <http://mit.undip.ac.id/ebook/files/079%20%20Contract%20Farming%20Theory%20and%20Practice%20%2007%29.pdf>

<sup>9</sup> Art. 4 (2) Cataluña law 2/2005.

<sup>10</sup> Art. 185f Reg. (EU) No 261/2012. Cf. European Commission, *Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe* (31.1.2013) p.13. Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0037:FIN:EN:PDF> (Last accessed 03.10.2013)

<sup>11</sup> Art. 5 (2) Belgian law.

## 2.4. Production contract and land tenure contract

Another aspect to be mentioned is the relation between the production contract itself and the land lease contract that the producer has possibly entered into.<sup>12</sup> Thereto, some national legislations address this specific matter.

In Moroccan law for instance, the production contract cannot be stipulated for a longer period than the land lease contract.<sup>13</sup> According to the Panama Agrarian code, the duration of the land lease contract shall correspond to the biological cycle of the concerning activity. It is interesting to note that if the parties do not stipulate the exact term of the contract, the law presumes three years as a term for land lease contracts.<sup>14</sup>

## 3. TERMINATION OF CONTRACTS

### 3.1. Definition

„Termination“ refers to the discharge of the contracting parties from the obligation to perform their contractual duties. This may occur automatically, by agreement or on the exercise of a right to terminate.<sup>15</sup> The last mentioned possibility is usually given to one party upon non-performance of the other.<sup>16</sup>

The range of cases covered by this terminus is very wide. The present paper therefore focuses on termination other than for breach, namely as provided by an agreement between the parties, by the exercise of a right to terminate or by expiration of its term.<sup>17</sup>

According to the U.S. Uniform Commercial Code, *“Termination occurs when either party pursuant to a power created by an agreement or law puts an end to the contract otherwise than for its breach.[...]”*<sup>18</sup>. Another definition can be found in the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law (CESL)<sup>19</sup>: *to “terminate a contract” means to bring to an end the rights and obligations of the parties under the contract [...]*.<sup>20</sup>

Various national legal provisions<sup>21</sup> recommend the drafting of termination conditions in the contract, as terms clearly regulating the termination of the agreement provide for more security in contractual relationships.

<sup>12</sup> Cf. UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming: *A preliminary outline of issues*, Rome, First Meeting 28 – 31 January 2013, p. 38 § 101.

<sup>13</sup> Art. 9 Moroccan law.

<sup>14</sup> Art. 51 Panama Agrarian Code.

<sup>15</sup> Furmston, M. P.: „The law of contract“, LexisNexis Butterworths (2003) p. 1317.

<sup>16</sup> Cf. Art. 7.3.1. of the 2010 UNIDROIT Principles of International Commercial Contracts regarding termination out of “fundamental non-performance”.

<sup>17</sup> v.i. Chapter 3.3.

<sup>18</sup> Art. 2 § 2-106 UCC.

<sup>19</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:en:PDF> (Last accessed 27.9.2013)

<sup>20</sup> Art. 8 CESL.

<sup>21</sup> e.g. Art. L.326-6, Art. R.326-1 and Art. L.631-24 French Rural and Fishery Code; Art. 6 (1b) Cataluña law 2/2005.

### 3.2. Conditions

The termination of a contract is usually bound to certain requirements which must be met in order to lawfully end the agreement. Clauses providing for termination that is not bound to any formal requisite are in fact rather rare.<sup>22</sup>

Contract terms on termination generally will establish conditions regarding (a) a specific form and (b) a specific time period that the party intending to terminate the contract must fulfill.<sup>23</sup>

The notice<sup>24</sup> will usually be bound to a written form<sup>25</sup>, for instance registered letter or judicial writ.<sup>26</sup>

- *The said agreement shall be terminated by either party serving three (3) months notice in writing [...]. (Sample contract B20 Trinidad and Tobago)*

As far as the time limit is concerned, provisions in national legislation are very varied. The notice may be given „taking into consideration the production cycle of the activity and the amount of the fulfilled investments“<sup>27</sup>, “within a reasonable period which should be equivalent to a full production and marketing cycle of the produce“<sup>28</sup> or “at least half of the production cycle beforehand“<sup>29</sup>.

Contract terms, on the other hand, will usually provide for a more specific period of time for the notice<sup>30</sup>, which should first and foremost be proportional to the duration of the agreement.

### 3.3. Grounds for termination

Termination of a contract can, among others, be reached through (a) automatic termination, i.e. upon expiration of the established term, (b) mutual consent between the parties, and (c) by means of unilateral or bilateral termination clauses.

#### 3.3.1. Automatic termination

Fixed term contracts may end automatically and without any prior notice on the basis of their stipulated expiration date or the legally prescribed maximum term.<sup>31</sup>

- *[...] At the expiration of the said period, this agreement shall automatically come to an end. (Sample contract B21 Trinidad and Tobago).*
- *This agreement shall be for the crop season 2009/2010 and shall be deemed to have automatically expired after the end of such period. (Sample contract B25 Tanzania)*

#### 3.3.2. Consensual termination

Another way to end a contractual relationship is that of a consensual agreement between the parties<sup>32</sup> by which they release each other from their mutual obligations.<sup>33</sup> Termination may occur

<sup>22</sup> v.i. Chapter 3.3.4.

<sup>23</sup> Cf. Art. 5.1.8. of the 2010 UNIDROIT Principles of International Commercial Contracts.

<sup>24</sup> Cf. Art. 7.3.2. (1) of the 2010 UNIDROIT Principles of International Commercial Contracts.

<sup>25</sup> Cf. Art. 8 (a) Cataluña law 2/2005; Kenya Code of Conduct.

<sup>26</sup> Art. 5 (1) Belgian law.

<sup>27</sup> Art. 4 Brazilian Bill n° 330 of 2011.

<sup>28</sup> Kenya Code of Conduct.

<sup>29</sup> Art. 8 (a) Cataluña law 2/2005.

<sup>30</sup> v.i. Sample clauses in the following Chapter 3.3.3.

<sup>31</sup> Art. 5 (4) Belgian law; Art. 8 (a) Cataluña law 2/2005.

<sup>32</sup> Art. 48 (1) Panama Agrarian code; Art 29 (1) CISG.

under an express agreement or as a result of an implied agreement to terminate the contract.<sup>34</sup> However, clauses dealing with this possibility are rather rare.<sup>35</sup>

### 3.3.3. Bilateral termination clauses

Most contracts contain provisions which allow them to be terminated by one or the other party.<sup>36</sup> So-called bilateral termination clauses entitle both parties to terminate the contract in compliance with certain conditions. They are predominantly found in permanent or long-term contracts<sup>37</sup>, as fixed-term contracts will usually already end upon expiry of their term.

- *The term of this agreement is undefined and may be rescinded by either party, with previous notice of 60 days. (Sample contract B5 Brazil)*
- *The agreement shall be in force till any of the party cancels the agreement.[...] This agreement can be cancelled by either party by giving 30 days advance notice in writing to the other party. (Sample contract B13 India)*
- *This is a permanent contract whereby the Parties to the agreement must adhere to. [...] THE BOARD and FARMER each have the right to terminate the agreement by giving a ninety (90) days written notice and stating the reasons for doing so. [...]*  
(Sample contract B26 Tanzania)
- *The parties agree that either party may terminate the agreement by giving one month written notice to the other party of its intention to terminate.*  
(Sample contract B28 Zambia)<sup>38</sup>
- *Any of the parties can terminate this agreement by informing the concerned party 4 months in advance. (Sample contract B23 Uganda)<sup>39</sup>*

These clauses may be symmetrical or asymmetrical. Symmetrical clauses treat both parties alike, whereas in asymmetrical clauses, a distinction is made between the position of the parties. This different treatment is often based on the parties' respective bargaining power, with the farmer being the weaker party.<sup>40</sup> In order to outweigh such imbalance, termination clauses should equally grant to both parties the right to end the contractual relationship.

Some termination clauses found in long-term contracts will take into account the production year and guarantee a certain minimum contract duration in favour of the farmer:

- *Either the processor or the grower may terminate this contract by giving the other party 24 calendar months' notice provided that such notice may only be given so as to*

<sup>33</sup> Veneziani, B.: „Formation, Modification and Termination of Employment Contracts“, Mohr Siebeck Tübingen / Martinus Nijhoff Publishers (2010), p. 76.

<sup>34</sup> Furmston, M. P.: „The law of contract“, LexisNexis Butterworths (2003), p. 1318 et seq.

<sup>35</sup> Fontaine, M. / De Ly, F.: „Drafting International contracts – an Analysis of contract clauses“, Martinus Nijhoff Publishers (2009), p. 577.

<sup>36</sup> Termination under such provisions can also be treated as „consensual termination“. Cf. Birds, J./ Bradgate, R. / Villiers, C.(Ed.): „Termination of contracts“, Wiley Chancery (1995), p. 3.

<sup>37</sup> Cf. Art. 5.1.8. of the 2010 UNIDROIT Principles of International Commercial Contracts. Also cf. Report on First Meeting of the UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming, Rome, 28 – 31 January 2013, p. 15 § 77.

<sup>38</sup> This clause is taken from a contract which does not clearly specify its duration; but given the context, a long-term contract will be assumed.

<sup>39</sup> *Dito.*

<sup>40</sup> Fontaine, M. / De Ly, F.: „Drafting International contracts – an Analysis of contract clauses“, Martinus Nijhoff Publishers (2009), p. 574.

*terminate the contract at the end of a production year, and may not be given until at least 10 production years have elapsed [...] and the loan has been repaid in full.*  
(Sample contract B19 South Africa).

In other cases, one or the other party may, in addition, be granted the right to terminate the obligations for his own convenience upon payment of compensation for any loss suffered by the contractor as a result of the early termination.<sup>41</sup>

#### 3.3.4. Unilateral termination clauses

A contractual relationship may be unilaterally terminated. Such termination clauses allow a party to end the contract usually (but not always) if a prior notice within a stipulated time is given to the contractor.<sup>42</sup> This period of time should be sufficiently long for the other party to retrench the arrangements he has made to fulfill his obligations without suffering loss. As a further protection to the farmer, the contract terms may permit termination only after the farmer has supplied the service for a specified length of time.<sup>43</sup>

- *This agreement between (Company) & (Farmer) will be effective from the above date & will be valid for a period of nine months. [...]. (Company) may terminate this agreement with a prior notice of 30 days to the other party without assigning any reason [...].*  
(Sample contract B12 India).
- *The term of this agreement is for a period of five (5) years to ten (10) years from the date of receipt of the first hogs delivered on the contract set forth below. [...] The undersigned producer agrees to a term of \_\_\_\_ years under this agreement. [...] This agreement is subject to termination by COMPANY at any time if COMPANY discontinues the slaughtering of hogs.* (Sample contract C4 Minnesota)

#### 3.3.5. Termination at will

The unevenness of bargaining power between the parties can result in stipulating unfair contract terms to the detriment of the weaker farmer.<sup>44</sup> In some cases for instance, one party – in general the dominant one, i.e. the buyer – may be entitled to unilaterally terminate the contract at any time, for any reason and / or without giving prior notice (so-called “termination at will”). This can give rise to uncertainties and pose a great risk for farmers, as it conflicts with large and long-term investments which they may undertake in the hope of a lasting contractual relationship.<sup>45</sup>

The following clause actually grants the right to terminate at will to both parties, but is a good example for how surprisingly short the period for prior notice can be:

- *This contract shall commence on the date it is executed by the parties thereto and shall continue in full force and effect until terminated by either party as provided herein or until a new Contract may be entered into by and between the parties. Either party to this*

<sup>41</sup> Cf. UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works (1987), p. 293.

