



STANDARD TERMS AND CONDITIONS OF TRADE: AGENCY

The following terms and conditions apply to all fruit supplied by PITTO (“**PRINCIPAL**”) being:

1. Definitions

1.1 In this agreement, unless the context requires a contrary interpretation the following words and expressions shall have the meanings herein assigned to them:

1.1.1 “fruit” means all and any fruit the **PRINCIPAL** delivers to the **AGENT**;

2. Appointment as agent

The **PRINCIPAL** hereby appoints the **AGENT** as its agent for the import, marketing and sale of fruit grown or sourced by the **PRINCIPAL**. Save as specifically contemplated herein, nothing in this agreement shall be construed as granting any authority to the **AGENT** to give any warranties or representations of whatsoever nature on behalf of the **PRINCIPAL**, or constituting a partnership between the **AGENT** and the **PRINCIPAL**, or that the **AGENT** is the owner of the fruit.

3. Term

This agreement shall apply to all and any fruit supplied to the **AGENT**.

4. Delivery and packaging of the fruit

- 4.1 The **AGENT** shall accept delivery of the fruit from the **PRINCIPAL** as agreed.
- 4.2 The fruit will be packed according to the specifications supplied by the **AGENT**.

5. Quality and market reports

Quality report - on all shipments

5.1 All fruit arriving shall be inspected by the **PRINCIPAL** and quality reports shall be forwarded within 72 (seventy-two) hours upon discharge of the fruit at the Port of Discharge to email pitto@pitto.co.za, marketing1@pitto.co.za, export@pitto.co.za and marketing@pitto.co.za. The downloadable temperature recordings obtained from the 1 (one) temperature recorder installed in each container **MUST** be supplied to the **PRINCIPAL** upon each arrival.

Report – damage or defect with fruit

- 5.2 Where there is any damage or defect to the fruit detected upon discharge of the fruit at its destination, which materially affects the market value of the fruit, the **AGENT** shall within 2 (two) normal working days of its discharge at its destination not only provide the preliminary report in 5.1 by email, but also contact the **PRINCIPAL** by phone to notify such damage or defect.
- 5.3 The **PRINCIPAL** shall, at its own cost be entitled to inspect any fruit which is alleged to be damaged or defective and advise the **AGENT** in writing of its intention to inspect

- the fruit within 72 (seventy-two) hours of receipt of the preliminary report and notification.
- 5.4 The sale and marketing of the defective or damaged fruit shall be managed by the **AGENT** in consultation with the **PRINCIPAL**.
 - 5.5 Should the **AGENT** fail to follow the above procedure set out in 5.1. to 5.4 the **AGENT** shall be liable to pay to the **PRINCIPAL** the price similar to that of non-defective fruit (by variety, size, class, week and market) as achieved in the market place.
 - 5.6 The **PRINCIPAL** and the **AGENT** note that the **PRINCIPAL** may have a credit insurance policy to address any non-payment by the **AGENT** to the **PRINCIPAL** and that these terms and conditions have been endorsed as acceptable by the insurer. Should the **AGENT** fail to follow the procedure in clause 5.1 the **AGENT** may not dispute, withhold or set-off any payment on the basis of an alleged quality claim. In such circumstances the **AGENT** agrees that the purchase price shall be as calculated in clause 5.5 and shall be deemed to be due, owing and payable. If the procedure in clause 5.1 to 5.5 has not been followed by the **AGENT**, due, owing and payable will mean that this will be a failure by the **AGENT/Debtor** to pay an undisputed debt to the **PRINCIPAL** relating to the fruit. Where the procedure in clause 5.1 to 5.5 has not been followed by the **AGENT**, the **AGENT** has no defense for non-payment and the non-payment may not be considered to be a dispute as between the **AGENT** and **PRINCIPAL** for the purposes of payment.

Weekly market and stock reports

- 5.7 While the **AGENT** is in possession of any fruit of the **PRINCIPAL**, the **AGENT** shall provide the **PRINCIPAL** on a weekly basis with a market and stock report. This stock report shall indicate what stock is in the **AGENT'S** possession by vessel, fruit variety, fruit size and class, age and any factors that could substantially effect the market value of the fruit. The market report shall also indicate what the selling prices were for all fruit sold during the preceding week by variety, class and size.
- 5.8 All fruit shall be sold by the **AGENT** within 3 (three) weeks upon its discharge unless otherwise agreed to by the **PRINCIPAL** in writing.

6. Documentation

- 6.1 The **PRINCIPAL** shall be listed as "the shipper" and the **AGENT** shall be listed as "the consignee" on the bill of lading. The **AGENT** will receive documents by email and DHL overnight services. The documents shall be prepared and supplied by the **PRINCIPAL** as instructed by the **AGENT** on the Consignee Information Sheet completed prior to the season.
- 6.2 The **PRINCIPAL** agrees to send the **AGENT** a scheduled packing program of which the **PRINCIPAL** intends to deliver to the **AGENT**, depending on climatologic circumstances in the coming months.

7. Costs and disbursements

- 7.1 All costs and disbursements, incurred in respect of the fruit prior to its acceptance by the **AGENT** on the agreed freight terms shall be for the account of the **PRINCIPAL** and shall be paid directly by the **PRINCIPAL** to the service provider concerned.
- 7.2 All direct costs and disbursements, after the acceptance of the fruit by the **AGENT** as set out in clause 7.1 shall be for the account of the **PRINCIPAL** and shall be deducted

from the proceeds. Where the proceeds of the sale of fruit are not sufficient to cover the costs, the **PRINCIPAL** shall be liable to refund the **AGENT** for any such costs and disbursements on demand.

