

HORTICULTURE PRODUCE AGREEMENT AND TERMS OF TRADE

FOR THE SUPPLY, PACKING AND MARKETING OF PRODUCE

This Agreement is made on _____ between:

Delite Growers Australia Pty Ltd ACN 158 416 598, Level 5, 1 York Street, Sydney, NSW 2000,
("DGA")

AND

Seven Fields Operations Pty Ltd ACN 106 499 656, Level 5, 1 York Street, Sydney, NSW 2000,
("Nutrano")

AND

The party specified in Item 3 of the Schedule ("**Grower**")

RECITALS

- A. The Grower is a grower of *W Murcott* type mandarins (Produce).
- B. DGA holds a licence (Licence) to use the 'Delite' trade mark (Trade Mark) in respect of the Produce.
- C. Nutrano carries on the business of sorting, packing and marketing fresh fruit produce and selling produce on behalf of itself and other growers.
- D. The Grower, DGA and Nutrano agree that Nutrano will provide a packing and marketing service and will also sell on behalf of the Grower the Grower's Produce under the Trade Mark on the terms of this Agreement.
- E. This Agreement is a Horticulture Produce Agreement and Nutrano is acting as an Agent for the purposes of the Horticulture Code.

1. OPERATIVE PART

1.1 Introductory clauses

(a) Definitions

In this Agreement:

“Additional Services” mean services Nutrano must provide in order to comply with its obligations under this Agreement or any law, or which Nutrano is requested to provide, for example dipping of fruit on arrival at the Packing Shed to comply with Interstate Certification Assurance (ICA) protocols, storage of Produce and additional treatments.

“Agent” has the meaning given to it in the Horticulture Code.

“Agreement” means this Horticulture Produce Agreement for the Supply, Packing and Marketing of Produce and any variation that is made in writing.

“Arbitrator” means a member of the Victorian Bar to be agreed between the parties or failing agreement to be appointed on the application of either party by the president for the time being of the Law Institute of Victoria. The person agreed or appointed must have sufficient expertise in the areas in which the parties are in dispute. However, if any appointment is made by the Law Institute of Victoria, then that appointment is not subject to challenge by the parties on any grounds. If the Law Institute of Victoria is abolished, then reference to that body will mean such other recognised professional association as may assume the role of Law Institute of Victoria.

“Commencement Date” means the date specified in Item 1 of the Schedule.

“Consumables” means all packaging material, straps, labels, stickers, inserts and anything else related to the packaging of Produce in a form that will meet the specifications of Nutrano’s customers.

“Default Interest Rate” means 15% per annum, calculated on a daily basis.

“Force Majeure” means:

- (i) act of God, explosion, earthquake, landslide, washout, flood, lightning, storm or tempest;
- (ii) strikes, lockouts, stoppages or restraints of labour or other industrial disturbances;
- (iii) war, acts of public enemies, riot or civil commotion or sabotage;
- (iv) epidemic or pandemic;
- (v) breakdown of or accident to plant, machinery or equipment; or
- (vi) restraints, embargoes or other unforeseeable actions of any government.

“GST” means goods and services tax.

“Horticulture Code” means the Horticulture Code of Conduct set out in the Competition and Consumer (Industry Codes – Horticulture) Regulations 2017.

“Horticulture Produce Agreement” has the meaning given to it in the Horticulture Code.

“Independent Person” means a Law Institute of Victoria approved mediator to be agreed between the parties or failing agreement to be appointed on the application of either party by the president for the time being of the Law Institute of Victoria. The person agreed or appointed must have sufficient expertise in the areas in which the parties are in dispute. However, if any appointment is made by the Law Institute of Victoria, then that appointment is not subject to challenge by the parties on any grounds. If the Law Institute of Victoria is abolished, then reference to that body will mean such other recognised professional association as may assume the role of the Law Institute of Victoria.

“KCT” in the context of export sales means export to Korea, China and or Thailand.

“Licence” means the licence to granted to DGA to use the Trade Mark.

“Market Levy” means the levy as outlined in Item 15 of the Schedule, or as otherwise agreed in writing by the parties.

“Orchard” means the orchard from which the Grower’s Produce is sourced, as specified in Item 3 of the Schedule.

“Packing Charges” means the packing charges determined in accordance with clause 3.7(a).

“Packing Shed” means the packing shed specified in Item 9 of the Schedule.

“Produce” means the citrus fruit delivered to Nutrano from time to time by or on behalf of the Grower for packing and sale.

“PPSA” means the Personal Property Securities Act 2009 (Cth).

“Reporting Period” means the period specified in Item 14 of the Schedule.

“Schedule” means the schedule which forms part of and is found at the end of this Agreement.

“Security Interest” has the same meaning as given to that term in the PPSA.

“Services” means the packing and agency services provided by Nutrano to the Grower pursuant to this Agreement.

“Trade Mark” means the *Delite* registered trade mark number 1003226, filed 24 May 2004.

(b) Interpretation

In this Agreement, headings do not affect interpretation and unless the context otherwise requires:

- (i) the singular includes the plural and vice versa;
- (ii) reference to a gender includes other genders;
- (iii) “person” includes firm, an unincorporated association or an authority;
- (iv) a reference to any instrument includes a reference to that instrument as varied from time to time;
- (v) a reference to a person includes his executors, administrators, successors and permitted assigns;
- (vi) where two or more persons are a party they are bound jointly and severally; and
- (vii) a reference to any legislation includes all amendments to it and any legislation enacted in substitution for it and all statutory instruments issued under it to and in force.

2. TERM

- (a) This Agreement will commence on the Commencement Date.
- (b) The initial term of this Agreement is specified in Item 2 of the Schedule, unless terminated earlier in accordance with clauses 20 or 21.
- (c) This Agreement will automatically renew annually on the anniversary of the Commencement Date, unless either party provides written notice to the other party that the Agreement is not renewed. This notice must be provided before the date specified in Item 4 of the Schedule.

