

# Terms & Conditions of Sale

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## TERMS AND CONDITIONS OF SALE FOR FERN RIDGE PRODUCE LIMITED

### 1. Terms of sale

All Goods sold by the Seller are sold subject to the Contract Terms.

### 2. Contract

2.1. A contract for the sale of Goods shall be formed when the Seller provides the Buyer with a Sales Confirmation.

2.2. If the basis of sale is FOB, CIF or CFR, such term shall be interpreted in accordance with Incoterms.

2.3. No document sent by the Seller prior to the Sales Confirmation shall be binding on the Seller.

2.4. Any dates quoted for delivery of the Goods are approximate only and time for delivery shall not be of the essence. The Seller shall not be liable for any delay in delivery of the Goods.

2.5. No variation to the Contract (including any purported cancellation) shall be binding unless agreed in writing between the Buyer and Seller.

### 3. Instalments

The Seller may elect to deliver the Goods in instalments. Where the Goods are delivered in instalments, each delivery shall constitute a separate contract and payment must be made for each delivery accordingly. Failure by the Seller to deliver any one or more of the instalments in accordance with the Contract Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.

### 4. Samples and weight

The Goods are sold on description as set out in the Sales Confirmation notwithstanding that a sample or samples may have been submitted. The Health Certificate shall be conclusive evidence of the weight or quantity of the Goods.

### 5. Payment and Price

5.1. Payment of the Price must be made by the Buyer in accordance with the payment terms specified in the Sales Confirmation. If the Sales Confirmation fails to specify payment terms, payment will, at the option of the Seller, be on the same terms as any previous transaction between the Buyer and the Seller or be made for 100% of invoice value prior to dispatch to the load port.

5.2. The Buyer must pay the full Price without any deduction or set off.

5.3. Unless otherwise stated in the Sales Confirmation or implied by the basis of sale, the Buyer shall be liable for all freight, packaging, taxes and customs duties and levies in addition to the Price. Unless otherwise stated the Price excludes GST, which, if payable, is payable by the Buyer.

5.4. Unless otherwise agreed in writing, all payments are to be wire/SWIFT transfer in cleared funds to the Seller's nominated account and are not deemed to have been made until the Seller has received notice of receipt from the Seller's bank.

## **6. Title**

Ownership of the Goods shall not pass to the Buyer until the Seller has received payment in full for the Goods. Until such time as the ownership of the Goods passes to the Buyer and immediately upon an Event of Default occurring:

- the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee; and
- the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods

## **7. Claims**

7.1. Any claim by the Buyer in respect of the Goods must be notified in writing to the Seller within 14 days of arrival of the container at the discharge port and must otherwise be made in accordance with the Seller's claim procedure as notified from time to time by the Seller. The Seller will not be liable for any claim unless notice is given within the required period and the claim procedure is followed.

7.2. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is accepted by the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the Price (or a proportionate part of the Price), but the Seller shall have no further liability to the Buyer.

## **8 . Exclusions and Limits of Seller's Liability**

8.1. To the fullest extent permitted by law, all warranties, conditions, guarantees or representations in respect of the Goods implied by statute or common law into the Contract Terms are excluded. If

the Buyer is acquiring, or holds itself out as acquiring, the Goods for the purposes of a trade or business, the Buyer acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of Goods by the Seller to the Buyer.

8.2. The Buyer shall keep from harm and indemnify the Seller against all claims made by third parties against the Seller in connection with the on-sale of the Goods by the Buyer whether such claims arise from any action, inaction or negligence of the Buyer or otherwise.

8.3. The Buyer acknowledges that in the event that the Seller is found to be liable to the Buyer under the Contract Terms, then the remedy of the Buyer shall be limited to damages which under no circumstances shall exceed the Price of the Goods. The Seller shall be under no liability whatever to the Buyer for any indirect loss or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of the Contract Terms.

## **9 . Default by the Buyer**

9.1. If the Buyer suffers an Event of Default, without prejudice to any other right or remedy available

to the Seller, the Seller shall be entitled to cancel any contract for the sale of Goods to the Buyer or suspend any further deliveries to the Buyer and the Seller may:

9.1.1. (in the case of default in payment only) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 15 per cent per annum (or such other rate as shall from time to time be fixed by the Seller as payable on overdue amounts), until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). All monies received by the Seller from the Buyer shall be applied first in payment of accrued interest and secondly in satisfaction of the Price.

