

Kyle Goodier

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT for the sale of Agricultural Waste. The parties to this purchase agreement are AgriFuel, LLC (“**Buyer**”) and Shona Farms (“**Seller**”).

IT IS AGREED:

Buyer will purchase all of Seller’s Agricultural Waste monthly for the Contract Term of two years starting on The Date of First Performance.

Seller runs a profitable organic produce company in Cottonwood, California that sells wholesale to supermarkets and specialty food stores in the United States. Seller’s farming operations generate large amounts of Agricultural Waste that Seller intends to sell to Buyer. Seller’s owner, Declan McManus, is an environmental activist that would like to sell the Agricultural Waste to Buyer for use in Buyer’s research project.

Buyer owns and operates a biorefinery in Goodyear, Arizona. The federal government recently issued Buyer a grant under its Advanced Energy Initiative to develop a process to cost-effectively produce cellulosic ethanol for commercial consumption. Cellulosic ethanol is a promising alternative fuel source that is derived from non-food plant materials, like Agricultural Waste.

Seller agreed to sell all of the Agricultural Waste that it produces for two years at a price of \$100 per cubic ton of Agricultural Waste. Buyer agreed to purchase all of Seller’s Agricultural Waste at this price. Additionally, Buyer agreed to incur all costs related to the removal and delivery of the Agricultural Waste, as Seller does not want to overburden Seller’s overworked employees with the duties related to this purchase agreement.

The parties understand that there is opportunity for a mutually beneficial relationship here as Buyer needs Seller's Agricultural Waste and Seller can financially benefit from Buyer's need for the Agricultural Waste it produces. Thus, the parties intend this contact to be fully integrated. Seller and Buyer, each represented by counsel, elects to waive its rights to a jury trial.

DEFINITIONS

1. "Agricultural Waste" means the waste produced by Seller in its organic produce business. Such waste refers to waste materials produced from agricultural operations, excluding waste from farms, poultry houses, and slaughterhouses. It consists of all parts of crops that are not used for human or animal food and may vary in density and moisture content.
2. "Contract Term" means the two years governing this agreement, starting at the date of first performance when Buyer pays its first Installment to Seller in exchange for Seller's Agricultural Waste.
3. "Monthly Term" means each calendar month during the Contract Term that Buyer purchases Agricultural Waste from Seller.
4. "Pickup Date" means the date Buyer picks up the Agricultural Waste from Seller. This date will often be the 1st of each month but can be on a different day that Buyer and Seller agree to.
5. "Necessary Quantity" means the amount needed by Buyer to be economically viable to the extent Buyer's biorefinery business is not harmed by insufficient Agricultural Waste.
6. "The Date of First Performance" means the first Pickup Date during the Contract Term where Seller provides Agricultural Waste to Buyer in exchange for payment.

OPERATIVE TERMS

1. Parties. The parties to this purchase agreement are AgriFuel, LLC (“Buyer”) and Shona Farms (“Seller”).

2. Description of Goods. Seller shall sell Buyer all Agricultural Waste Seller produces through Seller’s organic produce business. Seller shall provide the Agricultural Waste that it currently uses for composting to Buyer as part of this agreement.

3. Price. Seller shall sell to Buyer and Buyer shall purchase from Seller All Agricultural Waste Seller has to offer at a price of \$100 per cubic ton for the Contract Term.

4. Quantity. Buyer shall purchase all Agricultural Waste Seller produces. The quantity of Agricultural Waste may vary over Monthly Terms. Seller shall make a Good Faith Effort to provide Buyer with notice of an expected quantity prior to the Pickup Date. In the event Seller is unable to provide the Necessary Quantity of Agricultural Waste for a particular month to Buyer, Buyer may terminate this agreement with notice according to the notice requirements provided in this Agreement. Seller acknowledges that by selling All Agricultural Waste to Buyer means Seller will no longer be able to use the Agricultural Waste it produces for composting and will now need to purchase compost for his farming operations. Seller shall be responsible for keeping track the exact quantity of Agricultural Waste produced over the Monthly Term. Buyer may inspect the Agricultural Waste if Buyer wishes to confirm the quantity of cubic tons of Agricultural Waste purchased for the Monthly Term.

4. Pickup Terms. Buyer shall remove all Agricultural Waste purchased via this purchase agreement from Seller’s premises on the 1st of each month. Buyer shall pay for all costs relating to the removal and delivery of Agricultural Waste. Seller shall collect the agricultural waste for Buyer to pick up no later than the Pickup Date. Seller and Seller’s employees are in no way

obligated to assist Buyer with the removal and delivery of Agricultural Waste. Buyer and Seller may mutually agree to change the date of Pickup.

5. Payment Terms. Seller will make a Good Faith Effort to communicate to Buyer the estimated monthly quantity of Agricultural Waste over the Agreement term. Buyer shall pay \$100 per cubic ton for the quantity of Agricultural Waste for the Monthly Term. Buyer shall pay the amount of the invoice by cash no later 10 business days following the Pickup Date.

6. Title. Title will shift from Seller to Buyer upon Seller's receipt of Buyer's full payment for the Agricultural Waste.

