

# Purchase Agreement and Terms of Trade (Short Form)

## 1. Background:

These Terms are accepted by the Buyer purchasing the Grower's fruit as ordered by ("the Fruit") as a Merchant Trading Buyer. An order to purchase may be in written/facsimile/email form and supplied by the BUYER to the GROWER and becomes a commitment to buy. The Buyer will, in accordance with these terms, purchase Fruit as a Merchant Trading Buyer for export and sale agreed by ordered volumes, varieties, and specifications. These terms commence on the date the Buyer receives the Grower's fruit, and continue until terminated by either party upon one month's written notice.

## 2. Grower duties and obligations:

The Grower will:

- 2.1. Grow, harvest, package and deliver the Fruit in accordance with the Standard Industry Best Practice Quality Manual, Variety and any other specifications agreed to in writing between the Buyer and the Grower ("the Export Specifications").
- 2.2. Ensure that the Fruit meets the Export Specifications.
- 2.3. Take all reasonable measures to supply the Fruit in accordance with the Commitment Form (Appendix 1).
- 2.4. Keep accurate records (including quality control records) in relation to growing, harvesting, processing, packing, handling, cool store and delivery of the Fruit.
- 2.5. Observe all chemical application and withholding requirements advised in writing by the Buyer
- 2.6. Ensure delivery of all documentation to the Buyer upon completion, and in any event prior to the product being removed from the pack-house or cool-store.

## 3. Fruit to be supplied and purchased:

The Buyer agrees to purchase from the Grower, and the Grower agrees to sell to the Buyer, Fruit of such volumes, varieties and specifications agreed between the parties from time to time on a shipment-by-shipment basis at such prices as the parties may agree.

## 4. Shipping confirmation:

The Buyer will confirm in writing five (5) days prior to shipment the volume, variety, size, ship ETD, ETA etc required and the net price FAS as per Standard Fixed Price Purchase Order Form or other agreement.

## 5. Price:

The Buyer will specify the Fixed FAS Price on the Purchase Order. The Grower shall advise acceptance of the price within 24 hour of receipt of a Purchase Order.

## 6. Title:

Title to the Fruit will pass to the Buyer at FAS.

## 7. Costs:

The Buyer will be responsible for all costs and expenses from the FAS point onwards.

## 8. Outturn Report:

The Buyer will supply an outturn report within forty eight (48) hours of arrival, confirming volumes and quality.

## 9. Quality:

The Grower guarantees the quality of the Fruit (excluding quality deterioration attributable to transport, handling, or storage, post FAS) until arrival at its export port of destination and for a further forty eight (48) hours only.

## 10. Notice of Condition:

If the Fruit arrives at its export port of destination outside the Export Specifications as agreed in writing by the Buyer, then the Buyer must:

- 10.1. Notify the Grower within forty eight (48) hours of arrival in writing
- 10.2. Organise an independent survey of the Fruit immediately and furnish a copy of this report to the Grower within five (5) days of arrival of the Fruit. The Grower will not be liable for any deterioration of the Fruit caused by transport, handling, or storage circumstances, occurring after the FAS point.
- 10.3. If written notification is not given within forty eight (48) hours of arrival, the Fruit shall be taken as being within the Export Specifications.

## 11. Renegotiation:

Once confirmation of the quality problem has been established, the Buyer may:

- 11.1. Re-negotiate a new price
- 11.2. Revert the transaction to one of commission agent or
- 11.3. As otherwise agreed to in writing.

In the event that an overpayment has been made, due to a claim, the Grower will repay the amount paid within seven (7) days or as otherwise agreed to in writing.

## 12. Payment:

Payment for the Fruit at time of order shall be made as follows:

- 12.1. The Buyer will pay the Grower fifty (50) percent of the agreed FAS net price, or NZ\$11.50 per TCE, whichever is the greater, ten (10) days after acceptance.
- 12.2. The balance of the agreed net price shall be paid within thirty (30) days after the date of arrival of the carrying vessel at the port of discharge, or the date upon which the carrying vessel would in normal circumstances arrive at the port of discharge.
- 12.3. The Buyer will establish a letter of credit in terms acceptable to the Grower to secure payment of the total agreed purchase price if requested in writing by the Grower prior to the Buyer signing the Purchase Order.
- 12.4. All Levies are to be deducted and paid by the exporter from the Final Payment.
- 12.5. GST payment is additional on all fruit payments (quoted price) unless zero rated.
- 12.6. One Temperature Recorder is standard per container, any additional recorders required are to be paid for by the Exporter at \$60 per unit.