8. Marine Insurance

The **PRINCIPAL** shall take out marine insurance limited to catastrophic cover, such cover commencing from the first point of intake at the premises of the producer, and terminating upon delivery of the fruit to the **AGENT**.

9. Security for payment

- 9.1 The **AGENT** acknowledges and agrees that ownership in and to the fruit shall at all times remain with the **PRINCIPAL** until payment in respect thereof has been made in full by the third-party agent and the **AGENT** undertakes to procure that ownership in and to the fruit is retained to the **PRINCIPAL** in all transactions that may be concluded with third parties until payment in respect thereof has been made by third parties.
- 9.2 The **AGENT** warrants and undertakes that in respect of all transactions it shall ensure that sufficient credit insurance and/or competent letters of authority have been issued by such third party to secure the obligations of such third-party agent to the **PRINCIPAL** on behalf of the **PRINCIPAL**.
- 9.3 In the event of the **AGENT** failing to take out adequate or proper credit insurance in respect of any **AGENT**/debtor, and should any **AGENT**/debtor for any reason fail to pay the full purchase price for the fruit sold and delivered to it within such period of 30 (thirty) days, the **AGENT** shall be liable, at its own cost to indemnify the **PRINCIPAL** for the full shortfall in the gross selling price of the fruit concerned.

10 Proceeds

The **PRINCIPAL** irrevocably authorises the **AGENT** to collect on its behalf the full purchase price due and payable by the end **AGENT** of the fruit. The proceeds of the sale of the **PRINCIPAL's** fruit will thereafter be paid to the **PRINCIPAL** after deduction of all costs incurred and subject to the provisions of this agreement.

11 Remuneration

In consideration for the services provided in terms of this agreement the **AGENT** shall be paid a percentage commission on the selling price as agreed in writing before the season.

12 Payment arrangements

Advance & Final Payments

- 12.1 The **AGENT** agrees to pay the **PRINCIPAL** on the terms as agreed between both parties in writing prior to the season.

Account sales

- 12.2 The **AGENT** shall furnish the **PRINCIPAL** with an "Account Sale" within 45 (fort-five) days after arrival of the fruit at the port of entry which shall reflect the selling price and shall include details of all costs incurred by the **AGENT** on behalf of the **PRINCIPAL**,

which costs shall be recorded on the statement of account. The **AGENT** must when requested by the **PRINCIPAL**, provide original supporting documentation for all income and expenditure.

13 Limitation of Liability

The **PRINCIPAL** accepts no liability, for any indirect, incidental, special or consequential loss or damage of any kind whatsoever or howsoever caused arising from the sale and purchase of fruit as detailed in this agreement.

14 Breach

Subject to any other provision of this agreement which expressly provides for remedy of any breach of any provision of this agreement, should either party ("**the defaulting party**") commit a material breach of any material provision of this agreement and fail to remedy such breach within 7 (seven) days after receiving written notice from the other party ("**the aggrieved party**") requiring the defaulting party to do so, then the aggrieved party shall be entitled, without prejudice to the aggrieved party's other rights in law (including the aggrieved party's rights to claim damages), to cancel this agreement or to claim immediate specific performance of all of the defaulting party's obligations whether or not due for performance.

15 Governing Law and Dispute Resolution

15.1 The interpretation of this agreement and the resolution of any dispute arising therefrom shall be done in accordance with the laws of the Republic of South Africa.

15.1.1 Any dispute arising from or in connection with this agreement or its termination, shall, in the event the **AGENT** is domiciled in the Republic of South Africa –

15.1.2 in the first instance be referred to arbitration before an arbitrator appointed by and in accordance with such rules and procedures of arbitration as may be determined by and in accordance with the Arbitration Foundation of Southern Africa (the "Arbitration Foundation"), provided that the arbitrator appointed by the Arbitration Foundation must be permanently residing in Cape Town; and

15.1.3 notwithstanding anything to the contrary or stipulated by the Arbitration Foundation, the arbitration will be held in Cape Town with a view to achieving an expeditious result and the arbitration will be conducted in camera, the parties and the participants in the arbitration being obliged to maintain the utmost confidentiality with regard to all matters relating thereto or arising therefrom, save as otherwise expressly and peremptorily required by all applicable laws of the Republic of South Africa.

15.2 Any dispute arising from or in connection with this agreement or its termination, shall, in the event the **AGENT** is not domiciled in the Republic of South Africa –

15.2.1 be resolved in accordance with the (United Nations Commission on International Trade Law ('UNCITRAL') Arbitration Rules and the award of the Arbitrator shall be binding on both parties; and

15.2.2 in accordance with the UNCITRAL Arbitration Rules the Parties agree as follows:

15.2.2.1 the appointing officer shall be a practicing counsel or attorney of not less than 10 (ten) years standing;

15.2.2.2 the number of arbitrators shall be: 1 (one);

15.2.2.3 the place of arbitration shall be: Cape Town, South Africa; and

15.2.2.4 the language shall be: English.

PITTO CONTACT INFORMATION:

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