

## STANDARD TERMS AND CONDITIONS OF TRADE: SALE

The following terms and conditions apply to all fruit supplied by PITTO ("SELLER") 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 **SELLER** delivers to the **PURCHASER**;

1.1.2 "point of intake" means ex cold store as reflected on the sales order or FOB or CIF as agreed to by both parties in writing prior to the season. The parties agree that:

**EX COLDSTORE** means the **SELLER** delivers into a cold store as in 1.1.2. SATI and PPECB costs are for the **SELLER'S** account. All further costs are for the **PURCHASER'S** account.

**FOB** (Free On Board) means the **SELLER** delivers the fruit onto the vessel in Cape Town and the **PURCHASER** bears all costs from that moment onwards.

**CIF** (Cost, Insurance and Freight) means the **SELLER** shall deliver the fruit up onto the vessel in Cape Town harbour and shall invoice the **PURCHASER** an amount including all local costs plus the cost of the fruit, the insurance and the freight. The **PURCHASER** shall pay the full amount of the invoice. All overseas costs or costs not included in the **SELLER'S** invoice after delivery are for the **PURCHASER'S** account.

### 2. Sale and purchase

2.1 The **PURCHASER** will every WEDNESDAY of the week before PACKING advise the **SELLER** in writing of what the **PURCHASER'S** price and order is. The **SELLER** shall agree or not to pack the order.

2.2 The order shall set out: the fruit (variety, class and size), packaging specifications, special market requirements (including but not limited to country protocols, cold sterilisation regimes, documentation, permits, registrations and licenses), delivery date and point of intake).

2.3 The order shall set out the currency and the **PURCHASER** shall pay the **SELLER** in the agreed currency.

2.4 The **SELLER** sells to the **PURCHASER** who purchases the fruit described on all and any invoice(s) and delivered to the **PURCHASER**.

2.5 The purchase price shall be the price recorded in writing on an invoice(s) supplied in respect of fruit delivered at the point of intake.

2.6 The **SELLER** will only invoice and deliver fruit to the **PURCHASER** after receiving a written order setting out the vessel, container and fruit (indicating variety, class and size).

2.7 The Fruit shall be delivered to the **PURCHASER** at the point of intake.

2.8 On such delivery all risk in and to the fruit will pass to the **PURCHASER**.

2.9 Notwithstanding delivery and the passing of risk, the ownership in and to the Fruit shall however remain with the **SELLER** until the full purchase price has been paid.

2.10 The **PURCHASER** by accepting the fruit at the point of intake confirms the fruit is according to **PURCHASER'S** packing and quality specifications and the fruit has no patent defects. No query means acceptance and acknowledgement of specifications.

2.11 The **SELLER** will pay all SATI and PPECB fees and levies.

- 2.12 Grapes will be loaded on the farms between temperatures of -0.5°C and 2.5°C which has been approved by PPECB or as amended by PPECB from time to time.
- 2.13 Both the **SELLER** and the **PURCHASER** shall abide by all PPECB and Department of Agriculture, Forestry and Fisheries (South Africa) protocols, laws and regulations and the **PURCHASER** undertakes not to supply the product to any country under any South African sanction or trade embargo.

### 3. Term

This agreement shall apply to all and any fruit ordered by and delivered to the **PURCHASER**.

### 4. Delivery of the fruit

The **PURCHASER** shall accept delivery of the fruit from the **SELLER** at the point of intake. The **SELLER** will not accept liability for any patent defects thereafter. The **PURCHASER** is permitted to have third party inspection in the pack house or at any stage before the fruit is shipped.

### 5. Quality and market reports

#### Quality report - on all shipments

- 5.1 All fruit arriving shall be inspected by the **PURCHASER** 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](mailto:pitto@pitto.co.za), [marketing1@pitto.co.za](mailto:marketing1@pitto.co.za), [export@pitto.co.za](mailto:export@pitto.co.za) and [marketing@pitto.co.za](mailto:marketing@pitto.co.za). The downloadable temperature recordings obtained from the 1 (one) temperature recorder installed in each container **MUST** be supplied to the **SELLER** 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 **PURCHASER** shall within 3 (three) normal working days of its discharge at the Port of Discharge not only provide the preliminary report in 5.1 by email, but also contact the **SELLER** by phone to notify such damage or defect.
- 5.3 The **PURCHASER** will make available the temperature recordings as recorded by the temperature recorder inserted in each container. The **SELLER** will not only indicate the position and serial numbers of these recorders on the Packing List supplied to the **PURCHASER** upon shipment of the container, but also clearly mark the pallet where the recorders are located. A red or white string attached to the recorder will also be clearly visible by hanging from the box where it has been inserted.
- 5.4 The **SELLER** shall, at its own cost be entitled to inspect any fruit which is alleged to be damaged or defective and advise the **PURCHASER** in writing of its intention to inspect the fruit within 72 (seventy-two) hours of receipt of the preliminary report and notification in 5.1 to 5.3.
- 5.5 The **SELLER** shall be entitled to request an independent survey report compiled by a reputable third-party Surveyor
- 5.6 The sale and marketing of the latently defective or damaged fruit shall be managed by the **PURCHASER** in consultation with the **SELLER**. The **SELLER** may at any time

elect to repay any costs incurred by the **PURCHASER** and move the fruit to a third party.