## 13. Late Payment:

Interest on any late payments due to the Grower under this agreement shall accrue at the commercial non-authorized (penalty) overdraft interest rates as charged by the Grower's bank for the period that any payment remains outstanding.

## 14. Freight:

- 14.1. The Grower has the option of using the Grower's shipper's service in the case of a more competitive freight rate than that supplied by the Agent's shippers.
- 14.2. The Agent agrees to reimburse the Grower for all freight charges incurred within seven (7) days of production of the invoice from the Shipping Company.

## 15. Insurance:

Unless otherwise agreed, the Buyer shall insure the Fruit for the benefit of the Grower and the Buyer from point of FAS New Zealand to after Export discharge. Where quality of the Fruit is guaranteed by the Grower beyond the point of sale, the Buyer shall extend insurance for the period of the Grower's guarantee of quality.

(NB. The Grower is to be issued with a copy of the Insurance Policy Document and the Grower is to familiarise himself with the specific requirements with which he must comply in order for each shipment of product to be covered under the terms of the Insurance Policy).

## 16. Force Majeure:

- 16.1. Notwithstanding anything herein contained, non-performance by either party of any of its obligations under this agreement shall be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by any event beyond reasonable control of a party (a "Force Majeure").
- 16.2. The party claiming the benefits of this clause shall promptly give written notice to the other party specifying the cause and the extent of its inability to perform any of its obligations under these Terms and the likely duration of such non-performance. In the meantime such party shall take all reasonable steps to remedy or mitigate the effect of the Force Majeure.
- 16.3. No party shall, by virtue of this clause, be required against its will to settle any strike, lockout or other industrial disturbances.

## 17. Disputes:

- 17.1. Prior to the initiation of any formal dispute resolution procedures, the parties shall first attempt to resolve any dispute, difference, controversy or claim arising under or in connection with this agreement informally, through good faith negotiations. Formal proceedings for the resolution of a dispute may not be commenced until the expiry of 15 days following the date of notice of the dispute.
- 17.2. If the Dispute has not been resolved within fifteen (15) days notice then either party may refer to a single arbitrator to be appointed by the then President of the Napier District Law Society. The dispute shall then be determined in accordance with the Arbitration Act 1996 (excluding clause 5 of the Second Schedule).
- 17.3. The provisions of the above clauses and will not prevent a party from seeking a temporary restraining order or injunction or other equitable relief with respect to a breach (or attempted breach) of this agreement by the other party.

## 18. Law and Jurisdiction:

This Agreement is subject to New Zealand law and the jurisdiction of the High Court of New Zealand. Definitions and Construction:

In this agreement, unless the context requires otherwise:

## 19. Definitions:

**CF** means price is inclusive of Cost, Insurance and Freight;

**Commission Agent** means where the Agent exports and sells the Fruit on behalf of the Grower as agent for the Grower;

**Commitment Form** means a commitment form in the form set out in the schedule to this agreement signed by the Grower and the Agent;

**Costs** means all actual costs and expenses (without margin) including industry levies of whatever nature that can be attributed solely to the Fruit;

**Export Specifications** means the quality specifications in effect from time to time as advised by the Agent.

**FAS** means Free Alongside Ship;

**Fruit** means each volume of fruit supplied to the Buyer by the Grower pursuant to a Commitment Form under this agreement;

**Buyer** means the person purchasing the Fruit along with its agents, employees and appointees;

**QA Dispatch Report** means a report in relation to any fruit provided to the Agent under this agreement containing such information relating to the growing, harvesting, processing, packing, handling and cool store of the Fruit specified by the Agent from time to time; and

**TCE** means Tray Carton Equivalent (18 kilograms).

In the construction of this agreement, unless the context requires otherwise:

**Related terms:** Where a word or expression is defined in this agreement, other parts of speech and grammatical forms of that word or expression have corresponding meanings;

**Trademarks and Logos:** GlobalG.A.P and BRC are registered trademarks. Use of these trademarks are subject to GlobalG.A.P/BRC general regulations and sublicensing and certification agreements.

**Singular, plural and gender:** The singular includes the plural and vice versa, and words importing one gender include the other gender; and

**Writing:** References to "written" or "in writing" include all modes of presenting or reproducing words, figures and symbols in a tangible and permanently visible form.