

Applicability. Goods (as defined herein) sold under Seller's invoice and these terms and conditions herein (the "Terms") (together, the "Agreement") are the only terms which govern transactions between Buyer and Seller. No other terms and conditions, oral or otherwise, shall have any force or effect. Notwithstanding anything herein to the contrary, if Seller's invoice signed by both parties is in existence covering the transaction evidenced hereby, the terms and conditions of Seller's invoice shall prevail to the extent they are inconsistent with these Terms. If Buyer's purchase order or other documents state terms additional to, different from or inconsistent with this Agreement, this Agreement shall serve as a notice of Seller's objection and rejection of such additional, different or inconsistent terms, and the terms of this Agreement shall control and prevail for this transaction. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

Price / Payment Terms. The price to be paid by Buyer for the goods that are the subject hereof (the "Goods") are set forth on Seller's invoice. The Buyer shall pay all amounts due and owing under each invoice in accordance with the payment terms in the invoice. All payments shall be in U.S. dollars and made by check or electronic transfer. Except for invoiced payments that the Buyer has successfully disputed as set forth below, all late payments shall bear interest at the lesser of (i) one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) and (ii) the highest amount permitted by law. In addition to all other remedies available to Seller (whether hereunder or otherwise according to law or in equity, which Seller does not waive by the exercise of any rights hereunder), the Seller shall be entitled to suspend the provision of any services and/or the delivery of any products if the Buyer fails to pay any undisputed amounts when due and such failure continues for ten (10) days following written notice thereof.

Shipping, Insurance, and Other Costs; Delivery. The price indicated on Seller's invoice is exclusive of transportation costs, insurance, custom duties, and other fees. All such costs shall be for the Buyer's account and the Buyer agrees to pay such costs, even if invoiced by Seller. Buyer agrees that the carrier, even if arranged by the Seller, shall be for the Buyer's account and Buyer shall be responsible to pay any and all freight charges and other transportation related charges thereon, even if invoiced by Seller. Weight of Goods at the time of shipment is final, and Seller reserves the right to ship five percent (5%) more or less than the invoiced weight amount of the Goods.

Taxes. Prices are further exclusive of all sales, use, or excise taxes, and any other similar taxes, duties and charges imposed by any federal, state or local governmental entity on any amounts payable by Buyer. Any such taxes, duties and charges that are applicable to such sales are for Buyer's account, and Buyer hereby agrees to pay such taxes.

Risk of Loss. Buyer agrees that risk of loss shall remain with the Seller only until the goods are transferred to the shipping agent/carrier, as specified on the invoice, wherein the risk of loss shall pass to the Buyer.

Passage of Title. Title passes to Buyer at the time and place at which Seller completes its performance or upon the physical delivery of goods. If this invoice requires delivery at Buyer's destination, title passes on tender thereto.

Disputes Regarding Invoice. The quantity of any installment of Goods shown on Seller's invoice is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. The Buyer shall notify the Seller in writing of any dispute with an invoice or of any other shipping discrepancies within twenty-four (24) hours from the Buyer's receipt of such invoice. Invoices for which no such timely notification is received shall be deemed accepted by the Buyer as true and correct, and the Buyer shall pay all amounts due under such invoices within the period set forth hereinabove. The parties shall seek to resolve all disputes expeditiously and in good faith. The Buyer shall not withhold payment of any amounts due and payable under this or any other agreement with Seller by reason of any setoff of any claim or dispute with the Seller.

Inspection of Goods. Buyer has the right before payment or acceptance to inspect the Goods after their arrival in a reasonable manner within seven (7) days after their receipt (the "Inspection Period"). Buyer will be deemed to have accepted the Goods and waived all rights to reject the Goods, unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is a different type of good than identified in the invoice; or (ii) product's label or packaging incorrectly identifies its contents. If Buyer timely notifies Seller of any Nonconforming Goods within the Inspection Period, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the price for such Nonconforming Goods. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to a location which Seller shall specify to Buyer in Seller's sole discretion. Buyer acknowledges and agrees that the remedies

set forth herein are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided herein, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased hereunder to Seller.

Warranties. SELLER MAKES NO WARRANTY WITH RESPECT TO THE GOODS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE GOODS WILL CONFORM TO ANY PARTICULAR SAMPLE, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, OR OTHERWISE.

Limitation of Liability. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY, INCLUDING, BUT NOT LIMITED TO BUYER'S CUSTOMERS, FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS "AGREEMENT" (AS DEFINED HEREIN) EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD OR DELIVERED HEREUNDER.