<sup>42</sup> Cf. Report on First Meeting of the UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming, Rome, 28 – 31 January 2013, p. 15 § 77.

<sup>43</sup> UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works (1987), p. 292 et seq.

<sup>44</sup> Cf. Da Silva, C. A. B.: „The growing role of contract farming in agri-food Systems development: drivers, theory and practice”, Agricultural Management, Marketing and Finance Service FAO, Rome (2005), p. 23.

<sup>45</sup> Cf. Iannarelli, A.: “Contractual Frameworks and Inter-firm Co-operation in the Agricultural Sector”, *Unif. L. Rev.* (2012), p. 247, 253 ; Pultrone, C.: „An Overview of Contract Farming: Legal Issues and Challenger”, *Unif. L. Rev.* (2012), p. 285.



*contract may terminate this contract at any time, for any reason or for no reason at all by giving the other party ten (10) days written notice of that's party intent to terminate.*  
(Sample contract C1 Alabama)

Termination at will and similar clauses often concern contracts concluded for an indefinite period, where they operate as a technique to enable the parties to free themselves from obligations that otherwise would be perpetual.<sup>46</sup>

However, such clauses are also to be found in fixed-term contracts enabling termination before the expiry of the contract term:

- *The terms and conditions of this agreement shall be valid until June 30, 2012 and may be extended on mutual agreement until September 30, 2013. [...] The BUYER is at liberty to terminate this agreement forthwith even after the twelve month period and on such termination, the seller shall not be entitled to claim any damages from the buyer and shall settle the accounts without raising any objections whatsoever.*  
(Sample contract B15 India)

### 3.3.6. Termination for just cause

Where termination clauses are drafted with a particularly broad form of wording (i.e. „*at any time, for any reason or no reason at all...*“), the question arises whether termination „for just cause“ could implicitly be covered.

Termination for just cause is a far-reaching principle from the area of employment contracts, according to which a reasonable motivation may justify dismissal even without prior notice.<sup>47</sup> Generally speaking, it justifies immediate termination of a contract under the occurrence of a sufficient reason.

On the whole, termination for just cause will not be of any relevance unless expressly mentioned in the contract. In extreme cases, however, contracting practice may lead to termination without notice as a result of the clauses' wide formulation. This is especially problematic for contracts concluded with a specified duration. An abrupt ending of a fixed-term contract based on termination at will could conflict with general principles such as *pacta sunt servanda* and good faith. The party terminating a contract concluded for a definite period must thus prove a more extraordinary and exceptional cause than in case of an indefinite period.<sup>48</sup>

## 3.4. Termination and investments

The right to terminate an agreement is a particularly important aspect of the law of contracts. Termination, on whatever ground, can actually have drastic, possibly wasteful, economic consequences, yet it is often neglected in the drafting of contract texts.<sup>49</sup>

For long-term relationships, especially those requiring large investments by the farmer, early termination of the contractual agreement could give rise to severe financial difficulties. Moreover, termination of long-term contracts is often at the only discretion of one party – usually not the farmer. Being aware of the termination provisions in the contract is therefore of great importance

<sup>46</sup> Fontaine, M. / De Ly, F.: „Drafting International contracts – an Analysis of contract clauses“, Martinus Nijhoff Publishers (2009), p. 582.

<sup>47</sup> Veneziani, B.: „Formation, Modification and Termination of Employment Contracts“, Mohr Siebeck Tübingen / Martinus Nijhoff Publishers (2010), p. 70.

<sup>48</sup> Veneziani, B.: „Formation, Modification and Termination of Employment Contracts“, Mohr Siebeck Tübingen / Martinus Nijhoff Publishers (2010), p. 37 et seq.

<sup>49</sup> Birds, J./ Bradgate, R. / Villiers, C.(Ed.): „Termination of contracts“, Wiley Chancery (1995), p. 3 et seq.

already at the negotiation stage of the contract, where the farmer may have better chances to bargain for early-termination protection.<sup>50</sup> Contracts should thus be terminated while giving sufficient notice to the other party for compensating made investments.<sup>51</sup>

On the other hand, some long-term procurement agreements provide for unilateral extension of the contract in favor of the company (sic), in cases where the latter may incur losses.

- *If COMPANY is in a negative cash position with Producer at the end of the initial term of this agreement, COMPANY shall have the right to elect to extend the agreement for up to an additional five (5) years, or until such time as COMPANY has recouped its losses.[...] Producer shall be permitted to cancel Hormel Foods' option to extend the Agreement at any time after the completion of the initial term by making a cash payment to Hormel Foods sufficient to balance out the negative cash position. (Sample contract C4 Minnesota)*

Early termination may also be problematic for contracts concluded only for a single season. A short-term contract could require large upfront investments by the farmer such as construction of facilities in production contracts for poultry or livestock. If the payback period for this capital investment is long and the contracts are terminated or not renewed, the farmer could be exposed to significant investment risks and even fall into indebtedness.<sup>52</sup>

When a party made large capital investments upon the conclusion of the contract, it should be thus protected by a long-term agreement or other limitations on termination.

Under US state legislation for instance, producers enjoy such a special protection.<sup>53</sup> When a producer has been required to make capital investment above a certain amount, the contractor may be subject to restrictions on contract termination. He must give a written notice of the intention to terminate a certain amount of days beforehand, which varies from state to state.<sup>54</sup>

### **3.5. Effects and consequences of termination<sup>55</sup>**

#### **3.5.1. General observations**

Upon termination, the whole contract usually comes to an end. The consequences of termination in concreto depend on the intention of the parties. In general, they will be discharged from both the primary and the secondary obligations.<sup>56</sup> It would therefore be advisable to precisely determine the effects of termination in the contract text.

<sup>50</sup> World Farmers' Organisation, F@rmlletter n. 19 september 2013, p.12 et seq.

<sup>51</sup> Cf. European Commission, *Green Paper on unfair trading practices in the business-to-business food and non-food supply chain in Europe* (31.1.2013), p. 19 et seq.

<sup>52</sup> Pultrone, C.: „An Overview of Contract Farming: Legal Issues and Challenger”, *Unif. L. Rev.* (2012), p. 284 et seq.

<sup>53</sup> UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming: *A preliminary outline of issues*, Rome, First Meeting 28 – 31 January 2013, p. 24 note 41 and p. 38 § 101.

<sup>54</sup> Cf. Section 45 (b) Illinois Agricultural Production Contract Code (at least 60 days), Section 8 (b) Iowa Producer Production Act (at least 90 days), Minnesota Agricultural Contracts Act, 17.92, Subdivision 1 (at least 180 days).

<sup>55</sup> *N.B.: This section represents a mere preliminary overview on the consequences of termination, which will be more thoroughly covered by another chapter of the Legal Guide.*

<sup>56</sup> Furmston, M. P.: „The law of contract”, LexisNexis Butterworths (2003), p. 1319.

### 3.5.2. Obligations surviving termination

However, certain contractual obligations may not end upon termination.<sup>57</sup> In fact, a contract is seldom entirely extinguished upon its performance, the expiry of its term or for any other reason. The parties may still be bound by certain remaining obligations, either to wind up their contractual past, or to prolong into the future some other obligations.<sup>58</sup>

Provisions which the parties might wish to survive could regulate rights and obligations upon termination, quality guarantees, the preservation of confidentiality, claim for damages for non-performance or settlement of disputes<sup>59</sup>. The parties may specify in the contract those provisions which are to survive and to continue to bind the parties even after termination of the agreement.<sup>60</sup>

References to this issue can be found in some legislative provisions:

Under U.S. law, "all obligations which are still executory on both sides are discharged [on termination] but any right based on prior breach or performance survives".<sup>61</sup>

Also, the Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law (CESL) defines that termination puts an end to the parties' rights and obligations "with the exception of those arising under any contract term providing for the settlement of disputes or any other contract term which is to operate even after termination".<sup>62</sup>

Clauses dealing with post-contractual obligations surviving termination may contain general formulas which do not enumerate concrete obligations that are meant to survive: <sup>63</sup>

- *Upon termination of this agreement howsoever occasioned the rights that may have accrued to the parties under this agreement shall survive and the parties shall have the right to enforce such rights. (Sample contract B12 India)*
- *Termination of this contract for any cause shall not release a party from any liability which at the time of termination has already accrued to such party or which thereafter may accrue in respect of any act or omission prior to such termination. (Sample contract B19 South Africa)*
- *The termination of this agreement, for whatever reason, shall not prejudice the accrued rights or liabilities of either party hereto. (Sample contract B21 Trinidad and Tobago)*
- *Continuation of this deed after completion: Completion does not discharge liability to perform any outstanding obligation under this agreement.(Sample contract B25 Tanzania)*

More specifically, post-contractual obligations under contract farming may concern the return of seeds and plants, documents or technical equipment that where necessary for the production process.

<sup>57</sup> Cf. Report on First Meeting of the UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming, Rome, 28 – 31 January 2013, p. 15 § 79.

<sup>58</sup> Fontaine, M. / De Ly, F.: „Drafting International contracts – an Analysis of contract clauses”, Martinus Nijhoff Publishers (2009), p. 611.

<sup>59</sup> Cf. Art. 7.3.5. (2) and (3) of the 2010 UNIDROIT Principles of International Commercial Contracts.

<sup>60</sup> UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works (1987), p. 277.

<sup>61</sup> Art. 2 § 2-106 UCC.

<sup>62</sup> Art. 8 CESL.

<sup>63</sup> Cf. Fontaine, M. / De Ly, F.: „Drafting International contracts – an Analysis of contract clauses”, Martinus Nijhoff publishers (2009), p. 614 et seq.

### 3.5.3. Confidentiality clauses

It may be of the parties' interest to keep certain information or documents confidential even if (or especially after) the contract has been terminated.<sup>64</sup> An obligation to maintain confidentiality could relate for instance to material about technologies or the production process know-how.<sup>65</sup>

Such confidentiality or non-disclosure clauses can engender problems resulting from information asymmetry between the parties. A confidentiality clause may prevent farmers from disclosing contract terms and other conditions to third individuals. As a result, the farmers might not seek professional technical or legal advice from outside, or simply might not compare their own contracts with those of other farmers to make sure they are getting a comparable and fair deal.<sup>66</sup>

## 4. RENEWAL OF CONTRACTS

### 4.1. Preliminary remarks

Upon arrival of the expiration date of a fixed-term agreement, the parties might be interested in the continuation of the contract.<sup>67</sup> This is of great practical relevance especially in cases where the contract has been concluded only for a short period of time. Various provisions in national legislation thus recommend the drafting of renewal clauses in agricultural production contracts.<sup>68</sup>

Especially vegetable production agreements are stipulated for one year, with the farmer usually expecting the contracts to be continued. However, contracts may be subject to renewal at the company's only discretion. This raises the possibility that no new contract will be offered, which may leave farmers with expensive technology or equipment that has no more use.<sup>69</sup>

In the following, two possible grounds for renewing a contract will be closer illustrated.