3. PACKING SERVICES

3.1 Packing

The parties agree that Nutrano will pack all the Produce supplied by the Grower in accordance with the terms of this Agreement.

3.2 Delivery requirements

- (a) At a date and time nominated by Nutrano in advance and in writing, the Grower will provide Nutrano with information regarding the Grower’s citrus crop, including estimated yield (by block), estimated size and quality, maturity and estimated picking dates. A template report is provided as Appendix 1 of this Agreement.
- (b) Nutrano will consult with the Grower and develop a harvest plan that will contain estimated delivery times and volumes of Produce for packing. Nutrano may consult with the Grower and amend the harvest plan at its discretion, and the Grower will comply with the amended harvest plan to the extent it is reasonably able to do so by harvesting and delivering Produce to the Packing Shed according to the harvest schedule, and otherwise provide as much notice as practicable to Nutrano if it considers it cannot comply.
- (c) The Grower will deliver all Produce to the Packing Shed at times agreed with Nutrano. The Grower must give Nutrano a best estimate of the amount of Produce it will deliver per day,

for packing the following day. The Grower must provide at least 72 hours' notice to Nutrano of its intention to deliver Produce, unless otherwise agreed.

- (d) Nutrano may, at its discretion, require the Grower's Produce to be graded or packed to allow for a minimum grading or packing run of 40 bins. If there are less bins available for grading or packing at the time allocated by Nutrano, then Nutrano may at its discretion combine bins collected from the Grower with the bins of other growers in a particular run.
- (e) Produce delivered to the Packing Shed must be in 'CHEP-style' plastic foldable bins (approximately 1165mm x 1165mm x 780mm) with each bin having a card attached that identifies the Grower, variety of Produce and Orchard patch from which the Produce in that bin was picked. The Grower acknowledges non-compliance with this clause will result in additional administration and storage charges, as outlined in Item 6 of the Schedule or otherwise agreed between the parties.
- (f) If the Grower requires bins for its harvest, Nutrano will provide the Grower with bins at the Grower's request. All bins supplied by Nutrano to the Grower:
 - (i) remain the property of Nutrano at all times; and
 - (ii) must be returned to Nutrano immediately at the end of the Grower's harvest for any year, or earlier upon termination of this Agreement by either party, in good condition subject to fair wear and tear.
- (g) The Grower agrees that each bin not returned to Nutrano in accordance with subclause 3.2(f) or damaged and requiring repair for future use will incur a fee of \$300 per bin.
- (h) At the request of the Grower, Nutrano may agree to amend its packing schedule to accommodate urgent or unplanned deliveries. Nutrano will confirm and agree with the Grower the specific costs associated with the amended packing schedule before the Produce is packed.
- (i) For the purpose of this Agreement, delivery of the Produce occurs on the Produce arriving at the address specified in Item 9 of the Schedule.
- (j) The Grower will bear the costs of delivery of the Produce to Nutrano, unless agreed by the parties in writing.

3.3 Packing service provided by Nutrano

- (a) Nutrano will make an initial inspection of the Produce delivered to the Packing Shed by the Grower. If Nutrano decides not to accept the Produce in accordance with clause 4 of this Agreement, the Grower will bear the costs of picking up the Produce.
- (b) Nutrano will ensure that all Produce delivered to the Packing Shed that is confirmed in Nutrano's daily packing schedule will have a fungicide applied within 12 hours of it being delivered.
- (c) The choice of packaging, packing, means of delivery and customers is at the complete discretion of Nutrano unless otherwise agreed in writing with the Grower.

3.4 Pre-grading

- (a) This clause 3.4 applies only in respect to Nutrano's operations in the Sunraysia region.
- (b) Produce will be pre-graded into bins according to class, size and by any other criteria determined by Nutrano at its discretion.
- (c) Nutrano will provide the Grower with a report by email in accordance with Item 3 of the Schedule within two business days after the Grower's bins are pre-graded containing the following information:
 - (i) Number of bins tipped for packing.
 - (ii) Amount of Produce in each of the pre-grade categories.
 - (iii) Amount of Produce that was determined as not able to be packed and diverted to juice or waste.
- (d) Nutrano will pack the Produce either in pre-grade bins or in packaging ready for sale to customers.
- (e) Nutrano may, in its absolute discretion, complete an initial pre-grade of the Produce and then schedule the packing of the Produce into packaging ready for sale to customers based on the sales order pipeline and customer requirements.

3.5 Nutrano covenants and liability

- (a) Nutrano agrees that it will (subject to the terms of this Agreement) -
 - (i) take all reasonable steps to accept the Produce for packing at the time provided for in a harvest schedule and to provide the packing service in a timely fashion and to a professional standard having regard to packing services generally available in Australia for packing citrus;
 - (ii) take all reasonable steps to maintain the Produce in good and marketable condition; and
 - (iii) comply with all local, municipal, State, Territorial or Commonwealth laws, ordinances, rules and regulations relating to the packing and labelling of perishable citrus produce.
- (b) To the maximum extent permitted by the Horticulture Code and at law, Nutrano shall not be liable to the Grower as to—
 - (i) the accuracy, description, relevance, completeness, merchantable quality, fitness for any purpose or any other matter relating to the Services;
 - (ii) loss of, or damage to, the Produce by any cause (including lawful confiscation);
 - (iii) any damage to property or death of, or injury to, any person caused directly or indirectly by the Produce or the Services; or
 - (iv) any claim against the Grower in relation to the Produce or the consumption of the Produce.