7. Warranties and Representations.

- A. Buyer and Seller agree to make a Good Faith Effort to have frequent and honest communication regarding the expected monthly quantity of Agricultural Waste for purchase each month.
- B. Seller warrants that it complies with all material applicable laws and regulations regarding the handling, storage, transportation, and disposal of Agricultural Waste. Such warranty extends no later than the point on any given Pickup Date when Buyer takes possession of the Agricultural Waste.
- C. Buyer warrants it will be financially willing and able to pay for All Agricultural Waste produced for each Monthly Term during the Contract Term of this Agreement and failure to do so will result in monetary damages for Seller.
- D. Buyer represents it has the financial capacity to purchase all of Seller's Agricultural Waste on the schedule provided in "Payment Terms" section of this Agreement for the length of this Contract Term.
- E. Seller represents that it is an organic produce wholesaler in California.

F. Buyer represents that it owns and operates biorefinery and has been offered a \$60 million grant under the Advanced Energy Initiative to develop a cost-effective way to produce cellulosic ethanol.

G. Seller represents that there are no pending or threatened litigations, arbitrations, or other proceedings that could adversely affect its ability to perform this Agreement.

H. Buyer represents that there are no pending or threatened litigations, arbitrations, or other proceedings that could adversely affect its ability to perform this Agreement.

8. Headings. The headings and subheadings used in this Agreement are for convenience and ease of reference and do not limit the scope or intent of the clause.

9. Choice of Forum. Any legal proceeding relating to this Agreement will be commenced in a federal court in California, and each party irrevocably submits to the non-exclusive jurisdiction and venue of any such court in any such proceeding.

10. Choice of Law. This Agreement is governed under the laws of the state of California, without giving effect to the principles of conflict of law.

11. Waiver of Jury Trial. As a part of Buyer and Seller's commitment to a good faith commitment to this Agreement, each party gives up its right to receive a jury trial in the event of a dispute arising out of this contract.

12. Notice. All notices, requests, demands, and other communications required or permitted under this Agreement will (1) be in writing and (2) will be deemed given and received only: (a) upon personal delivery to the party to whom it is directed; or (b) when sent by email. If either party intends to terminate the agreement or exercise any other right with a notice requirement specified in this Agreement, the party exercising the right must provide notice one week in advance of the next Pickup Date to exercise said right.

13. Merger Clause: This agreement represents the complete understanding between the parties. It replaces any previous agreements or discussions related to this subject. Parties agree that this Purchase Agreement is the final and only agreement. No other promises, representations, or understandings, whether written or spoken, are part of this contract unless both parties sign a separate document that specifically says it is part of this contract. This Purchase Agreement follows the Uniform Commercial Code to ensure fairness and consistency in our business dealings.

AgriFuel, LLC (“Buyer”)	Shona Farms (“Seller”)
Date:	Date:
Name:	Name:
Title:	Title:

DRAFTING ASSIGNMENT 1

Facts: Declan McManus is the owner of Shona Farms, located in Cottonwood, California. Shona Farms raises free-range chickens and grows a variety of organic produce for wholesale to supermarkets and specialty foods stores throughout the United States.

AgriFuel, LLC owns and operates a biorefinery located in Goodyear, Arizona. AgriFuel has been offered a \$60 million grant under the federal government's Advanced Energy Initiative to develop a process to cost-effectively produce cellulosic ethanol for commercial consumption. Cellulosic ethanol is a promising new alternative fuel that has the potential to greatly reduce the country's reliance on petroleum. It is made from a wide variety of non-food plant materials, including agricultural wastes and energy crops.

Shona Farms has been very profitable in recent years due to the increased demand for organic produce and has expanded its operations to include a wide variety of vegetables and grains. Accordingly, the farming operations result in a large amount of agricultural waste, most of which is currently discarded. McManus, an environmental activist who drives an electric vehicle and utilizes solar energy, read about AgriFuel's new biorefinery grant and its need for agricultural waste to produce cellulosic ethanol. He contacted AgriFuel's President and CEO, Patti Smith, inquiring as to whether her company was interested in purchasing Shona Farm's waste for its biorefinery.

During their telephone conversation, McManus offered to sell all of its agricultural waste to AgriFuel for a price of \$100 per cubic ton. Since Shona farms presently uses some of its waste for composting, McManus will now need to purchase compost for his farming operations. Accordingly, he informed Smith that he does not want to incur any costs for the removal or delivery of the waste. McManus also does not want to overburden his already overworked employees with any additional duties relating to this contract with AgriFuel.

Smith is very excited about purchasing all of Shona Farm's agricultural waste for AgriFuel's research and agreed to those terms. However, she is unsure of the future funding for AgriFuel's project and would only agree to a two-year contract. Smith also expressed her concern regarding Shona's capacity to supply the entire amount of waste that the biorefinery needs in order to be economically viable, but McManus assured her that it would. She hopes to get that promise somehow incorporated into their contract. It was also agreed that AgriFuel would receive the waste on a monthly basis during the contract term.

McManus agreed to contact his attorneys immediately to work out the details and draft a contract for the parties to execute.

Assignment: You are an associate at Simon & Sierra, which represents Shona Farms. Your assignment is to draft the contract to be entered into by Shona Farms and AgriFuel as agreed to above. While the contract should be written on behalf of your client, it should also be a document that

is fair to both sides and one that the other party would not simply reject. You should only include those boilerplate terms that we have covered in class prior to the due date. The contract must follow the ground rules set forth in the course syllabus and may not be longer than six pages. This assignment must be submitted on or before 10:00 p.m. on February 4, 2024 via TWEN.