### 4.2. Express agreement

Renewal of a contract may be subject to an express agreement between the parties.<sup>70</sup>

- *The present contract can only be renewed by written agreement between the parties.*  
(Sample contract A2 France)
- *The contract shall operate from....to....and may be extended by mutually agreed terms and conditions.* (Sample contract B24 Tanzania)
- *The agreement is valid for a period of 32 weeks commencing the ... (day) of .... (month) .... (year) and continuing through to the .... (day) of .... (month) .... (year) or any other period as may be subsequently agreed by the parties in writing. At the end of the said*

<sup>64</sup> UNICTRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works (1987), p. 59.

<sup>65</sup> Report on First Meeting of the UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming, Rome, 28 – 31 January 2013, p. 15 § 79.

<sup>66</sup> Pultrone, C.: „An Overview of Contract Farming: Legal Issues and Challenger”, *Unif. L. Rev.* (2012), p. 285.

<sup>67</sup> Cf. Schauer, Martin: Comments on duration of contract and precautionary measures, ERA Forum September 2008, Volume 9, Issue 1 Supplement, p. 158.

<sup>68</sup> Art. L.326-6 and Art. R.326-1 French rural and fishery code; Art. 11 Italian law for the regulation of agrifoods markets; Art. 6 (1b) Cataluña law 2/2005.

<sup>69</sup> Hamilton, N.D.: Farmer's Legal Guide to Production Contracts, University of Arkansas, 7 (1995) p. 17.

<sup>70</sup> UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming: *A preliminary outline of issues*, Rome, First Meeting 28 – 31 January 2013, p. 39 § 103.

*period, this agreement shall automatically come to and end. (Sample contract B21 Trinidad and Tobago)*

In other cases, the parties might stipulate that after a certain period, they will enter into negotiation for a possible renewal of the contract. In such an occasion, the parties may take into account relevant changes (e.g. concerning prices) and revise some of the terms of the agreement.

- *The parties to this agreement agree that during the period between \_\_\_\_ and \_\_\_\_\_, they will attempt to negotiate a renewal of this agreement on terms and conditions acceptable to both parties with the intent of entering into a new written agreement before the end of the term of the agreement. Both parties will act in good faith [...]. If the parties do not enter into a new written agreement prior to the end of the term of this agreement, then this agreement will expire on the date described above. (Sample contract C3 Iowa)*
- *This agreement will last for one growing season. [...] If both parties are satisfied with the performance of the agreement it may be renewed for another enterprise cropping cycle [...], but there is no obligation on either party to renew the agreement. The producer will give notice in writing to the company a minimum of 60 days before the expiration of the contract of interest in renewing the contract and the company will inform the producer within 30 days of receipt of the the renewal request of its willingness to renew or renegotiate the contract and the terms and conditions thereof. (Sample contract B9 Grenada)*

#### **4.3. Tacit or automatic renewal**

In principle, only an agreement can extend the duration of a contract for a new period. This does not apply to tacit (or automatic) renewal, whereby in absence of a party's contrary will, the contractual relationship will endure. The advantage lies in the fact that there is no need to expressly conclude a new agreement.<sup>71</sup>

Tacit renewal will intervene where there is no respective contractual provision. Upon occurrence of the expiration date that usually terminates a fixed-term contract, the parties will behave as if they were still bound by the initial contract, i.e. they continue to fulfill their respective obligations. However, they may also expressly establish that the contract will be tacitly renewed for a specified<sup>72</sup> or unspecified period as long as no objection within a previously stipulated time is being raised. The conditions of the renewed contract correspond, in principle, to those contained in the "old" contract, if they are not revised by the parties.<sup>73</sup>

- *Any party who does not intend to tolerate the tacit renewal of the contract must give notice by registered letter with recorded delivery \_\_\_\_ months prior to the end of the reference period [...]. (Sample contract A1 France)*

In short-term contracts, it will usually be arranged that the contract is to be renewed automatically for further periods of the same or a different duration, unless the renewal is prevented by giving written notice of non-renewal. Otherwise, the parties will have to negotiate the extension for a further period if the obligations shall continue after the expiry of the first short period.<sup>74</sup>

<sup>71</sup> Litty, O.: „Inégalité des parties et durée du contrat. Étude de quatre contrats d'adhésion usuels", Librairie Générale de Droit et de Jurisprudence (L.G.D.J.) (1999), p. 363.

<sup>72</sup> Art. L. 631-24 French Rural and Fishery Code: *A contract of sale of agricultural products can be renewed by tacit agreement for the same period as the contract has first been concluded for.*

<sup>73</sup> Litty, O.: „Inégalité des parties et durée du contrat. Étude de quatre contrats d'adhésion usuels", Librairie Générale de Droit et de Jurisprudence (L.G.D.J.) (1999), p. 395 et seqq.

<sup>74</sup> Cf. UNCITRAL Legal Guide on International Countertrade Transactions (1992), p. 291 et seq.

- *This contract has an initial 6-months term, which automatically renews unless either party terminates the contract. You or we may terminate this contract at the end of any 6-month term upon 30 days' notice. (Sample contract C5 Minnesota)*
- *The present agreement is valid for one year [...]. The agreement shall be reconducted, automatically, during an equal period, in case any of the parties does not denounce it expressly and in written terms, with a minimum of 60 (sixty) days in advance of its end or of subsequent periods. (Sample contract B3 Brazil)*

Automatic renewal can be limited to a specified or unspecified number of times.

- *[...] this agreement shall automatically renew for an additional five (5) years' term upon the same terms and conditions contained herein, unless either party shall give to the other written notice of its intent to terminate [...]. (Sample contract C7 Minnesota)*
- *Upon expiration of the initial term and any renewal term(s) hereof, this Agreement automatically shall renew for successive one year intervals unless either Corporation or Grower has given written notice to the other party at least thirty (30) days prior to the renewal date of such party's election to terminate this Agreement [...]. (Sample contract C2 Iowa)*

In some cases, a contract that has initially been concluded for a short period will be renewed periodically for other short periods, creating de facto a long-term relationship lasting for many years. This procedure can be very common under contract farming, where agreements are influenced by seasonal or periodical factors (e.g. growing cycle, harvest and production process).

It may occur that after a long period of annual or periodical renewal, the company unilaterally terminates the contract by giving prior notice within a short period of time. In fact, as the actual agreement represents a fixed-term contract of a short duration, the notice period for non-renewal or termination will be short too. This, however, may not be a fair way of ending such a long-lasting relationship. Given the expectations on the farmer's side to which the perpetual renewal over years has led to, the other party should give the termination notice a reasonable time prior to the usual renewal date.

When determining the reasonableness of the notice period, due regard should be given to the actual long duration of the relationship, the particular nature of the agricultural production contract – especially the biological and production cycle of the crop – and the substantial investments that have been undertaken.

Certain national legislations thus limit the occurrence of tacit renewal of contracts. According to the French Rural and Fishery Code for instance<sup>75</sup>, an integration contract may be tacitly renewed for a maximum period of 1 year, except if otherwise provided by the parties by written agreement.<sup>76</sup>

In other cases, automatic renewal may be prohibited by law. Under Belgian law for example, a fixed term contract cannot ever be automatically renewed, regardless of an agreement between the parties. If the parties continue the execution of the contract tacitly, it will be regarded as a permanent contract with no specified term.<sup>77</sup>

<sup>75</sup> Art. L.326-7 French Rural and Fishery Code.

<sup>76</sup> Prévault, J.: „Contrat d'intégration en agriculture", Encyclopédie Dalloz de droit commercial, Paris, (2012), p. 40 et seq.

<sup>77</sup> Art. 5 (5) Belgian law.

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## 5. CONCLUSION

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Agricultural production contracts are being stipulated across the whole world and set up a minimum legal regime for producing under contract farming.

The vast majority of the contracts analyzed within the framework of this research contain clauses regarding duration, termination and renewal of the agreement – aspects which are an important part of the risks bearing upon the producer.<sup>78</sup> This leads to the conclusion that such clauses belong to a „minimum content“ which should be closer defined by the parties in order to create a secure basis for their contractual and economic relationship. Most important, defining when the respective obligations will start, end and possibly be extended guarantees a fair balance between the parties' (possibly diverging) interests.

The present review of contract clauses aimed at giving an aperçu over the broad range of issues arising under duration, termination and renewal of contracts. The single clauses have been taken into consideration in an isolated approach, while they should, of course, be read with due regard to the entire agreement.

Farmers generally represent the weaker party to the agricultural production contract and are often not aware of the whole agreement's consequences that they will be subject to. Thus, bearing in mind the special nature of contract farming, it is of utmost importance to draw the parties' attention, especially the farmers' one, to the specific problematic topics which have been portrayed in this paper.

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<sup>78</sup> Cf. UNIDROIT Working Group for the preparation of a Legal Guide on Contract Farming: A preliminary outline of issues, Rome, First Meeting 28 – 31 January 2013, p. 38 § 100.

## APPENDIX I

### COLLECTION OF CLAUSES FROM CONTRACT SAMPLES

#### A. Contract samples from <http://www.unidroit.org/dynasite.cfm?dsmid=113652> (Last accessed 11.09.2013)

No.	Country	Contract name	Product	Clause
A1	France	<p>Contrat type pour la production de volaille de chair à façon</p> <p>(Arrêté du 15 mars 1988 relatif à l'homologation d'un contrat type d'intégration)</p>	Poultry meat	<p><u>Duration and termination:</u></p> <p><i>Durée du contrat. Article Annexe</i></p> <p><i>Le contrat est conclu pour une durée de ... (mois ou années) ou debandes, réserve faite des cas de résiliation prévus à l'article 20 ci - après.</i></p> <p><i>Le contrat se terminera au moment de l'enlèvement de la dernière bande mise en place pendant la période de référence dans le ou les bâtiments visés à l'annexe II, étant entendu que l'intervalle de vide sanitaire entre deux bandes sera de ... jours, compte tenu d'une tolérance de ... jours en plus ou en moins, tout en respectant une moyenne annuelle de ... jours selon les espèces et les types de production.</i></p> <p><i>La date d'effet du contrat est fixée au ..., jour de la mise en place de la première bande.</i></p> <p><i>Dans le cas où l'entreprise accorde un prêt à l'éleveur ou se porte caution pour ce dernier envers un organisme bancaire, la durée du contrat est égale à celle du prêt ou de la caution, réserve faite des dispositions prévues aux articles 18 et 20 ci - après.</i></p> <p><u>Renewal:</u></p> <p><i>Renouvellement. Article Annexe</i></p> <p><i>Le présent contrat peut être renouvelé par tacite reconduction pour une période d'un an maximum, sauf accord écrit des parties pour une durée supérieure.</i></p> <p><i>Si l'une des parties n'entend pas laisser jouer la tacite reconduction, elle doit le signifier par lettre recommandée avec accusé de réception ... mois avant la fin de la période de référence fixée à l'article 2 du présent contrat ou au moment de la mise en place de l'avant - dernière bande.</i></p>