- (c) Notwithstanding any other clauses in this Agreement, if any liability is found to attach to Nutrano then Nutrano's liability is limited to -
- (i) the supplying of the Services again; or
 - (ii) the cost of supplying the Services.
- (d) Neither Nutrano nor any of its agents, sub-contractors or assigns, shall be liable whatsoever to the Grower for:
- (i) any loss of profit, loss of goodwill, loss of production, loss of business, loss of opportunity, business interruption, loss of revenue, loss of contract, loss of anticipated savings or anticipated revenue;
 - (ii) any consequential, special, indirect, exemplary or punitive damages of any nature.
- (e) The Grower acknowledges that Nutrano's financier will not have liability or responsibility to the Grower, including after the financier acquires the debt mentioned in clause 10.

3.6 Grower's covenants and acknowledgements

- (a) The Grower covenants that at all times during the term of this Agreement it—
- (i) will implement and maintain an industry recognised HACCP based food safety and quality system that is subject to annual third party audit by an expert and reputable auditor;
 - (ii) will hold the following certification(s):
 - Fresh-care Code of Practice Food Safety and Quality;
 - GLOBAL G.A.P. Integrated Farm Assurance, including G.R.A.S.P; or
 - Safe Quality Food (SQF);
 - (iii) will be registered in the SEDEX supplier register and ensure ongoing updates of information submitted in the SEDEX system;
 - (iv) will provide copies of any current certification with respect to any of the certifications obtained under subclause 3.6(a)(ii) and 3.6(a)(iii) to Nutrano upon request;
 - (v) will maintain spray diaries for all applications of sprays on the Orchard and this will be made available prior to delivery to Nutrano including any additional sprays applied before harvest;
 - (vi) will grow and harvest the Produce to a high standard of husbandry and in accordance with any recommendations provided by Nutrano;
 - (vii) will comply with all applicable laws and industry standards relevant to the growing, harvesting and handling of Produce up to and including delivery of the Produce to the Packing Shed; and
 - (viii) will provide to Nutrano on request samples of Produce for the purpose of testing residues and maturity.
- (b) The Grower warrants to Nutrano that the Produce delivered to Nutrano:

- (i) is fit for human consumption;
 - (ii) complies with all applicable laws and statutory regulations including without limitation food safety, packaging and or labelling; and
 - (iii) is fit for purpose and complies with any specifications notified by Nutrano to the Grower.
- (c) If the Grower has agreed to deliver Produce for sale to export markets, then the Grower must comply with all directions provided by Nutrano in relation to the Produce and on request provide Nutrano with information and evidence required to ensure all relevant export protocols are met. If Nutrano is not wholly satisfied the Grower has complied with the requirements for export, then Nutrano will not, and is not obliged to, pack the Produce for export and will divert that Produce to alternative sales channels where protocols are not required.
- (d) The Grower acknowledges and agrees that Nutrano may store the Produce in bins for a period of time before it is sold to a customer, in which case the Produce will be inspected again to ensure it still meets specifications required by Nutrano and as a result some Produce may be downgraded.

3.7 Packing Charges

- (a) The Grower must pay the Packing Charges to Nutrano (plus GST), comprising the following:
- (i) The Bin Tipping Charges, calculated per bin of Produce delivered to the Packing Shed for packing in accordance with Item 6 in the Schedule;
 - (ii) The cost of all packaging material into which the Produce is packed so it is ready for sale; and
 - (iii) Statutory levies and other deductions authorised by law or agreed with the Grower.
- (b) Nutrano may deduct the Packing Charges and any additional charges payable by the Grower under this Agreement from any payment due to the Grower. If Nutrano makes this deduction, then Nutrano must include particulars of the deduction in a report to the Grower.
- (c) In the event there is no payment due to the Grower or it is less than the Grower's Packing Charges and any additional charges payable by the Grower under this Agreement, then the Grower must pay the amount owing upon presentation of a tax invoice by Nutrano.
- (d) The review mechanism set out in Item 8 of the Schedule will be applied to the charges in effect immediately prior to the Review Date set out in that Item.

3.8 Consumables

- (a) Nutrano will be solely responsible for the negotiation and purchase of all Consumables which are used in Nutrano's facility for packing Produce.
- (b) Nutrano will on-charge the Grower for Consumables.

- (c) If Additional Services are required then either party may give notice of the requirement to the other and the parties will negotiate the fees for those Additional Services in good faith. If no agreement is reached by the parties within seven days from the notice, either party may proceed with a settlement conference in accordance with clause 11.4 as though a Dispute Notice was issued pursuant to clause 11.2.
- (d) The Grower must reimburse Nutrano for its expenses arising in respect to any Grower-branded Consumables Nutrano has on hand upon termination of this Agreement by either party. These expenses may be set-off by Nutrano in accordance with clause 16. This clause 3.8(d) survives termination of this Agreement.

3.9 Review of Packing Charges

- (a) This clause 3.9 applies where Item 8 of the Schedule sets out the review mechanism and review date.
- (b) Where this clause applies, review of the Packing Charges is to be implemented in accordance with the review mechanism.
- (c) Where changes to the Packing Charges are agreed pursuant to the review mechanism, the revised Packing Charges will take effect on and from the review date.

4. REJECTIONS OF CITRUS PRODUCE DELIVERED FOR PACKING

4.1 Acceptance by Nutrano of deliveries

Nutrano must accept Produce delivered under this Agreement, with the exception of where the circumstances set out in clause 4.2 arise.