- 5.7 Should the **PURCHASER** fail to follow the above procedure set out in 5.1.to 5.6 the **PURCHASER** shall be liable to pay to the **SELLER** the full invoiced purchase price.
- 5.8 The **SELLER** and the **PURCHASER** note that the **SELLER** may have credit insurance to address any non-payment by the **PURCHASER** to the **SELLER** and that these terms and conditions have been endorsed as acceptable by the insurer. Should the **PURCHASER** fail to follow the procedure in clause 5.1 to 5.6 the **PURCHASER** may not dispute, withhold or set-off any payment on the basis of an alleged quality claim. In such circumstances the **PURCHASER** agrees that the purchase price as stated on the invoice which accompanied delivery of the fruit shall be deemed to be due, owing and payable. If the procedure in clause 5.1 to 5.6 has not been followed by the **PURCHASER**, due owing and payable will mean that this will be a failure by the **PURCHASER/Debtor** to pay an undisputed debt to the **SELLER** relating to the fruit. Where the procedure in clause 5.1 to 5.6 has not been followed by the **PURCHASER**, the **PURCHASER** has no defence for non-payment and the non-payment may not be considered to be a dispute as between the **PURCHASER** and **SELLER** for the purposes of payment.
- 5.9 The **PURCHASER** shall not deem the **SELLER** responsible for the fruit quality after acceptance of the fruit in the timeframe as set out in 5.1.

## 6. Documentation

- 6.1 The **PURCHASER** shall be responsible for all documentation after the point of intake.
- 6.2 The **SELLER** agrees to send the **PURCHASER** a proposed packing program of which the **SELLER** intend to deliver to the **PURCHASER**, depending on climatologic circumstances in the coming months. The **PURCHASER** must keep the **SELLER** informed of any adverse marketing circumstances.
- 6.3 The fruit shall be packed to the specifications as agreed in a purchase order by the parties or as agreed in writing prior to the start of the season

## 7. Costs and disbursements

- 7.1 All costs and disbursements, incurred in respect of the fruit prior to its acceptance by the **PURCHASER** at the point of intake shall be for the account of the **SELLER** and shall be paid directly by the **SELLER** to the service provider concerned.
- 7.2 All direct costs and disbursements incurred after the acceptance of the fruit by the **PURCHASER** at the point of intake shall be for the account of the **PURCHASER**. The **SELLER** shall only be liable to refund the **PURCHASER** for any such costs and disbursements incurred where the fruit has latent quality defects and the procedure set out herein has been followed.

## 8 Insurance

- 8.1 Fruit purchased EX COLD STORE - the **PURCHASER** shall take out insurance from the point of intake. The insurance must contain a term that "sound fruit", means fruit that has passed PPECB inspection as being suitable for export. Although risk passes to the **PURCHASER** on delivery in a CIF and FOB delivery of fruit, the **SELLER** shall insure all fruit for marine risk, which insurance shall be limited to catastrophic cover only.
- 8.2 Where fruit is the subject matter of an insurance claim in an EX COLDSTORE-delivery the **PURCHASER** shall pay on the terms agreed and not only when the insurance pays out.

- 8.3 The **PURCHASER** is responsible to insure for losses caused by shipping delays after delivery at the point of intake.
- 8.4 Where the point of delivery means the fruit will also be subject to road transport then the **PURCHASER** shall insure "all risk" and not only "accidental damages".
- 8.5 Notwithstanding anything to the contrary, the **SELLER** shall not be responsible for any claims other than those caused by latent defects.

## 9 Payment of purchase price

The **PURCHASER** shall pay the **SELLER** per electronic transfer to the **SELLER's** bank account as agreed to by both parties in writing prior to the start of the season.

## 10 Limitation of Liability

The **SELLER** 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.

## 11 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.

## 12 Governing Law and Dispute Resolution

- 12.1 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.
- 12.2 Any dispute arising from or in connection with this agreement or its termination, shall, in the event the **PURCHASER** is domiciled in the Republic of South Africa –
- 12.2.1 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
- 12.2.2 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.
- 12.3 Any dispute arising from or in connection with this agreement or its termination, shall, in the event the **PURCHASER** is not domiciled in the Republic of South Africa –
- 12.3.1 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
- 12.3.2 in accordance with the UNCITRAL Arbitration Rules the Parties agree as follows:
- 12.3.2.1 the appointing officer shall be a practicing counsel or attorney of not less than 10 (TEN) years standing;
- 12.3.2.2 the number of arbitrators shall be: 1 (one);
- 12.3.2.3 the place of arbitration shall be: Cape Town, South Africa; and
- 12.3.2.4 the language shall be: English.

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