A2	France	<p>Contrat type pour l'élevage à façon de veaux de boucherie</p> <p>(Arrêté du 15 mars 1988 relatif à l'homologation d'un contrat type d'intégration)</p>	Veal calf	<p><u>Duration:</u></p> <p><i>Durée du contrat. Article Annexe.</i></p> <p><i>Le contrat est conclu pour ... bandes, soit une durée d'environ ... mois (1). La première bande est mise en place le .... Chaque bande a une durée minimale de.. jours et une durée maximale de...jours (2). L'intervalle entre deux bandes (vide sanitaire) est de ... jours (3).</i></p> <p><i>(1) La durée du contrat ne peut excéder trois bandes. Toutefois, dans le cas exclusif où l'éleveur demande à bénéficier d'un prêt bonifié et/ou d'une aide de l'Ofival en application de la circulaire DEPSE/SDEEA n° 7027 et DAFE/SDFA C 92 n° 1510 du 5 novembre 1992, la durée maximale du contrat est portée à dix bandes. Les contrats d'une durée supérieure à trois bandes conclus dans le cadre de cette dérogation sont désignés ci - après "contrats de longue durée".</i></p> <p><i>(2) En aucun cas l'écart entre la durée minimale et la durée maximale ne peut être supérieur à quinze jours.</i></p> <p><i>(3) Il ne peut être inférieur à quinze jours, ni supérieur à vingt et un jours entre la sortie d'une bande et l'entrée de la suivante. Dans le cas exclusif des contrats de longue durée tels que définis à l'article 3 (1), l'intervalle entre deux bandes, vide sanitaire compris, ne pourra être inférieur à dix jours par intervalle, ni supérieur à vingt - huit jours en moyenne annuelle (nombre de jours/nombre d'intervalles).</i></p> <p><u>Renewal:</u></p> <p><i>Renouvellement et modifications. Article Annexe.</i></p> <p><i>Le présent contrat ne peut être reconduit qu'après accord écrit entre les parties. [...]</i></p>
A3	Spain	Modelo homologado de contrato de integración	Livestock	<p><u>Duration, renewal and termination:</u></p> <p><i>3 Duración y renovación 3.1 La duración del contrato es de (indicar plazo de duración que no puede ser inferior a la del ciclo productivo)</i></p>

				<p>3.2 Una vez transcurrido este plazo, el contrato se entenderá renovado por el plazo de (indicar plazo).</p> <p>3.3 Antes del inicio de los ciclos productivos, de acuerdo con lo que, en su caso, establezca la normativa sectorial, se prevé un periodo de vacío sanitario de (número de días) días para sanear y adecuar las instalaciones</p> <p>12. Rescisión y extinción  12.1 Cualquiera de las partes podrá instar por escrito ante la otra la rescisión del contrato en los supuestos y con las condiciones que se pactan a continuación: (indicar los pactos).  12.2 Además de las causas generales de extinción de las obligaciones que establece el Código civil, este contrato se extinguirá en los supuestos que prevé el artículo 8 de la Ley 2/2005, de 4 de abril.</p>
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**B. Contract samples from FAO database** <http://www.fao.org/ag/agcs/contract-farming/toolkit/contract-links/en/>  
(Last accessed 11.09.2013)

No.	Country	Contract name	Product	Clause
B1	Afghanistan	Sample contract for sugar beet in Afghanistan	Sugar Beet	<p><u>Duration and renewal:</u></p> <p><i>For the commercial beet cultivation in the year __ the following contract has been agreed upon between the BUYER and the beet grower. BUYER will decide on a possible renewal of this contract in __ after knowing the harvesting results of __ .</i></p>
B2	Brazil	Sample contract for passion fruit in Brazil	Passion fruit	<p><u>Duration:</u></p> <p><i>8. The term of this agreement is 22 months, starting on ..... and finishing on ....., and may be extended for the next harvest in the event of fortuitous case or force majeure, duly proven and accepted by BUYER.</i></p>

<b>B3</b>	Brazil	Sample contract for poultry in Brazil (1)	Poultry	<p><u>Duration, termination and renewal:</u></p> <p><i>2. The present agreement is valid for one year, after its signature, being right and agreed that this term will be automatically extended until all the poultry flock reach, by the exclusive "INDUSTRY'S" discretion, the ideal slaughter age, with which the "INTEGRATED", henceforth, agrees and acquiesces to. The agreement shall be reconducted, automatically, during an equal period, in case any of the parties does not denounce it expressly and in written terms, with a minimum of 60 (sixty) days in advance of its end or of subsequent periods;</i></p>
<b>B4</b>	Brazil	Sample contract for poultry in Brazil (2)	Poultry	<p><u>Duration and termination:</u></p> <p><i>Clause eleventh: The term of the present agreement is undefined and may be rescinded by either party, by means of a written notification with at least 180 (one hundred and eighty) days in advance, this measure not generating the right to indemnity for either party.</i></p>
<b>B5</b>	Brazil	Sample contract for poultry in Brazil (3)	Poultry	<p><u>Duration and termination:</u></p> <p><i>ELEVENTH CLAUSE : The term of the present agreement is undefined and may be rescinded by either party, with previous notice of 60 days.</i></p>
<b>B6</b>	China	Sample contract for silk worm in China	Cocoon (silkworm)	<p><u>Duration and termination:</u></p> <p><i>IV. Period of Contract</i>  <i>This cocoon purchasing contract between Party A and Party B is valid from (date/month/year) to 31st December (year). During the contracted period, neither party shall modify or terminate the contract freely. If the contract could not be carried out as a result of force majeure, the two parties shall modify or terminate the contract after a consensus is reached.</i></p>
<b>B7</b>	Colombia	Sample contract for panela in Colombia	Panela (sugar)	<p><u>Duration:</u></p> <p><i>9- El presente acuerdo tendrá una vigencia de tres meses. Sin embargo, si se llegase a presentar algún desacuerdo antes de lo estipulado, las dos partes estarían dispuestas a hacer los ajustes necesarios.</i></p>
<b>B8</b>	Fiji	Sample contract for milk in Fiji Islands	Milk	<p><u>Duration:</u></p> <p><i>4. This Agreement shall come into force on day/month/year and shall subsist until the day/month/year. [...]</i></p>

<b>B9</b>	Grenada	Sample contract of farm produce in Grenada	Not specified	<p><u>Duration, termination and renewal:</u></p> <p>44) This agreement will last for one growing season (growing season means the date from the planting of the crop to the final harvest) from the date of signing to the end of the harvesting and delivery of the contracted produce in line with the approved schedule;</p> <p>45) If both parties are satisfied with the performance of the agreement it may be renewed for another enterprise cropping cycle (enterprise cropping cycle means the time from the planting of the first crop agreed on in the contract to the final harvest of the last crop), but there is no obligation on either party to renew the agreement.</p> <p>46) The Producer will give notice in writing to the COMPANY a minimum of 60 days before the expiration of the contract of interest in renewing the contract and the COMPANY will inform the Producer within 30 days of receipt of the renewal request of its willingness to renew or renegotiate the contract and the terms and conditions thereof.</p>
<b>B10</b>	Honduras	Contrato tipo de compra-venta de caña de azúcar zafra en Honduras	Sugar cane	<p><u>Duration:</u></p> <p>DECIMA SEGUNDA: VIGENCIA: El Presente Contrato tendrá una vigencia improrrogable de un (1) año zafra, que corresponde a la zafra del año _____.</p>
<b>B11</b>	India	Sample contract for potato in India	Potato	<p><u>Termination:</u></p> <p>This Agreement shall become effective from the time of handing over the XXX variety potato planting materials to the GROWER by COMPANY and would terminate upon the GROWER handing over the entire yield of multiplied chip grade potatoes to COMPANY, which shall not be later than 30/11/2009.</p>
<b>B12</b>	India	Sample contract for paddy in India	Paddy	<p><u>Duration:</u></p> <p>1. Term: 1.1 This agreement between (Company.) &amp; the (Farmer) will be effective from the above date &amp; will be valid for a period of Nine months.</p> <p><u>Termination:</u></p> <p>6. TERMINATION and CONSEQUENCES 6.1 (Company.) may terminate this agreement with a prior notice of 30 days to the other party without assigning any reason, or</p>

				<p>6.2 (Company) may terminate this agreement at any time without giving any notice in the following circumstances:</p> <p><i>i. If the Farmer sells the contract farmed crops to any third party.</i></p> <p><i>ii. If the Farmer fails to perform any of his obligations and / or commits breach of any of the terms and conditions of this agreement.</i></p> <p>6.3 Upon termination of this Agreement howsoever occasioned the rights that may have accrued to the Parties under this Agreement shall survive and the Parties shall have the right to enforce such rights.</p> <p>6.4 In the event that this Agreement is terminated by either party and /or either Party commits a breach of the terms of the Agreement, that Party shall indemnify the other for all costs, expenses incurred and damages suffered by the former in relation to this Agreement.</p>
<b>B13</b>	India	Sample contract for rubber latex in India	Rubber latex	<p><u>Duration and termination:</u></p> <p>11. The agreement shall be in force till any of the party cancels the agreement. This agreement can be cancelled by either party by giving 30 days advance notice in writing to the other party.</p>
<b>B14</b>	India	Sample contract for fresh fruits and vegetables in India	Fruits and vegetables	<p><u>Duration and renewal:</u></p> <p>15. This agreement will be valid and in force for a period of one year from the date first above mentioned herein above but however, the company will be at liberty to extend the same for further periods as may be thought fit and proper upon the same terms and conditions agreed upon herein.</p>
<b>B15</b>	India	Sample contract for pineapple in India	Pineapple	<p><u>Duration, Renewal and termination:</u></p> <p>3. The terms and conditions of this agreement shall be valid until June 30, 2012 and may be extended on mutual agreement until September 30, 2013.[...]</p> <p>9. The Buyer shall review this agreement at the end of the first twelve months period. Further, the Buyer will continue with the operations for the remaining period of this Agreement, only if the Buyer is fully satisfied with the arrangement . However, the Buyer is at liberty to terminate this Agreement forthwith even after the twelve month period and on such termination, the Seller shall not be entitled to claim any damages from the Buyer and shall settle the accounts without raising any objections whatsoever.</p>
<b>B16</b>	Indonesia	Sample contract of milk in Indonesia	Goat milk	<p><u>Duration:</u></p> <p>Article 9 - Duration of the agreement</p>