4.2 Circumstances for rejection of deliveries

Nutrano reserves the right to reject any delivery of Produce, in whole or part, delivered by the Grower for packing where the following circumstances arise:

- (a) Where the quality of the Produce, in the absolute discretion of Nutrano, is likely to:
 - (i) place the Packing Shed equipment at risk of damage;
 - (ii) impact adversely on any other produce in the Packing Shed;
 - (iii) impact adversely on any certification the Packing Shed holds or plans to hold for the packing and supply of citrus to any market in the world;
 - (iv) increase the possibility of pests and disease incursion into the Packing Shed; or
 - (v) reduce the effectiveness of measures intended to prevent pest and disease incursion into the Packing Shed.
- (b) Bins delivered to the Packing Shed, in Nutrano's opinion, contain a large amount of split or rotten fruit, fruit from the ground, diseased fruit, pests, or matter that is not citrus (including leaves, sticks and soil).

- (c) Where Nutrano is not satisfied, in its complete discretion, as to the accuracy of certifications, spray diaries or other steps taken (or not taken) by the Grower in relation to Orchard practices.
- (d) The Produce delivered, in whole or part, does not comply with this Agreement, including where the delivery does not comply with the delivery requirements under clause 3.2.

4.3 Procedure for rejection

- (a) Nutrano may reject a whole consignment of bins delivered by the Grower based on a sample of bins inspected by Nutrano.
- (b) If Nutrano rejects any Produce (the “Rejected Produce”) delivered by the Grower, then Nutrano must notify the Grower in writing with reasons for the rejection as soon as possible and in any event within 24 hours of delivery.
- (c) Nutrano will provide the Grower an opportunity to inspect the Rejected Produce. Such inspection must occur within 48 hours of being notified in writing of the reasons for the rejection. The Grower must notify Nutrano as to whether the Grower:
 - (i) wishes to retake possession of the Rejected Produce; or
 - (ii) requires an independent inspection and assessment of the condition of the Rejected Produce, to be conducted at the Grower’s cost; or
 - (iii) wishes to make other arrangements in respect to the Rejected Produce, including the storage or warehousing, sale or resale or removal from Nutrano’s premises, all of which will be at the Grower’s cost.
- (d) In the case of Nutrano’s operations in the Sunraysia region only, Nutrano may agree to conduct a further grading of the Rejected Produce in an attempt to mitigate the impacts of the rejection to the Grower. If the Produce is re-graded and/or packed for a second time (or more), additional charges will be applied in accordance with Item 6 of the Schedule
- (e) In the event the parties cannot agree on how the Rejected Produce will be handled, within 3 business days of notice given under clause 4.3(b) or, alternatively, completion of an inspection conducted pursuant to clause 4.3(c), the Grower shall be deemed to have instructed Nutrano the Grower wishes to retake possession of the Rejected Produce.
- (f) The right of Nutrano to reject Produce under this Agreement cannot be deemed to be waived by past acceptance of Produce of a similar quality.
- (g) Despite anything else in this Agreement, Nutrano may elect, and the Grower authorises Nutrano to destroy and dispose of the Rejected Produce, or deliver the Rejected Produce to the Grower if:
 - (i) the Grower does not respond within 24 hours of notification in accordance with subclause 4.3(f); or
 - (ii) the Grower fails to retake possession of the Produce within 5 business days of the Grower indicating an intention to do so under subclause 4.3(f).

(h) The Grower must pay all costs associated with a rejection under this clause 4.

5. POOLING OF GROWERS' PRODUCE (SUNRAYSIA OPERATIONS ONLY)

- (a) Nutrano may pool the produce it receives from a number of growers if:
- (i) The other produce is of the same grade as the Produce delivered by the Grower as determined by Nutrano; and
 - (ii) The Grower's Produce and the other produce meet the quality requirements set out in this Agreement.
- (b) The Grower's share of the pool will be determined by calculating the Grower's proportion of produce in each quality class and count size in that pool as compared to the total volume of each quality class and count size of produce in the pool.
- (c) A pool must only consist of one of the main types of produce as determined by Nutrano (for example each of the following is a type of produce for pooling purposes: early season navel oranges, mid-season navel oranges, late season navel oranges, imperial mandarins, Afourer mandarins, grapefruit, lemons and tangelos).
- (d) Nutrano will determine the allocation of produce to the pool, the time for which the pool is open and any other features of the pool in its complete discretion.
- (e) For the purposes of determining the consideration payable by Nutrano under clause 10.1 a pool is credited with the gross sale proceeds received for all produce allocated to that pool and then from those proceeds the following costs are deducted:
- (i) Freight to the customer;
 - (ii) Freight to and from the Packing Shed of pre-grade bins;
 - (iii) Direct and indirect selling costs associated with that pool, including Nutrano's commission.
- (f) The net result is used in the calculation in item 11 of the schedule.

6. SALE OF GROWER'S PRODUCE

6.1 Appointment as Agent

- (a) For the purposes of the Horticulture Code, Nutrano is acting as an agent and the Grower hereby appoints Nutrano as its agent to sell the Produce delivered by the Grower to Nutrano. The Grower's interest in each debt which arises from a sale of the Produce is sold to Nutrano in accordance with clause 10.
- (b) If the Grower's Produce is part of a pool the Grower agrees that Nutrano may sell Produce in the pool to one or more customers and the Grower will have an entitlement to the debt arising from the sales equivalent to its interest in the pool. That interest is sold by the Grower to Nutrano in accordance with clause 10.

6.2 Nutrano's Commission

- (a) Nutrano will charge a commission on the sale price of Produce sold by Nutrano as the Grower's agent. The commission will be calculated in accordance with the commission rates set out under Item 10 of the Schedule, according to the customer to whom Nutrano sells the Produce and the amounts of Produce sold. The commission rates are exclusive of GST.
- (b) The commission is only payable in the event, and to the extent that, the Produce is sold by Nutrano.

6.3 Marketing services

- (a) Nutrano will use its best efforts, acting reasonably, to promote and sell the Produce delivered to it by the Grower.
- (b) Nutrano will have complete discretion in relation to which customers it will sell the Produce, and in which export and domestic markets.
- (c) Nutrano may charge the Grower a marketing levy for Produce that is to be sold under the Trade Mark or proprietary brand or other marketing program. The market levy will be as outlined in the Schedule or otherwise agreed by the parties.