Any testing for aflatoxin being performed by Buyer must be conducted at the destination port reflected on the invoice. Seller will not be responsible for any aflatoxin test results performed at destinations beyond the first port of entry. In the event the Goods are rejected by authorities or Buyer for a substantiated material deficiency, including, without limitation, aflatoxin, Seller shall provide replacement Goods at the originally contracted price and no other right or remedy (including, without limitation, incidental or consequential damages for lost profits, lost sales, injury to person or property or any other incidental or consequential loss) shall be available to Buyer or Buyer's customers.

Governing Law; Forum Selection. This Agreement and these Terms shall be construed in accordance with and

shall be governed by the Uniform Commercial Code as enacted and enforced under California law, and all other laws of California, without giving any effect to any choice or conflict of law provision. Any controversy or claim related to this Agreement, Seller's invoice, or any facts relating to the transaction underlying the details of Seller's invoice, shall be resolved in Sacramento County California, by binding arbitration to be administered by JAMS pursuant to its Streamlined Arbitration Rules & Procedures. The arbitrator's decision may be enforced as a judgment anywhere in the world such judgments are valid. These Terms incorporate all of the Specialty Crop Trade Council ("SCTC") terms and conditions for dried fruit, tree nuts and kindred products, except for any SCTC terms and conditions relating to "Force Majeure Events" (as defined below). Further, to the extent that any of the SCTC terms and conditions are inconsistent with any of the provisions within these Terms, these Terms shall prevail. Any and all disputes which are not arbitrated shall be determined by the federal courts in the Eastern District of California and each Party submits to the exclusive jurisdiction of such courts.

Attorney's Fees and Costs. In the event that any claim, suit, or arbitration is brought relating to this Agreement, Seller's invoice, or any facts relating to the transaction underlying the details of Seller's invoice, the prevailing party shall be entitled to reasonable attorney's fees and costs.

Breach. Any breach by Buyer of any other contract between the parties shall be deemed a breach of this Agreement and Seller, without limiting any other rights or remedies, shall be entitled to consider such breach of another contract as an anticipatory breach of this Agreement and refuse to perform this Agreement, in which case, Seller shall be entitled to recover damages for the breach of this Agreement and shall not be responsible for any indemnification or liability of any kind whatsoever to Buyer. In the event of bankruptcy or insolvency of Buyer, Seller shall have the right to terminate this Agreement, in its sole and absolute discretion, without any liability or obligations of any kind. Buyer represents and warrants that its sale and disposition of the Goods hereunder complies and shall comply with any and all laws and regulations relating to the sale of the Goods.

Mitigation. Buyer agrees to fully cooperate in the mitigation of damages, including, but not limited to, the unconditional execution of a no objection certificate ("NOC"), where applicable, or any other documents requested by Seller or necessary for Seller to get possession of its Goods. Any release or cancellation executed by Seller of this Agreement in connection with the receipt of a NOC from Buyer shall be deemed null and void.

Waiver. No waiver by Seller of any of the provisions hereof is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising herefrom operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Force Majeure and Delays. The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached hereunder, for any failure or delay in fulfilling or performing any term hereof when and to the extent such failure or delay is caused by or results from any reasonably unforeseeable event, including, without limitation, acts of God, pandemic, government actions of any kind, war, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, or any other acts or circumstance beyond the reasonable control of Seller ("Force Majeure Event"). Buyer expressly accepts shipment delays outside of the contracted period herein which are directly or indirectly the result of a lack of available equipment, chassis, trucking, bookings, vessels, or any other related logistical delays. Buyer hereby agrees that its performance is not excused or delayed and its obligations hereunder are maintained, including, but not limited to, its obligation to pick up Goods from the port and pay for Goods, despite the occurrence of any Force Majeure Event.

Assignment. Buyer shall not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations hereunder. Seller has the right to assign this Agreement in its sole and absolute discretion.

Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained herein shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

No Third-Party Beneficiaries. The provisions hereof are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable

right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

Severability. If any term or provision hereof is invalid, illegal or unenforceable in any jurisdiction, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant terms shall be deemed deleted. Such modification, invalidity, illegality or unenforceability shall not affect any other term or provision hereof or invalidate or render unenforceable such term or provision in any other jurisdiction.

Amendment and Modification. These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.

Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

Electronic Signature. Each party agrees that an electronic signature on the invoice or an electronic image of the signed invoice shall bind the parties to the invoice and these Terms and shall have the same force and effect as manual or original signatures.