				<i>The agreement will be valid only for 6 (six) months. Both actors may add additional statements and revise it.</i>
<b>B17</b>	Iran	Sample contract for tomato in Iran	Tomato	<p><u>Duration:</u></p> <p><i>Article 14: Duration of the Contract</i>  <i>From the time the contract comes into force until the final settlement of accounts.</i></p>
<b>B18</b>	Malawi	Sample contract for paprika in Malawi	Paprika	<p><u>Duration:</u></p> <p><i>The period of the agreement is from the day of purchasing seed (...../...../.....) up to the day of buying the last part of the crop.</i></p>
<b>B19</b>	South Africa	Sample contract for sugar beet in South Africa	Sugar beet	<p><u>Duration and termination:</u></p> <p><i>22. DURATION</i>  <i>22.1 This Contract shall commence on the fulfilment the conditions precedent set out in clause 4 and shall remain in force until such time as it is lawfully terminated in accordance with clauses 21.3, 22.2 or 23.4.</i></p> <p><i>22.2 Either the Processor or the Grower may terminate this Contract by giving to the other Party 24 (twenty-four) calendar months' notice provided that such notice:</i></p> <p><i>22.2.1 may only be given so as to terminate the Contract at the end of a Production Year; and</i>  <i>22.2.2 may not be given until at least 10 (ten) Production Years have elapsed since 1 April of the First Production Year, and the Loan has been repaid in full.</i></p> <p><i>29. GENERAL [...]</i>  <i>29.6 Termination of this Contract for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination.</i></p>
<b>B20</b>	Trinidad and Tobago	Sample contract for fresh agricultural products in Trinidad and Tobago	Not specified	<p><u>Duration:</u></p> <p><i>The said Agreement shall have duration of ____ months effective from _____.</i></p> <p><u>Termination:</u></p> <p><i>5 Termination</i>  <i>(a) The said agreement shall be terminated by either party serving three (3) months notice in writing provided that all outstanding accounts between themselves are settle in full.[...]</i></p>

<b>B21</b>	Trinidad and Tobago	Sample contract for pepper in Trinidad and Tobago	Pepper	<p><u>Duration and renewal:</u></p> <p>1. <i>TERM</i>  <i>This Agreement is valid for a period of thirty two (32) weeks commencing the ....(day) of ....(month).... (year) and continuing through to the.... (day) of .....(month) .....(year) or any other period as may be subsequently agreed by the Parties in writing. At the expiration of the said period, this agreement shall automatically come to an end.</i></p> <p><u>Termination:</u></p> <p>15. <i>TERMINATION [...]</i>  <i>c. The Buyer reserves the right to terminate this Agreement at any time by notice in writing, should there be serious misconduct on the part of the Farmer, its servants or agents (including the filing of criminal charges against the Farmer). In such event, the Buyer shall be entitled to reimbursement for all monies expended pursuant to its obligations hereto [...]</i>  <i>e. The termination of this Agreement, for whatever reason shall not prejudice the accrued rights or liabilities of either party hereto.</i></p>
<b>B22</b>	Uganda	Sample agreement, Uganda	Not specified	<p><u>Duration and termination:</u></p> <p>9. <i>This agreement shall begin on [day/month/year] and run until [day/month/year].</i></p>
<b>B23</b>	Uganda	Sample contract for organic production in Uganda	Not specified	<p><u>Duration and termination:</u></p> <p><i>Duration of this agreement:</i>  <i>a. This contract must be respected all the time [company] is certified organic.</i>  <i>b. For all the time the farmer is selling produce to [company]. [...]</i>  <i>d. Any of the parties can terminate this agreement by informing the concerned party 4 months in advance.</i></p>
<b>B24</b>	United Republic of Tanzania	Sample contract for tea in the United Republic of Tanzania	Tea	<p><u>Duration and renewal:</u></p> <p>1.0 <i>Joint undertaking</i>  1. <i>The contract shall operate from.....to.....and may be extended by mutually agreed terms and conditions.</i></p> <p>2. <i>Any alteration, extension or renewal of the contract shall form an addendum to this Agreement and shall be submitted to the Board for approval and registration.</i></p>

				<p><u>Termination:</u></p> <p><i>10.0 Early termination of the contract period</i></p> <p><i>10.1 Neither party hereto shall give notice of termination of the Contract Period pursuant to this Section without first seeking an opportunity of discussing the matter with the other party hereto with a view to establishing whether an alternative course acceptable to both parties can be found.</i></p> <p><i>10.2 Either of the parties hereto shall, by notice given to the other party in writing, be entitled to terminate the contract period immediately or on a date specified in the notice if such other party becomes subject of a judicial order or proceedings, whether voluntarily or involuntarily, under any bankruptcy or insolvency law or becomes subject to analogous proceedings having substantially similar effect or becomes subject to proceedings providing for its dissolution or winding-up or shall have a Receiver appointed of its assets or any substantial part thereof. [...]</i></p>
<b>B25</b>	United Republic of Tanzania	Sample contract for tobacco in the United Republic of Tanzania	Tobacco	<p><u>Duration:</u></p> <p><i>Clause -2. DURATION AND SCOPE.</i></p> <p><i>2.1 This Agreement shall be for the crop season 2009/2010 and shall be deemed to have automatically expired after the end of such period. [...].</i></p> <p><i>Clause-16. CONTINUATION OF THIS DEED AFTER COMPLETION.</i></p> <p><i>16 Completion does not discharge liability to perform any outstanding obligation under this Agreement.</i></p>
<b>B26</b>	United Republic of Tanzania	Sample contract for sisal in the United Republic of Tanzania (Board & Farmer)	Sisal	<p><u>Duration and Termination:</u></p> <p><i>5.0 GENERAL PROVISIONS [...]</i></p> <p><i>5.2. This is a permanent contract whereby the Parties to the agreement must adhere to [...].</i></p> <p><i>5.3. The BOARD and the FARMER each have the right to terminate the agreement by giving a ninety (90) days written notice and stating the reasons for doing so. A copy of this notice shall be submitted to THE COMPANY for information purposes only.</i></p>
<b>B27</b>	United Republic of Tanzania	Sample contract for sisal in the United Republic of Tanzania (Farmer & Buyer)	Sisal	<p><u>Termination:</u></p> <p><i>3.3. COMPANY will have the right to give a one year's notice in writing to FARMER of his intent to terminate the contract stating the reason for doing so. The copy of this notice should be submitted to the BOARD. This notice shall prohibit FARMER to develop new</i></p>



				<p><i>land areas in her subleased land. However FARMER shall have the right to continue harvesting the sisal planted before within the notice period and the other FARMER's rights shall continue to be observed as stipulated in her contract with the BOARD. [...]</i></p> <p><i>4.5. FARMER shall have the right to terminate this contract by giving a ninety (90) days written notice to COMPANY stating the reason fro doing so. A copy of this notice shall be submitted to the BOARD by FARMER within a period of fourteen (14) days. However FARMER shall have the right to harvest all the mature sisal within the notice period by adhering to the procedures agreed upon by the Parties. After the notice has elapsed, FARMER will not be allowed to make any deal or develop the area subleased to her.</i></p> <p><u>Duration and renewal:</u></p> <p><i>5.0. GENERAL PROVISIONS [...]</i></p> <p><i>5.2. The duration of the contract is for the period of ten (10) years and can be renewed for the same period immediately after the first ten (10) years. THE COMPANY and the FARMER can review the contract after every three (3) years if deemed necessary.</i></p>
<b>B28</b>	Zambia	Sample contract for seed cotton production in Zambia	Seed cotton	<p><u>Termination:</u></p> <p><i>7. Termination</i>  <i>The parties agree that either party may terminate the Agreement by giving one month written notice to the other party of its intention to terminate. Provided that if the producer terminates after he/she received Inputs he/she shall be bound to deliver Seed Cotton to the Distributor in terms of clause 4.1 above.</i></p>

**C. Contract samples from Iowa Attorney General's Office**

[http://www.iowaattorneygeneral.org/working\\_for\\_farmers/contracts/index.html](http://www.iowaattorneygeneral.org/working_for_farmers/contracts/index.html) (Last accessed 12.09.2013)

No.	State	Contract name	Product	Clause
<b>C1</b>	Alabama	Poultry Contracts: Broiler Contract One (ConAgra)	Poultry	<p><u>Duration and termination:</u></p> <p><i>VI. TERM OF CONTRACT:</i>  <i>1. This contract shall commence on the date it is executed by the parties thereto and shall continue in full force and effect until terminated by either party as provided herein or until a new Contract may be entered into by and between the parties.</i></p>

				<p>2. Either party to this Contract may terminate this Contract at any time, for any reason or for no reason at all by giving the other party ten (10) days written notice of that party's intent to terminate.</p>
<b>C2</b>	Iowa	<p>Swine Marketing Contracts:</p> <p>Market Swine Grower Agreement (Pork Plus Inc.)</p>	Swine	<p><u>Duration and renewal:</u></p> <p>1. <i>Term</i> The initial term of this Agreement shall commence upon Corporation's delivery to Grower of the initial feeder pigs to be raised hereunder and shall continue and exist thereafter through and including ____, 20____, unless earlier terminated as provided in Paragraph 7 herein.</p> <p>2. <i>Renewal</i> Upon expiration of the initial term and any renewal term(s) hereof, this Agreement automatically shall renew for successive one year intervals unless either Corporation or Grower has given written notice to the other party at least thirty (30) days prior to the renewal date of such party's election to terminate this Agreement or unless this Agreement otherwise has been terminated prior to such renewal date pursuant to the provisions of Paragraph 7 hereof.</p>
<b>C3</b>	Iowa	<p>Swine Production Contracts:</p> <p>Swine Management, Grow-Out and Feeding Agreement (Heartland Pork Enterprises Inc.)</p>	Swine	<p><u>Duration, termination and renewal:</u></p> <p><b>2.1 TERM.</b> The term of this Agreement shall commence on the date hereof and end on _____, _____. Unless otherwise provided in this Agreement, it shall be terminated upon 30 days written notice by either party for a failure of the other party to comply with a material term hereof; provided, however, that once pigs are delivered by Owner to Grower, then the contract cannot be terminated by Owner or Grower with respect to that given lot of pigs until said pigs are marketed by Owner.</p> <p>The parties to this agreement agree that during the period between _____, _____, and _____, _____, they will attempt to negotiate a renewal of this Agreement on terms and conditions acceptable to both parties with the intent of entering into a new written agreement before the end of the term of the Agreement. Both parties will act in good faith based upon the facts and circumstances at the time of negotiation. If the parties do not enter into a new written agreement prior to the end of the term of this Agreement, then this Agreement will expire on the date described above.</p>