7. REPORTING ON SALE OF PRODUCE

7.1 Packing reports

For each Reporting Period, Nutrano will give the Grower a statement setting out the following:

- (a) the date on which the Produce was delivered to Nutrano; and
- (b) the type, quality grading, size and quantity (kilograms) of the Produce recorded at the commencement of the packing process .

7.2 Sales report

- (a) Nutrano will give the Grower a separate report on a bi-monthly basis setting out the estimated notional value of the Produce (reported in kilograms) based on market conditions at the time the report is circulated.
- (b) The sales report will including break down by—
 - (i) varietal class;
 - (ii) quality grade; and
 - (iii) size.
- (c) The sales report will provide the notional value of the Produce based on an estimate of all costs associated with the packing and marketing of the Produce in order to provide the Grower with an indicative net return. These costs will be indicative only and will be subject to sales achieved. That net return is the amount which it is expected that Nutrano will pay in accordance with clause 10.

7.3 Final return report

- (a) Nutrano will give the Grower a final report setting out the following:
 - (i) the date or dates of the sale of the Produce by Nutrano;
 - (ii) the type, quality grading, size and quantity of the Produce sold;
 - (iii) the price received for the Produce sold;
 - (iv) details of each amount Nutrano will pay to the Grower in accordance with clause 10; and
 - (v) details of any amounts of the Produce not sold by Nutrano during that period, including:
 - A. the reasons why the Produce was not sold; and
 - B. amounts of the Produce destroyed by Nutrano, and the costs incurred in destroying the Produce; and
 - C. amounts of the Produce held by Nutrano at the end of the period.
- (b) Nutrano will give the final return report referred to in clause 7.3(a) to the Grower within one business day of the end of each Reporting Period.

8. TITLE

- (a) The Grower warrants that it has title in the Produce that it delivers to Nutrano and that Produce is not subject to any Security Interest.
- (b) As the Grower's agent, title in the Produce will not pass to Nutrano and remains with the Grower until Nutrano sells the Produce to a customer, on which title will pass to the customer. Unless and until this occurrence, title in the Produce remains with the Grower.

9. GROWER TO INSURE

- (a) Nutrano will not, and is not required to, hold insurance in respect to the Produce.
- (b) The Grower must insure the Produce for defined events including fire, theft and accidental damage and such other events as required by Nutrano from time to time. The Grower will not be required to insure against deterioration of quality or any other inherent losses not caused by the pre-packer's act or omission.
- (c) The Grower must provide a copy of any policy obtained under this clause 9 to Nutrano on request.
- (d) The Grower must compensate Nutrano for all direct or indirect losses, damages, costs, claims and expenses which Nutrano may suffer or incur as a result of any act or omission of the Grower.

10. COLLECTION OF DEBTS FOR PRODUCE SALES

10.1 Assignment of debts

- (a) Nutrano will be responsible for collecting debts owed by customers who have acquired Produce to the exclusion of the Grower. Nutrano is not liable to make good any debt owing

- by a customer that is not collected. The Grower acknowledges and agrees that any debts owed by a customer after the due date will be a cost allocated to the relevant pool and will accordingly be deducted from the amount determined in clause 5(e).
- (b) absolutely assigns to Nutrano all debts payable or which may become payable to the Grower by customers who acquire Produce sold under the terms of this Agreement and all interests which the Grower may at any time have in any of those debts. Accordingly the Grower will have no interest in the sale proceeds which are paid by or on behalf of the customer. The assignment is unconditional and is an absolute transfer of the entire interest which the Grower has in the debts. No further act or instrument is required for the assignment to occur. Any debts which exist on the Commencement Date are assigned on the Commencement Date (or the date of this Agreement if it is later) and debts which are created after the Commencement Date are assigned immediately after they are created (or the date of this Agreement if it is later).
 - (c) In consideration for that assignment Nutrano will pay to the Grower an amount determined in accordance with item 11 of the Schedule. Nutrano will (subject to clause 16) pay that consideration to the Grower by the instalments outlined in item 11 of the schedule. The Grower and Nutrano agree the assignment is made for good and valuable consideration. The Grower acknowledges that the assignment under clause 10.1(b) is not affected by any failure by Nutrano to pay the consideration or any instalment of the of the consideration and that the obligation to pay the consideration is an unsecured obligation of Nutrano.
 - (d) For the purposes of the PPSA the assignment gives Nutrano a security interest in the assigned property and for all other purposes the effect of the assignment is that the assigned property belongs to Nutrano as the absolute owner. Nutrano may freely assign its interest.
 - (e) The Grower agrees that it does not have a security interest (as defined in the PPSA) in the property which is the subject of the assignment or any of the proceeds (as defined in the PPSA) of that property. The Grower acknowledges that this agreement will be disclosed to Nutrano's financier and that financier will rely on this agreement when it decides to provide financial accommodation to Nutrano.
 - (f) The Grower consents to Nutrano doing all things and taking all actions necessary to give effect to the assignment, including by giving notice of the assignment to any customer and permitting the registration of any security interest under the PPSA as reasonably required by Nutrano.

10.2 Payment of proceeds of sale

Since the Grower has assigned to Nutrano the debts referred to in clause 10.1(b) Nutrano will not pay to the Grower the proceeds of a sale of the Produce made by Nutrano as the Grower's agent. Instead Nutrano will pay the consideration in accordance with clause 10.1(c). Accordingly for the purposes of section 26 of the Horticulture Code the amount which is deducted is the full amount which is received for the sale of Produce.

10.3 Payments to Grower

Payments will be made by Nutrano to the Grower by a transfer to a bank account nominated by the Grower in Item 13 of the Schedule.

