# 9. What do we contractually agree on?

Why is it useful to talk about contracts and agreements?
The aim is to achieve clarity and timeliness in all contractual agreements of the farm or cooperative in written form to:

* Avoid misunderstandings between the partners about what is agreed upon
* Provide the basis for solving potential future problems, for example, in the case of disputes (about individual questions, or about the cooperation as a whole), which can no longer be solved in conversation with each other, but have to be clarified in arbitration proceedings or even in court
* Assist in decisions regarding insurance. In the case of damage regulated by insurance companies, the contracts (among other things) often decide whether the insurance company will compensate the damage or not

Situations in which contracts and agreements should be addressed

1. When establishing new enterprises
2. When new members/shareholders are added
3. If contracts have not been reviewed in more 5 years, because the regulations may or may not correspond to the current needs/desires and the actual operations

Work Steps
The next steps will be to check the completeness of the important regulations. Newly founded cooperations can use the next steps to develop a basis for their contracts. Existing communities can use the next steps to review and update their contracts.

Step 1: Creating the basis for written contracts

 All contractual agreements must be in written form. A prerequisite for any contractual agreement is that the contracting parties set out the objectives for each individual agreement in as much detail as possible

* What is the purpose of the agreements?
* Who is affected?
* What should be regulated?
* What should the content of the regulations be? / What should the regulations be?

Possible contents could be:

Description of the joint venture

Visions and goals

Contributions of individuals

Distribution of tasks and responsibilities

Entry and exit of new members

Dissolution of the company

Additional points that can/should be regulated can be found in the examples section.

The principle here: describe the reality in the regulations

Often, for tax and other reasons, legal relationships are created which, although they optimally satisfy the current situation of the parties involved, do not correspond to reality. This is not a healthy basis for a long-term good cooperation. Therefore, we recommend that the contracts remain close to the reality of what is desired.

Step 2: Consultating Experts

These draf ideas and desires should be reviewed by legal advisors (attorney and/or tax counsel) and turned into a contract for the community.

It is important to observe the legal framework: As a rule, the legislator provides the framework for the contractual basis. The basic rules e.g. of a GbR contract are laid down in the German Civil Code (BGB) and it is not possible to include provisions in a GbR contract that contradict the BGB. This is then considered a declaration of intent, but does not stand up in court.

Step 3: Signatories

Signature creates a binding effect and establishes a serious and formal relationship. With the signature, a private person, who is solely responsible for themselves, becomes a co-responsible person who continues to take responsibility for themselves, but also for their fellow partners.

Legal forms of Companies

The usual form of a company in agriculture is the GbR, a partnership under civil law. The basic features of this type of company are regulated in the BGB. The GbR is a partnership in which no limitation of liability is possible. It is easy to set up, easy to handle and usually meets the requirements of cooperation (if limitation of liability is not an important issue).

There are other legal forms for farm and marketing associations in which liability can be limited. These, however, require higher expenses for establishing them and for administration. Examples are the KG (limited partnership), the GmbH or the UG, but also the (small) cooperative or the small stock corporation. Information on the advantages and disadvantages can be obtained from suitable lawyers / tax consultants or from colleagues who work with the legal form.

You can also find some legal form comparisons under "Other materials.”

Other important topics for existing communities:

* Are the collaboration agreements (teams and timelines, protocol etc) up to date?
* Are the lease contracts all concluded in writing, and other possible contracts with the non-profit organizations?
* Are the credit agreements, participation certificates (if available) up-to-date?
* Are memberships in associations current and relevant?
* Are the insurance policies up to date and adapted to possible increased exposure?