				<p><b>2.1(a)RIGHT OF FIRST REFUSAL.</b> If the parties do not negotiate a renewal of this agreement as outlined in paragraph 2.1 above, Grower agrees to grant Owner a right of first refusal. Before Grower enters into any other contractual arrangement for the use of Grower's buildings, he shall give Owner written notice of the terms and conditions of such agreement. Owner shall have 30 days from the date of this notice to exercise this right of first refusal by forwarding to Grower a written contract on the same terms and conditions as the proposal contract. After expiration of the 30 day period, without Owner forwarding a contract to Grower, Grower may enter into a contractual arrangement with any other party on the same terms and conditions offered to Owner. All notices provided herein shall be mailed to the other party's last known address by certified mail, return receipt requested.</p>
<p><b>C4</b></p>	<p>Minnesota</p>	<p>Swine Marketing Contracts:  Long Term Procurement Agreement Original (Hormel Foods Corporation)</p>	<p>Swine</p>	<p><u>Duration:</u></p> <p>1. <b>TERM.</b> The term of this Agreement is for a period of five (5) years to ten (10) years from the date of receipt of the first hogs delivered on the contract set forth below. The length of time is to be determined and agreed upon by Hormel Foods and Producer. The term contained herein is a term of essence of the Agreement: it is hereby acknowledged by both parties that Hormel Foods' payment of a guaranteed minimum price is contingent upon Producer's ability to remain in the program for the entire term of the contract, so as to allow for ordinary market swings to become fully incorporated in the pricing structure. The undersigned producer agrees to a term of _____ years under this Agreement.</p> <p>4. <b>OPTIONS TO EXTEND CONTRACT.</b></p> <p>(a) If Hormel Foods is in a negative cash position with Producer at the end of the initial term of this Agreement, Hormel Foods shall have the right to elect to extend the Agreement for up to an additional five (5) years, or until such time as Hormel Foods has recouped its losses. "Negative cash position" is defined as the amount that Hormel Foods has paid to Producer over the initial term for hogs purchased from Producer under the guaranteed minimum payment program that exceeds the total market value of those hogs during that same period. Producer shall be permitted to cancel Hormel Foods' option to extend the Agreement at any time after the completion of the initial term by making a cash payment to Hormel Foods sufficient to balance out the negative cash position.</p>

				<p>(b) If Hormel Foods is in a positive cash position with Producer at the end of the initial term of this Agreement, Producer will have the right to extend the Agreement for five (5) additional years. During this five (5) year extension, Producer can cancel (1) anytime that Hormel Foods is in a positive cash position; (2) anytime that Hormel Foods is in a negative cash position by making a cash payment to Hormel Foods sufficient to balance out the negative cash position.</p> <p>(c) The provisions in sections 4a and 4b are subject to the following restrictions:</p> <p>(1) that any extension to the Agreement by either party shall be governed by the terms of the basic Long-Term Procurement Agreement being offered at the time of the extension.</p> <p>(2) that Hormel Foods reserves the right to terminate the Long-Term Procurement program in its entirety at any time after the initial contract term has ended, and upon such a termination any extension previously made under sections 4a or 4b shall likewise be terminated, and the parties shall be released from any further obligation to participate in the program.</p> <p><u>Termination:</u></p> <p>6. <b>TERMINATION.</b> This Agreement is subject to termination by Hormel Foods at any time if Hormel Foods discontinues the slaughtering of hogs.</p>
C5	Minnesota	Swine Marketing Contracts: Short Term Hog Procurement Agreement (Hormel Foods Corp.)	Swine	<p><u>Duration and termination:</u></p> <p><i>TERMINATION RISKS</i></p> <ul style="list-style-type: none"> <li>• This contract has an initial 6-month term, which automatically renews unless either party terminates the contract. You or we may terminate this contract at the end of any 6-month term upon 30 days' notice.</li> <li>• We may terminate this contract prior to expiration of the term of the contract if you are in default.</li> <li>• We may terminate this contract prior to expiration of the term of the contract if we stop slaughtering hogs at the plant to which your hogs are being delivered.</li> </ul>

<p><b>C6</b></p>	<p>Minnesota</p>	<p>Swine Marketing Contracts:  Short Term Hog Procurement Agreement (Hormel Foods Corp.)</p>	<p>Swine</p>	<p><u>Duration, termination and renewal:</u></p> <p>1. <b>Term; Termination.</b> The initial term of this Agreement is six (6) months commencing on Producer's first delivery of hogs meeting the specifications hereunder. The commencement date shall be noticed in writing to Producer. Thereafter this Agreement shall automatically renew for successive six-month terms unless terminated by either party at the end of the initial term or any renewal term by providing the other party at least thirty (30) days prior written notice of such termination. This Agreement is subject to immediate termination by Hormel Foods at any time in the event of a default by Producer or if Hormel Foods discontinues the slaughtering of hogs at the plant indicated in paragraph 3.(e) below.</p>
<p><b>C7</b></p>	<p>Minnesota</p>	<p>Swine Purchase Contracts:  Feeder Pig Sale And Purchases Agreement (TriCounty)</p>	<p>Swine</p>	<p><u>Duration, termination and renewal:</u></p> <p>2. <b>Terms of Agreement</b></p> <p><b>This Agreement shall commence on DECEMBER 21<sup>st</sup>, 1998 , and continue for an initial term of TEN (10) YEARS thereafter. At the end of such initial term, this Agreement shall automatically renew for an additional FIVE (5) years term upon the same terms and conditions contained herein, unless either party shall give to the other written notice of its intent to terminate, which notice shall be given at least one hundred and twenty (120) days in advance of the end of the termination of such initial term.</b></p>

## APPENDIX II LEGISLATION

### 1. EU legislation

- *Regulation (EU) No 261/2012 of the European Parliament and of the Council of 14 March 2012 amending Council Regulation (EC) No 1234/2007 as regards contractual relations in the milk and milk products sector*<sup>79</sup>

#### Preface

[...]

(10) In order to ensure appropriate minimum standards for such contracts and to ensure that the internal market and the common market organisation function well, some basic conditions for the use of such contracts should be laid down at Union level. All such basic conditions should, however, be freely negotiated. Nevertheless, in order to strengthen the stability of the dairy market and the outlet for milk producers in certain Member States where the use of extremely short contracts is quite widespread, Member States should be allowed to set a **minimum contract duration** to be included in such contracts and/or offers. Such minimum duration should however be imposed only on contracts between first purchasers and milk producers or in the offers made by first purchasers to milk producers. Moreover, it should not impair the proper functioning of the internal market and milk producers should be free to opt out or refuse such a minimum duration. [...]

#### Article 185f.

##### Contractual relations in the milk and milk products sector

2 . The contract and/or the offer for a contract shall: [...]

(c) include, in particular, the following elements: [...]

(iii) the **duration** of the contract, which may include either a definite or an indefinite duration with termination clauses; [...]

4. All elements of contracts for the delivery of raw milk concluded by farmers, collectors or processors of raw milk, including the elements referred to in paragraph 2(c), shall be freely negotiated between the parties.

Notwithstanding the first subparagraph,

(i) where a Member State decides to make written contracts for the delivery of raw milk compulsory in accordance with paragraph 1 of this Article, it may establish a minimum **duration**, applicable only to written contracts between a farmer and the first purchaser of raw milk. Such a minimum duration shall be at least 6 months and shall not impair the proper functioning of the internal market; and/or

(ii) where a Member State decides that the first purchaser of raw milk must make a written offer for a contract to the farmer in accordance with paragraph 1, it may provide that the offer must include a minimum **duration** for the contract, set by national law for this purpose. Such a minimum duration shall be at least 6 months and shall not impair the proper functioning of the internal market.

The second subparagraph shall be without prejudice to the farmer's right to refuse such a minimum **duration** provided that he does so in writing. In this case, the parties shall be free to negotiate all elements of the contract, including those elements referred to in paragraph 2(c).

<sup>79</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:094:0038:0048:EN:PDF>  
accessed 16.09.2013).

- *Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law* <sup>80</sup>

#### Article 8. Termination of a contract

1. To 'terminate a contract' means to bring to an end the rights and obligations of the parties under the contract with the exception of those arising under any contract term providing for the settlement of disputes or any other contract term which is to operate even after termination. [...]

#### Article 16. Information about the contract terms

The information to be provided under point (d) of Article 13 (1) must include: [...]

(b) where applicable, the **duration** of the contract, the minimum duration of the consumer's obligations or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract;

#### Article 77. Contracts of indeterminate duration

1. Where, in a case involving continuous or repeated performance of a contractual obligation, the contract terms do not stipulate when the contractual relationship is to end or provide for it to be terminated upon giving notice to that effect, it may be terminated by either party by giving a reasonable period of notice not exceeding two months.

#### Article 85. Contract terms which are presumed to be unfair

A contract term is presumed to be unfair for the purposes of this Section if its object or effect is to: [...]

g) enable a trader to terminate a contract of indeterminate duration without reasonable notice, except where there are serious grounds for doing so;

## **2. General contract legislation**

### **2.1. United States of America**

- *Uniform Commercial Code (UCC)* <sup>81</sup>

#### Article 2 – Sales (2002)

§ 2-106. Definitions: "Contract"; "Agreement"; "Contract for sale"; "Sale"; "Present sale"; "Conforming" to Contract; "**Termination**"; "Cancellation"

#### Part 1. Short title, general construction and subject matter [...]

3) "**Termination**" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

## **3. Specific national legislation on contract farming**

### **3.1. Belgium**

- *Loi relative à l'intégration verticale dans le secteur de la production animale, 1 avril 1976* <sup>82</sup>

<sup>80</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0635:FIN:en:PDF> (Last accessed 27.9.2013).

<sup>81</sup> <http://www.law.cornell.edu/ucc/> (Last accessed 16.09.2013).



Art. 3.

Le contrat doit contenir ce qui suit : [...] 3. la date de prise de cours et la **durée du contrat**;

Art. 5.

Le contrat peut être conclu pour une **durée indéterminée**. Dans ce cas, chacune des parties peut y mettre fin moyennant préavis donné par lettre recommandée à la poste ou par exploit d'huissier de justice. Le délai de préavis est de trois mois au moins et sera prolongé afin d'achever de la manière convenue les prestations en cours à la date de la notification du préavis. Au cours du délai de préavis, une nouvelle prestation peut être entamée, pour autant qu'elle puisse être achevée de la manière convenue pendant le délai de préavis.

Le contrat peut également être conclu pour une **durée déterminée**. Celle-ci ne peut excéder trois ans, si ce n'est pour permettre aux parties d'achever de la manière convenue une prestation en cours. Si une durée plus longue a été fixée, celle-ci est ramenée d'office à la durée susdite.

Le contrat peut éventuellement être **renouvelé**.

Le contrat conclu pour une **durée déterminée** prend fin d'office et sans aucun préavis par l'expiration du terme ou de la prestation convenus et, éventuellement, de la durée légale maximum. Le cas échéant, la durée convenue sera prolongée afin de permettre aux parties d'achever de la manière convenue la prestation en cours.

Nonobstant toute stipulation contraire, un contrat conclu pour une **durée déterminée** n'est jamais renouvelé d'office. Si les parties continuent tacitement l'exécution du contrat, il s'agit cette fois d'un contrat d'une durée indéterminée.

**3.2. Brazil**

- *Projeto de Lei do Senado nº 330, de 2011 sobre a parceria de produção integrada agropecuária*<sup>83</sup>

In Brazil, the Senate is examining a bill relating to contracts of partnership for the integrated production of agricultural products.

Art. 4º

O contrato de integração, sob pena de nulidade, parcial ou total, deve ser escrito de forma direta e precisa, em português simples e com letras uniformes de fácil visualização, e dispor sobre as seguintes questões, sem prejuízo de outras que as partes considerem mutuamente aceitáveis: [...]

XII - a definição de prazo para aviso prévio de **rescisão** do contrato de produção integrada, que deve levar em consideração o ciclo produtivo da atividade e o montante dos investimentos realizados;

XIII - as sanções para os casos de inadimplemento ou **rescisão unilateral** do contrato.