11. DISPUTES

11.1 Requirements under the Horticulture Code

- (a) In the event of a dispute arising between the parties in respect to the terms of this Agreement, the parties must in good faith attempt to mediate the dispute by contacting the

person named in the Schedule at Item 12 as the person to whom notices are to be sent pursuant to this Agreement.

- (b) If the parties are not able to resolve the dispute between themselves, then either party may give notice to the other that it wishes to use the dispute resolution procedures set out under Part 5 of the Horticulture Code to resolve the dispute.
- (c) Nothing in this Agreement prohibits a party's right to commence the dispute resolution procedure pursuant to under Part 5 of the Horticulture Code and to the extent of any inconsistency this clause 11.1 will prevail.

11.2 Invoice or price packout report disputes

- (a) If the Grower disputes all or part of an invoice or price packout report given under this Agreement, then the Grower must notify the person named in the Schedule at Item 12 of the dispute in writing within 7 days of receipt of the relevant invoice or report (Dispute Notice).
- (b) The Dispute Notice must state—
 - (i) the items disputed by the Grower;
 - (ii) the Grower's arguments supporting their position; and
 - (iii) what should be done to rectify the dispute.
- (c) Despite the Grower issuing the Dispute Notice, Nutrano may still deduct the disputed invoice from the consideration payable under clause 10.1(c).

11.3 Notice in response

The recipient of a Dispute Notice must respond in writing within 7 days of receiving the Dispute Notice.

11.4 Settlement conference

- (a) If the dispute is not resolved by the exchange of notices, then the parties must confer in the presence of an Independent Person to attempt to resolve the dispute.
- (b) The conference with the Independent Person must be held within 14 days (or at a later time to meet the convenience of the Independent Person) from a notice convening the conference being sent by one of the parties.
- (c) The Independent Person is to act as a mediator at the conference.

11.5 Negotiations without prejudice

Evidence of anything said or done in the course of attempting to settle a dispute is not admissible in subsequent proceedings.

11.6 Continued performance

- (a) During the dispute resolution process the parties must continue to perform their obligations under the Agreement.

- (b) A dispute between the Grower and Nutrano will not affect the assignment by the Grower to Nutrano under clause 10 or any assignment between Nutrano and its financier although a dispute between the Grower and Nutrano, and the resolution of that dispute, can affect the consideration which Nutrano is required to pay to the Grower in accordance with clause 10.1(c).

11.7 Arbitrator's determination

If the parties are unable to resolve the dispute by the exchange of notices or conference with the Independent Person, then the dispute must be submitted to and settled by an Arbitrator. Each party may make submissions to the Arbitrator. The decision of the Arbitrator will be final and binding on the parties. The Arbitrator must also determine which party or parties pays the costs of and incidental to the resolution of the dispute, and in what proportion. The Arbitrator will be subject to the provisions of the relevant State legislation in which the Arbitrator is appointed.

11.8 Disputes resolved in the Grower's favour

- (a) If a disputed invoice is resolved in favour of the Grower, then the invoice in question will be deemed to be amended to as to reflect the resolution reached by the parties.
- (b) Within five business days of the resolution of the dispute Nutrano must reissue an amended invoice in accordance with the resolution reached pursuant to this clause 11.8.
- (c) If the Grower has overpaid the invoice (as amended), then Nutrano must, at the same time as it issues the amended invoice, refund to the Grower any overpayment of the invoice.

12. VARIATION OF THIS AGREEMENT

This Agreement may only be varied by written agreement of the parties.

13. AGREEMENT NOT ASSIGNABLE

- (a) This Agreement may be assigned by Nutrano subject to providing the Grower a written communication advising the same. However, Nutrano may assign without any notification being required any debt or other obligation due to it, including the debt or other obligation owed by a person who acquires the Produce.
- (b) This Agreement may only be assigned by the Grower with consent in writing first being obtained from Nutrano, which consent may not be unreasonably withheld.

14. FORCE MAJEURE

Nutrano will not be liable nor have any responsibility of any kind to the Grower for any loss, damage, cost or expense incurred or suffered by the Grower following any failure, interruption or delay in the performance of Nutrano's obligations resulting from an event of Force Majeure or the consequences of an event of Force Majeure.

15. LIEN AND PPSA

- (a) The Grower grants to Nutrano a lien over the Produce as security for all amounts outstanding and due to Nutrano on any account whether in respect of packing, Consumables or any other Additional Service.

- (b) The Grower agrees and acknowledges that the lien granted pursuant to clause 15(a) is a Security Interest for the purposes of the PPSA and may be registered pursuant to the PPSA at Nutrano's absolute discretion.
- (c) The Grower will not create or permit to be created any Security Interest over the Produce or the proceeds from the sale of the Produce, except a Security Interest in favour of Nutrano or one created with the prior consent of Nutrano.
- (d) The Grower hereby acknowledges receipt of a copy of this Agreement, and, to the extent permitted by the PPSA, waives any right it may have to receive a copy of the financing statement, a financing change statement or a verification statement, as those terms are defined in the PPSA, relating to it.
- (e) Sections 95, 96, 117, 118, 121(4), 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA do not apply to the obligations owed between the parties under this Agreement and the Grower agrees it has no rights under those sections.
- (f) Any right or rights conferred upon Nutrano by this Agreement are in addition to those conferred by statute.

16. DEDUCTION AND SET-OFF

Nutrano may deduct or set-off against moneys the Grower owes to Nutrano any debts or monies (including under an indemnity or reimbursement obligation) Nutrano may owe to the Grower pursuant to this or any other agreement. This clause survives termination of this Agreement.