9.1.2. Resell the Goods;

9.1.3. Divert the Goods (at sea or on shore);

9.1.4. Claim damages for all losses suffered by and costs incurred by the Seller as a result of termination.

9.2. The Buyer agrees to pay to the Seller, on demand, all costs and expenses incurred by the Seller or

the Seller's agents relating to the recovery of any amounts payable by the Buyer to the Seller (including legal costs on a solicitor own client basis).

## **1 0 . Dispute Resolution**

If any dispute or difference shall arise between the Buyer and the Seller in any way arising out of the Contract Terms or in connection with the Goods such dispute or claim shall be referred to the arbitration in Hastings, New Zealand, in accordance with the provisions of the Arbitration Act 1996 or any re-enactment or modification of such Act for the time being in force.

## **1 1 . Force Majeure**

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract Terms by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any Force Majeure Event. If a Force Majeure Event continues for 30 days or more, the Seller may rescind the contract and in that case the Buyer shall have no claim against the Seller.

## **1 2 . Written Communications**

12.1. Any communication required to be in writing may be by letter, facsimile or email. A facsimile

communication is received when the sender has a successful transmission report showing transmission to the correct facsimile number of the recipient. An email communication is received when the sender receives a reply email (other than an automated out of office reply) or other acknowledgement from the recipient.

### **13 . Exclusion of Vienna Convention**

The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply and no terms or conditions shall be implied into the Contract Terms by that Convention or by the Sale of Goods (United Nations Convention) Act 1994.

### **14 . General**

14.1. No waiver by the Seller of any breach of any Contract Terms by the Buyer shall be considered as

a waiver of any subsequent breach of the same or any other provision.

14.2. If any provision of the Contract Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract Terms and the remainder of the provision in question shall not be affected.

14.3. The Contract Terms shall be governed by the laws of New Zealand and the parties submit to the jurisdiction of the Courts of New Zealand and New Zealand arbitrators.

14.4. The headings in these Conditions are for convenience only and shall not affect their interpretation.

### **15. Definitions**

15.1. "Bankruptcy" means the making of a voluntary arrangement with creditors, becoming subject to an administration order, going into liquidation (other than for the purposes of a solvent reconstruction or amalgamation), the appointment of a receiver of any property of that party, the ceasing or threatening to cease to carry on business, being unable to or deemed to be unable to pay your debts when due.

15.2. "Buyer" means the person who buys or whose order for the Goods is accepted by the Seller and to whom the Purchase Confirmation is made out.

15.3. "Conditions" means the standard terms and conditions of sale set out in this document.

15.4. "Contract Terms" means the Conditions together with the terms set out in the Sales Confirmation and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Seller.

15.5. "Event of Default" means failure by the Buyer to pay for the Goods in accordance with the Contract Terms, failure by the Buyer to comply with any other provisions of the Contract Terms, the Buyer suffering or committing an event of Bankruptcy or the Seller reasonably considering that the Buyer has suffered or is about to suffer an event of Bankruptcy or intends to commit a breach of the Contract Terms.

15.6. "Force Majeure Event" means any cause beyond the Seller's reasonable control including, without limitation, act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.

15.7. "Goods" means the goods supplied by the Seller to the Buyer.

15.8. "GST" means goods and services tax payable pursuant to the Goods and Services Tax Act 1985 and any legislation passed in substitution for, or amendment of, that Act.

15.9. "Health Certificate" means the health certificate, phyto-sanitary certificate or other certificate issued by an appropriate New Zealand authority clearing the Goods for export.

15.10. "Incoterms" means Incoterms 2010 or any document in substitution for that document.

15.11. "Price" means the price for the Goods payable under the Contract Terms.

15.12. "Sales Confirmation" means the written confirmation of the sale of Goods provided by the Seller to the Buyer.

15.13. "Seller" means Fern Ridge Produce Limited, its successors and assigns or any person acting on behalf of and with the authority of Fern Ridge Produce Limited