Art. 4 of the Brazilian Bill nº 330 of 2011 regarding partnerships for integrated agricultural production:

The integration contract shall, upon partial or total nullity, define [...] (XII) the term for notice prior to the termination, which should take into consideration the production cycle of the activity and the amount of the fulfilled investments, (XIII) the sanctions in cases of default or unilateral rescission from the contract.

<sup>82</sup>

[http://www.ejustice.just.fgov.be/cgi\\_loi/change\\_lg.pl?language=fr&la=F&cn=1976040132&table\\_name=loi](http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&cn=1976040132&table_name=loi) (Last accessed 16.09.2013).

<sup>83</sup> <http://www.senado.gov.br/atividade/materia/getTexto.asp?t=92151&c=PDF&tp=1> (Last accessed 16.09.2013).



### 3.3. France

- *Contrat d'intégration (Art. L.326-1 to L.326-10 Code rural et de la pêche maritime)*<sup>84</sup>

Under the French Rural and Sea Fishing Code, integration contracts shall specify the duration of contract as understood in a wide sense. In comparison to the provisions of the French civil code<sup>85</sup>, the above mentioned Code sets stricter requirements to the content of integration contracts.<sup>86</sup>  
Chapitre VI : Les contrats d'intégration [...]

Article L.326-5 (Créé par Loi 93-934 1993-07-22 annexe JORF 23 juillet 1993)

Un ou plusieurs contrats types fixent par secteur de production, les obligations réciproques des parties en présence, et notamment les garanties minimales à accorder aux exploitant agricoles. Le contrat type détermine notamment : [...]

3°. La **durée** du contrat, le volume et le cycle de production sous contrat ainsi que les indemnités dues par les parties en cas de non-respect des clauses.

Article L.326-6 (Créé par Loi 93-934 1993-07-22 annexe JORF 23 juillet 1993)

Les contrats d'intégration conclus à titre individuel ou le contrat collectif doivent obligatoirement, à peine de nullité, fixer la nature, les prix [...]. Leurs clauses doivent également mentionner les conditions de **durée**, de **renouvellement**, de révision et de résiliation.

Article L.326-7 (Créé par Loi 93-934 1993-07-22 annexe JORF 23 juillet 1993)

Sauf consentement écrit des parties, aucun contrat ne peut être **renouvelé** par tacite reconduction pour une période excédant un an.

- *Implementation rules for standard agreements (Art. R.326-1 to R.326-10 Code rural et de la pêche maritime)*

Article R.326-1 (Créé par Décret 96-205 1996-03-15 annexe JORF 17 mars 1996)

Les contrats types d'intégration définis aux articles L. 326-1 à L. 326-10 comportent les mentions suivantes :

1° Le lieu d'application, la **durée** et les conditions de signature, de **renouvellement**, de reconduction et de **résiliation** du contrat, la durée de chaque prestation et le délai séparant deux prestations ; [...]

- *Contracts of sale of agricultural products to be marketed or processed (L.631-24 to L.631-26 Code rural et de la pêche maritime)*

Section 2 : Les contrats de vente de produits agricoles

Article L.631-24 (Modifié par Loi n°2012-387 du 22 mars 2012 - art. 84)

[...]

Ces contrats écrits comportent des clauses relatives à la **durée** du contrat, [...] et aux modalités de révision et de résiliation du contrat ou au préavis de rupture. [...] Sauf stipulations contraires, ces contrats sont **renouvelables** par tacite reconduction pour une période équivalente à celle pour laquelle ils ont été conclus.

Ils peuvent être rendus obligatoires :

a) Par extension ou homologation d'un accord interprofessionnel, dans les conditions définies aux articles L. 631-10, L. 632-3, L. 632-4 et L. 632-12 ;

<sup>84</sup> As regulated by law n° 64-678 of 6 July 1964 and amended by law n° 80-502 of 5 July 1980.

<sup>85</sup> Art. 1129 Code civil.

<sup>86</sup> Cf. Lorvellec, L.: "Production et marchés. Contrats individuels d'intégration", JurisClasseur Rural, V° Production et marchés (1 Novembre 2003), p. 20.

b) Ou, si aucun accord interprofessionnel ayant le même objet n'a été étendu ou homologué, par un décret en Conseil d'Etat. L'application de ce décret est suspendue en cas d'extension ou d'homologation d'un accord interprofessionnel mentionné au a.

L'accord interprofessionnel mentionné au a ou le décret en Conseil d'Etat mentionné au b fixe, par produit ou catégorie de produits et par catégorie d'acheteurs, la **durée minimale du contrat** qui est de un à cinq ans, ainsi que les modes de commercialisation pour lesquels une durée inférieure est admise. Les dispositions relatives à la durée minimale du contrat prévues à l'avant-dernier alinéa ne sont applicables ni aux produits soumis à accises, ni aux raisins, moûts et vins dont ils résultent. Pour l'ensemble de ces produits, tant des contrats pluriannuels que des contrats ponctuels peuvent être conclus.

### 3.4. India

- *Addendum on Contract Farming Agreement And Its Model Specifications (9th Sept 2003)*

#### 6. Specifications of Contract Farming agreements [...]

The Specifications : Within the broad categories of market-specification, resource-providing, and produce-management contracts, firms must specify terms that include [...]

f) The **duration** of the contract [...]

#### Contents of a model contract farming agreement

##### Mandatory provisions

[...] III. Duration of Agreement

a) Seasonal b) Annual c) Long Term (3 - 5 years )

Explanatory note : The **duration** of agreements depends on the nature of the crop. Contracts for short - term crops such as table vegetables are normally issued and renegotiated on a seasonal basis, whereas crops such as tea, coffee, sugar cane, and cocoa require long - term contracts that can be amended periodically.

### 3.5. Italy

- *Decreto legislativo n° 102 of 27 March 2005 for the Regulation of agrifood markets ("Regolazione dei mercati agroalimentari")*

#### Art. 11: Modalità

1. Il contratto quadro definisce il prodotto, le attività e l'area geografica nei cui confronti e' applicabile; nel contratto quadro devono essere indicate la **durata e le condizioni del suo rinnovo**.

- *Art 62 of the Law Decree n°1 of 24 January 2012 on commercial relationships in the sales of agricultural and agro-food products*<sup>87</sup>

#### Art. 62 del Decreto Legge 24 gennaio 2012, n.1

##### Disciplina delle relazioni commerciali in materia di cessione di prodotti agricoli e agroalimentari

1. I contratti che hanno ad oggetto la cessione dei prodotti agricoli e alimentari, ad eccezione di quelli conclusi con il consumatore finale, sono stipulati obbligatoriamente in forma scritta e indicano la **durata** [...]. I contratti devono essere informati a principi di trasparenza, correttezza [...].

<sup>87</sup> As amended by law n° 27 of 24 March 2012 and law decree n° 179 of 18 October 2012.

### 3.6. Morocco

- *Law n° 04-12 of 17 July 2012 on agricultural aggregation* <sup>88</sup>

#### Article 9

A peine de nullité, le contrat d'agrégation agricole doit obligatoirement contenir les clauses suivantes: [...]

- la **durée** du contrat déterminée en fonction notamment de la nature des activités prévues par le contrat avec la possibilité d'introduire des clauses de révision périodique.

Lorsque le contrat d'agrégation agricole concerne un agrégé bénéficiant d'un bail agricole, la durée du contrat ne doit pas dépasser la durée du contrat de bail de l'immeuble objet du projet d'agrégation agricole.

### 3.7. Panama

- *Agrarian Code adopted by Law 55 of 23 May 2011* <sup>89</sup>

[Extract]

#### Titulo II: Contratos Agrarios. Capítulo I: Disposiciones Generales

Artículo 45. La **duración** de los contratos agrarios deberá determinarse, sin desconocer el ciclo biológico de la actividad de que se trate, de manera que se asegure, por lo menos, un ciclo completo hasta el levantamiento de la cosecha.

Artículo 48. Son causas comunes de **terminación** de los contratos agrarios:

1. El mutuo acuerdo.
2. La resolución.
3. El vencimiento del término.
4. La muerte, incapacidad o imposibilidad física de alguna de las partes, sin perjuicio de las excepciones previstas en este Código.

Artículo 49. El contrato agrario deberá contener como mínimo: [...] 3. **Duración** [...]

#### Capitulo II: Contrato de Arrendamiento Agrario

Artículo 51. El **término de duración** pactado corresponderá al ciclo biológico de la actividad que se trate. De no determinarse expresamente, se presume por un término de tres años.

Artículo 61. Cumplido el término pactado, se extinguirá el arrendamiento; sin embargo, se entenderá prorrogada su duración por el periodo necesario para concluir con el ciclo biológico de la actividad agraria que se esté desarrollando.

Artículo 62. El arrendatario tendrá derecho a la **renovación** del contrato cuando transcurridos treinta días calendario de su terminación permanezca en el predio con el consentimiento del arrendador. En este caso, cesan respecto del contrato renovado las obligaciones otorgadas por un tercero para garantizar su cumplimiento.

#### Capitulo II: Contrato de Aparcería o Medicría

Artículo 74. En ningún caso se podrá pactar un **término de duración** del contrato que desconozca el ciclo biológico de la actividad de que se trate. De no determinarse expresamente la duración del contrato, se presume que no podrá ser por un término menor de dos años.

<sup>88</sup> Loi n° 04-12 relative à l'agrégation agricole" promulguée par Dahir n° 1-12-15 du 17 juillet 2012.

<sup>89</sup> Código Agrario de la República de Panamá. Available at [http://www.gacetaoficial.gob.pa/pdfTemp/26795\\_A/GacetaNo\\_26795a\\_20110530.pdf](http://www.gacetaoficial.gob.pa/pdfTemp/26795_A/GacetaNo_26795a_20110530.pdf) (Last accessed 13.09.2013).

Artículo 76. El contrato de aparcería **termina** con la muerte, incapacidad o imposibilidad física del aparcerero tomador. Sin embargo, podrá continuarse el contrato con los herederos, previa notificación por escrito al aparcerero dador en el plazo de treinta días.

El contrato de aparcería **no terminará** por muerte del dador o por traspaso del predio, salvo opción contraria del aparcerero tomador.

#### Título IV: Integración Vertical de la Agricultura y los Agronegocios

##### Capítulo I: Contrato de Agroindustria

Artículo 135. El contrato de agroindustria deberá constar por escrito y, además de los requisitos comunes a los contratos agrarios, contendrá como mínimo:[...] 4. La **duración**.

Artículo 136. Son causales especiales de **terminación** del contrato las siguientes:

2. La quiebra o la muerte del productor o del industrial cuando estos sean personas naturales y carezcan de herederos que continúen la actividad. [...]
3. El mutuo acuerdo de las partes.

### **3.8. Spain**

- *Cataluña Law 2/2005 on integration contracts ("contrato de integración")*

#### Artículo 4. Forma y duración del contrato de integración [...]

2. La duración mínima del contrato de integración debe coincidir con la duración del ciclo productivo correspondiente.

#### Artículo 6: Contenido mínimo del contrato de integración

1. El contrato de integración debe contener, como mínimo, los datos y estipulaciones siguientes: [...]

b) El objeto y **duración** del contrato, y las condiciones de **renovación** y **rescisión**.