17. CONFIDENTIALITY

17.1 All details contained in this Agreement or acquired as a result of this Agreement or in any agreement as to price shall, subject to clause 17.2, remain confidential between the parties except to the extent a party is required by law to disclose its contents. A party may disclose the contents of this Agreement or any agreement as to price to its professional advisers and its directors, officers, employees, servants and agents on a confidential basis.

17.2 The Grower agrees that Nutrano may disclose this Agreement and any information which Nutrano has obtained or obtains to Nutrano's financier.

18. COUNTERPARTS

- (a) This Agreement may be executed in several counterparts.
- (b) All executed counterparts taken together constitute one agreement.

19. COSTS

Each party must pay its own costs of negotiation, preparation and execution of this Agreement and any document required by this Agreement.

20. TERMINATION

- (a) Either party may terminate this Agreement by written notice to the other party if a Default Event occurs in respect of that other party. A Default Event occurs in respect of a party if that party:

- (i) breaches this Agreement and fails to remedy such breach within 7 days of notice from the other party requiring the alleged breach to be remedied, such notice setting out the alleged breach and the intention of the party giving notice to terminate the obligations to sell and purchase, forthwith upon expiry of the required remedy period; or
 - (ii) being a body corporate becomes an externally administered body corporate within the meaning of the Corporations Act and the other party sends a notice to the externally administered party that this Agreement is terminated.
- (b) Termination under this clause does not prejudice the rights of a party against the other party which accrue up to and including the date of termination
 - (c) Where this Agreement is terminated pursuant to this clause 20 and there is Produce that has commenced being tipped for packing, then Nutrano will continue to pack and deal with that Produce in accordance with this Agreement unless otherwise agreed with the Grower. This clause therefore survives the termination of this Agreement. All other Produce will be returned to the Grower at the Grower's cost.
 - (d) Subject to clause 20(e), a party to this Agreement who receives a payment (of money or other valuable consideration) for the purposes of, and directly related to, trade that would have occurred after the termination of this Agreement, must return the payment to the party who made the payment within 14 days after the day on which this Agreement is terminated. This does not affect the assignment under clause 10 or the entitlement of Nutrano (or its assignee) to the debt assigned under clause 10 or the proceeds of that debt.
 - (e) A party required to return a payment under clause 20(d) may deduct, from the amount to be returned, reasonable expenses incurred under the agreement for the purposes of, and directly related to, trade that would have occurred after the termination of the agreement.
 - (f) The Grower agrees that it will reimburse Nutrano for any Grower-branded Consumables in accordance with clause 3.8(d).

21. COOLING OFF PERIOD

Despite clause 20, either party may terminate this Agreement within seven days of the date of signing this Agreement.

22. UNPAID MONEY

If there is any money owed under this Agreement by a party, then the party who is owed the money may charge interest at the Default Interest Rate for the period the payment is overdue.

23. NOTICES

- (a) A notice or other communication given under this Agreement must be in writing signed by the party sending it and delivered personally, sent by prepaid post or sent by email to the recipient's contact details shown in Item 12, unless updated by the recipient during the term of this Agreement. Any such notice sent by email or facsimile is deemed duly delivered at the time of receipt provided the email or fax is received in office hours (8am to 5pm), failing which it will be deemed to have been received on the next business day. Any notice sent by mail is deemed delivered five business days after it is sent.

(b) Either party can update their details in Item 12 by giving notice to the other party.

24. GOVERNING LAW

Victorian law applies to this Agreement. The parties submit to the jurisdiction of courts of that State.

25. SEVERANCE

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to the extent only of the prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

26. ENTIRE AGREEMENT

This Agreement represents the entire agreement and understanding between the Grower and Nutrano and supersedes all prior agreements between the parties.

27. NO WAIVER

Any time or other indulgence that Nutrano may grant to the Grower shall not affect the rights of Nutrano except to the extent that Nutrano expressly waives such term, or part thereof in writing.

28. INDEMNITY

Without limitation, the Grower hereby indemnifies Nutrano against:

- (a) all claims, losses or expenses that may be brought against or incurred or suffered by Nutrano and which arise as a result of the Produce not complying with any provision of this Agreement; and
- (b) any liability, loss or expense of any kind arising from or in respect of the death of, or personal injury to, or disease suffered by, any person and/or any damage to or loss of any property (or the use of that property), arising out of any:
 - (i) breach of this Agreement; or
 - (ii) negligent act or omission of the Grower.
- (c) This clause 28 survives termination of this Agreement.

29. TRADE MARK

29.1 Covenants

- (a) Nutrano and the Grower must not take any action which would or might—
 - (i) invalidate or put in dispute DGA's rights in respect to the Trade Mark
 - (ii) compromise the intellectual property rights associated with any person directly or indirectly in any of the above acts.
 - (iii) support an application to challenge or remove the Trade Mark as a registered trade mark

- (iv) cause the registrar of trade marks to require a disclaimer of a monopoly in the Trade Mark, or
 - (v) assist any person directly or indirectly in any of the above acts.
- (b) The Grower must not in the conduct of its business—
- (i) use the Trade Mark, or any other trade mark or logo which is substantially similar to or nearly resembles the Trade Mark or is likely to cause deception or confusion among the public in respect to the Trade Mark
 - (ii) in any manner describe itself or hold itself out as the agent of DGA or Nutrano
 - (iii) at any time during the term of this Agreement, or after termination of this Agreement, disclose or make known any information (confidential or otherwise) that identifies the Grower as having supplied Fruit which was sold under the Trade Mark
 - (iv) apply for or obtain registration of any trade mark which is similar to the Trade Mark, or cause anyone else to do so, or
 - (v) represent or hold out the Trade Mark or use of the names of Nutrano or DGA without prior written consent.
- (c) The Grower covenants and agrees with DGA that in the event of any of the following occurring, the Grower will notify DGA giving particulars and providing all information and assistance to DGA if DGA commences or defends proceedings in relation to any of them:
- (i) The Grower receives notice or learns of any infringement or threatened infringement of the Trade Mark or any common law passing off by reasons of imitations, get up or otherwise.
 - (ii) Any third party allegation or claim that the Trade Mark is liable to cause deception or confusion to the public

29.2 DGA Warranties

DGA warrants that at the date of this Agreement it has the right to use the Trade Mark and, to the best to its knowledge, information and belief, that usage does not infringe any patent or other rights of a third party.

29.3 Loss of the Licence

The Grower will have no right any compensation or recovery or amounts paid or payable to Nutrano or DGA in the event DGA loses the right to use the Trade Mark.

30. REPLACEMENT AGREEMENT

From the Commencement Date this Agreement replaces any earlier Horticulture Produce Agreement between the parties in connection with any Produce delivered on or after the Commencement Date.

31. DELIVERY AS A DEED

Each party by signing or executing this Agreement is deemed to unconditionally sign, seal and deliver this Agreement as a deed, with the intention of being immediately legally bound by this Agreement.

EXECUTED as a deed by the parties

SIGNED, SEALED AND DELIVERED FOR AND ON BEHALF OF SEVEN FIELDS OPERATIONS LTD

Secretary/Director

Director

Name (please print)

Name (please print)

SIGNED, SEALED AND DELIVERED FOR AND ON BEHALF OF DELITE GROWERS AUSTRALIA PTY LTD

Secretary/Director

Director

Name (please print)

Name (please print)

**SIGNED, SEALED AND DELIVERED FOR AND ON BEHALF OF THE GROWER, WHO IN SO SIGNING
WARRANTS THEY ARE DULY AUTHORISED BY THE GROWER TO ENTER INTO THIS AGREEMENT**

Secretary/Director

Director

Name (please print)

Name (please print)

Schedule

Item 1	Commencement Date									
Item 2	Initial Term									
Item 3	Grower name and contact details	Name: ABN: Address: Email: Mobile:								
Item 4	Date for notice for non-renewal	30 days before the end of the Term.								
Item 5	Orchard particulars	Approximate number of bins per variety Variety: Bins: Variety: Bins: Variety: Bins: Variety: Bins: Variety: Bins: Variety: Bins:								
Item 6	Bin Tipping Charges	Per bin tipped and is inclusive of all consumables used through infeed (wax, treatments, and harvest bin hire): <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Mandarin & Tangelo (over minimum bin run)</td> <td style="width: 20%;">\$ per bin</td> </tr> <tr> <td>Mandarin & Tangelo (under minimum bin run)</td> <td>\$ per bin</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">Re-run (if requested by Grower)</td> <td style="width: 20%;">\$ per bin</td> </tr> <tr> <td>Storage after 48 hours (contract packing services only)</td> <td>\$ per pallet space per day</td> </tr> </table>	Mandarin & Tangelo (over minimum bin run)	\$ per bin	Mandarin & Tangelo (under minimum bin run)	\$ per bin	Re-run (if requested by Grower)	\$ per bin	Storage after 48 hours (contract packing services only)	\$ per pallet space per day
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Re-run (if requested by Grower)	\$ per bin									
Storage after 48 hours (contract packing services only)	\$ per pallet space per day									
Item 7	De Greening	De Greening per bin \$ per bin								
Item 8	Review Mechanism and Review Date	Packing Charges will be reviewed every 1 July in each year and may be increased by the percentage increase in the cost of the packing charges to Nutrano. For example, in the case of labour (Fair Work minimum wage) and electricity (Victoria) increases.								
Item 9	Packing Shed	546 Treviso Way, Red Cliffs, 3496								
Item 10	Rates of Commission	For domestic sales to supermarkets* <i>*Charged on proceeds received net of supermarket rebates, but not net of promotion funds paid to supermarkets</i> %								

		For domestic sales to wholesale markets	%
		For export sales	\$ per carton (non-KCT) \$ per carton (KCT)
Item 11	Payments and Payment Periods	<p>(Initial payment): Grower will be paid the following within 14 days of its Produce being pre-graded into bins by Nutrano (<i>Subject to fruit quality, Nutrano reserves the right to alter the initial payment subject to fruit quality and to ensure it does not exceed estimated bin return</i>):</p> <ul style="list-style-type: none"> ▪ \$ per bin tipped for Afourer Mandarins <p>(Interim payment) Growers may receive a further payment from Nutrano as Produce is sold by Nutrano from the pool, based on 60% of the prevailing prices of fruit at that time, with these payments being interim determinations by Nutrano of the net result of the pool (refer subclause 5(e)), less:</p> <ul style="list-style-type: none"> • the initial payment; • packing charges and any other deductions for direct and indirect selling costs • any set-off for expenses and fees incurred by the Grower; and • statutory levies or other amounts required to be deducted by law. <p>(Final payment) By no later than one month after Nutrano has paid the final costs allocated to a pool (including any cost allocated in accordance with clause 10.1(a)), or received the final proceeds from the sale of citrus in a pool (which ever comes later), then Nutrano must make final payments (if any) to growers whose citrus was allocated to that pool.</p>	
Item 12	Notices	<p>To the Grower: refer Item 2</p> <p>To Nutrano:</p> <p>Address: PO Box 1200 Red Cliffs, Victoria, 3496</p> <p>Email: adrian.chapman@Nutrano.com.au</p> <p>Mobile: 0428 131069</p> <p>Attention: Adrian Chapman</p>	
Item 13	Bank account details	<p>Bank: _____ Branch: _____</p> <p>BSB: _____ A/C No: _____</p>	

Item 14	Reporting Period	Reports will cover each delivery of Produce by the Grower to Nutrano.
Item 15	Marketing Levy	\$ per kilogram of Produce delivered to Nutrano.