#### Artículo 8: Extinción del contrato de integración

Además de las causas generales de extinción de las obligaciones, el contrato de integración se extingue:

a) Por haber llegado al **término establecido** en el contrato. En caso de que una de las partes quiera resolver el contrato, debe avisar a la otra parte por escrito con una antelación mínima equivalente a la mitad del ciclo productivo.

b) Por defunción o extinción de cualquiera de las partes contratantes, una vez acabado el proceso en curso, aunque no haya finalizado la duración del contrato, salvo acuerdo entre el contratante superviviente y los sucesores del premuerto o en caso de que los sucesores sean profesionales de la ganadería y colaboradores principales y directos en la producción afectada a la integración, caso en el cual tienen derecho a suceder al premuerto en condiciones idénticas a las establecidas por el contrato y hasta el plazo que consta en el mismo.

- *Implementation act regarding a standard form of agreement (Resolución ARP/2974/2005 de 13 de octubre, por la que se aprueba el modelo homologado de contrato de integración)* <sup>90</sup>

#### [...] Tercero

Que ambas partes han convenido a otorgar este contrato de integración que se regirá por las siguientes cláusulas: [...]

<sup>90</sup> [http://www.porcat.org/download/resolucion\\_arp\\_2974\\_2005.pdf](http://www.porcat.org/download/resolucion_arp_2974_2005.pdf) (Last accessed 16.09.2013).

### 3. Duración y renovación

3.1 La **duración** del contrato es de (indicar plazo de duración que no puede ser inferior a la del ciclo productivo).

3.2 Una vez transcurrido este plazo, el contrato se entenderá renovado por el plazo de (indicar plazo).

3.3 Antes del inicio de los ciclos productivos, de acuerdo con lo que, en su caso, establezca la normativa sectorial, se prevé un periodo de vacío sanitario de (número de días) días para sanear y adecuar las instalaciones.

### 12. Rescisión y extinción

12.1 Cualquiera de las partes podrá instar por escrito ante la otra la rescisión del contrato en los supuestos y con las condiciones que se pactan a continuación: (indicar los pactos).

12.2 Además de las causas generales de extinción de las obligaciones que establece el Código civil, este contrato se extinguirá en los supuestos que prevé el artículo 8 de la Ley 2/2005, de 4 de abril.

- *Ley 2/2000, de 7 de enero, reguladora de los contratos tipo de productos agroalimentarios*<sup>91</sup>

#### Artículo 3. Contenido de los contratos tipo.

Los contratos tipo agroalimentarios, para ser homologados, deberán incluir, al menos, las estipulaciones relativas a: [...]

b) **Plazo de vigencia** del contrato

- *Draft Proposal: BOCG 10A37-1 Proyecto de Ley de medidas para mejorar el funcionamiento de la cadena alimentaria*

## Título II: Régimen de contratación y prácticas comerciales abusivas

### Capítulo I : Contratos alimentarios

#### Artículo 9. Condiciones contractuales.

1. Los contratos alimentarios regulados en este Capítulo, contendrán como mínimo los siguientes extremos: [...]

h) **Duración** del contrato, así como las condiciones de renovación y modificación del mismo.

i) Causas, formalización y efectos de la **extinción** del contrato

### 3.9. United States of America

In the USA, several states have adopted specific legislation on production contracts. In 2000 a Model Producer Protection Act (MPPA) was drafted, upon which several states have based their legislation.

- *Iowa Producer Protection Act (2000)*<sup>92</sup>

#### Section 4. Disclosure of Risks and Readability

a. Disclosure Statement. An agricultural contract must be accompanied by a clear written disclosure statement setting forth the nature of the material risks faced by the producer if the producer enters into the contract. [...] The statement shall disclose the following: [..]

<sup>91</sup> <http://www.boe.es/boe/dias/2000/01/10/pdfs/A00881-00885.pdf> (Last accessed 16.09.2013).

<sup>92</sup> [http://www.state.ia.us/government/ag/working\\_for\\_farmers/2000\\_news/producer\\_protection\\_act.html](http://www.state.ia.us/government/ag/working_for_farmers/2000_news/producer_protection_act.html) (Last accessed 16.09.2013).

- (2) contract **duration**;
- (3) contract **termination**;

b. Readability of Contracts. [...]

(2) Cover Sheet Requirements. [...]

(b) Requirements. The cover sheet or sheets must comply with paragraph 3 and must contain the following all of the following: [...]

v. An index of the major provisions of the contract and the pages on which they are found, including all of the following:

(iii) The provisions governing **termination**, cancellation, **renewal**, and amendment of the contract by either party.

Section 8. Production Contracts Involving Investment Requirements.

a. Applicability. This section only applies to a production contract executed by a contract producer and a contractor, if the contract producer must make capital investments of \$100,000 or more according to investment requirements provided in all production contracts in which the contract producer and the contractor are parties. [...]

b. **Restrictions on Contract Termination.** Except as provided in subsection (d), a contractor shall not terminate, cancel, or fail to renew a production contract until the contractor has done the following:

(1) Notice. The contractor has provided the contract producer written notice of the intention to terminate, cancel, or not renew at least 90 days before the effective date of the termination, cancellation, or nonrenewal.

(2) Damages. The contract producer has been reimbursed for damages incurred due to the termination, cancellation, or failure to renew. Damages shall be based on the value of the remaining useful life of the structures, machinery or equipment involved.

➤ *Illinois Agricultural Production Contract Code*<sup>93</sup>

(505 ILCS 17/45) Section 45. Investment requirements

(a) This Section applies to all production contracts that have capital investment requirements.

(b) Except as provided in subsection (c), a contractor shall not take action to **terminate** or cancel a production contract until the contractor has done the following:

(1) Provided the producer with written notice of the intention to terminate or cancel at least 60 days before the effective date of the termination or cancellation.

(2) Reimbursed the contract producer for the value of the remaining useful life of the capital investment items. In calculating this reimbursement amount, the contractor may take into account the producer's ability to use the capital investments in other business enterprises of the producer and the opportunity to recoup the cost of the capital improvements by sale or lease.

[...] (Source: P.A. 93-522, eff. 1-1-05.)

(505 ILCS 17/25) Section 25. Index

An index of the major portions of the contract and the pages on which they are found must be included with each production contract offered to a producer that exceeds 2 pages in length. The index must contain references for any of the following that are included in the contract: [...]

(3) The provisions governing cancellation, **renewal**, or amendment of the contract by either party. (Source: P.A. 93-522, eff. 1-1-05.)

<sup>93</sup> <http://law.justia.com/codes/illinois/2010/chapter505/2485.html> (Last accessed 16.09.2013).

➤ *Minnesota Agricultural Contracts Act*<sup>94</sup>

17.92 Recapture of capital investment required by an agricultural contract.

Subdivision 1. Notice and damages to be paid.

A contractor must not terminate or cancel a contract that requires a producer of agricultural commodities to make a capital investment in buildings or equipment that cost \$100,000 or more and have a useful life of five or more years until:

(1) the producer has been given written notice of the intention to terminate or cancel the contract at least 180 days before the effective date of the termination or cancellation or as provided in subdivision 3; and

(2) the producer has been reimbursed for damages incurred by an investment in buildings or equipment that was made for the purpose of meeting minimum requirements of the contract.

17.942 Cover sheet requirements

Subdivision 1. Mandatory cover page.

An agricultural contract entered into or substantively amended after January 1, 2001, must contain as the first page, or first page of text if it is preceded by a title page or pages, a cover sheet as provided in this section.

Subdivision 2. Requirements.

The cover sheet or sheets must comply with section 17.943, and must contain the following: [...]

(5) an index of the major provisions of the contract and the pages on which they are found, including: [...]

(iii) the provisions governing cancellation, renewal, or amendment of the contract by either party; [...]

➤ *South Carolina Code of Regulations (2005)*  
*Chapter 5 – Department of Agriculture*  
*Article 1 – Agricultural Commodities Marketing Act*<sup>95</sup>

5-72. Contracts.

[...] The duration of the contract must be stated, and if it is "open end" or can be terminated by either the "handler" or "producer" upon certain notification and time lapse or any other condition, such procedure must be clearly indicated.

#### **4. Soft law and guidelines**

##### **4.1. Kenya**

➤ *Code of Conduct for Fresh Horticultural Produce Sales*<sup>96</sup>

Duration of Contract.

**Duration** and maturity of contract should be specified by indicating number of months from contract execution or a specific time interval.

<sup>94</sup> <https://www.revisor.mn.gov/statutes/?id=17> (Last accessed 16.09.2013).

Cf. <http://www.mda.state.mn.us/news/publications/animals/livestockproduction/manual.pdf> , A Guide to Agricultural Production Contracting in Minnesota (Last accessed on 16.09.2013).

<sup>95</sup> <http://law.justia.com/codes/south-carolina/2005/5/5.html> (Last accessed 24.09.2013).

<sup>96</sup> [http://www.hcda.or.ke/tech/full\\_site\\_map.php?p\\_title=Code%20of%20Conduct](http://www.hcda.or.ke/tech/full_site_map.php?p_title=Code%20of%20Conduct) (Last accessed 16.09.2013).

### Termination Clause.

Conditions for **termination** must be indicated i.e., a written notice of termination within a reasonable period which should be equivalent to a full production and marketing cycle of the produce.

## **5. International instruments**

### **5.1. 2010 UNIDROIT Principles of International Commercial Contracts**

#### Chapter 5 — Content and third party rights

##### Section 1: Content

###### Article 5.1.8 (Contract for an indefinite period)

A contract for an indefinite period may be ended by either party by giving notice a reasonable time in advance.

#### Chapter 7: Non-performance

##### Section 3: Termination

###### Article 7.3.1. (Right to terminate the contract)

(1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance. [...]

###### Article 7.3.2. (Notice of termination)

- (1) The right of a party to terminate the contract is exercised by notice to the other party.
- (2) If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the offer or of the non-conforming performance. [...]

###### Article 7.3.5 (Effects of termination in general)

- (1) Termination of the contract releases both parties from their obligation to effect and to receive future performance.
- (2) Termination does not preclude a claim for damages for non-performance.
- (3) Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.

###### Article 7.3.6 (Restitution with respect to contracts to be performed at one time)

- (1) On termination of a contract to be performed at one time either party may claim restitution of whatever it has supplied under the contract, provided that such party concurrently makes restitution of whatever it has received under the contract.
- (2) If restitution in kind is not possible or appropriate, an allowance has to be made in money whenever reasonable.
- (3) The recipient of the performance does not have to make an allowance in money if the impossibility to make restitution in kind is attributable to the other party.
- (4) Compensation may be claimed for expenses reasonably required to preserve or maintain the performance received.

###### Article 7.3.7. (Restitution with respect to contracts to be performed over a period of time)

- (1) On termination of a contract to be performed over a period of time restitution can only be claimed for the period after termination has taken effect, provided the contract is divisible.
- (2) As far as restitution has to be made, the provisions of Article 7.3.6 apply.



## 5.2. 1980 United Nations Convention on Contracts for the International Sale of Goods (CISG)<sup>97</sup>

### Article 29

(1) A contract may be modified or **terminated** by the mere agreement.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

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<sup>97</sup> <http://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf>  
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