

HORTICULTURE PRODUCE AGREEMENT

INCORPORATING NUTRANO'S TERMS OF TRADE

FOR THE SUPPLY, PACKING AND MARKETING OF PRODUCE

This Agreement is made between:

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

AND

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

RECITALS

- A. The Grower is a grower of fresh fruit produce.
- B. Nutrano carries on the business of sorting and packing fresh fruit produce and selling produce it has packed on behalf of itself and other growers.
- C. The Grower and Nutrano agree that Nutrano will provide a packing service and will also sell on behalf of the Grower the Grower's Produce on the terms of this Agreement.
- D. 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 Supply, Packing and Marketing Agreement (including the Terms of Trade) 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.

“Business Day” means a day on which banks are open for general banking business in Melbourne other than a Saturday, Sunday or public holiday .

“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, or
- (v) breakdown of or accident to plant, machinery or equipment, or
- (vi) restraints, embargoes or other unforeseeable actions of the 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.

“Orchard” means the orchard from which the Grower’s Produce is sourced and which is delivered to the Packing Shed, as specified in Item 5 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.

“Statement Period” means the period specified in Item 15 of the Schedule.

(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 Grower and Nutrano 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 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;
 - (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.
- (d) The Grower may have a representative be present whilst their Produce is being received, packed and dispatched, subject to the following:
 - (i) The representative will not have dedicated office accommodation or office services made available by Nutrano;
 - (ii) The representative will have access to those parts of the Packing Shed that are required for the observation of the receiving, packing and dispatching of the Grower's Produce, but may be refused access to other parts of the Packing Shed at the discretion of Nutrano;

- (iii) The Grower acknowledges all staff in the Packing Shed are employees of Nutrano and the Grower may not provide directions to Nutrano employees;
 - (iv) The Grower's representative must submit to an induction for occupational health and safety purposes.
 - (v) The Grower must ensure the Grower's representative keeps confidential any packing or related operations, processes or systems the representative observes, or information about or in relation to those operations, processes or systems that the representative receives.
- (e) If the Grower elects not to send a representative then the Grower confirms Nutrano has authority to store, or pack and transport Produce at its discretion, acting reasonably, in accordance with its prevailing operational standards and procedures.

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 having regard to the specifications published from time to time by Fresh Markets Australia.
- (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.

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 one of 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) maintains 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:
- (i) may store the Produce in bins for a reasonable period of time before it is sold to a customer;
 - (ii) will at the time of packing, inspect the Produce again to ensure it still meets specifications required by Nutrano having regard to available markets and channels including specifications as determined by the intended customer or which are customary or prevailing in the selected market or channel;
 - (iii) has the right following delivery of Produce from time to time to review its quality having regard to available markets and channels, customer requirements and passage of time since delivery;
 - (iv) may as a result of degradation of the Produce not meeting the required specifications or requirements since delivery, downgrade the Produce, including downgrade to juice quality;

- (v) will incur the operational cost of transferring the downgraded Produce; and
- (vi) may market and sell Produce downgraded to juice quality having regard to available buyers, but otherwise dispose of the downgraded Produce if no such buyers exist at the time.

3.7 Packing Charges and bin rebates

- (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;
 - (iii) Statutory levies and other deductions authorised by law or agreed with the Grower; and
 - (iv) If required, de-greening charges set out in Item 7 in the Schedule.
- (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 from the sale of the Produce by Nutrano. If Nutrano makes this deduction, then Nutrano must include particulars of the deduction in a report to the Grower.
- (c) In the event the sale of the Produce 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.
- (e) Subject to the Grower delivering at least 90% of the estimated number of bins of Produce set out in Item 6 of the Schedule, then Nutrano will pay the Grower a bin rebate set out in Item 16 of the Schedule.

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

The delivery of the Produce by the Grower is the first availability Nutrano has to inspect the Produce since it was harvested, and 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 discretion of Nutrano acting reasonably, 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;
 - (v) reduce the effectiveness of measures intended to prevent pest and disease incursion into the Packing Shed; or
 - (vi) not be commercially viable for the Grower and Nutrano.
- (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 or part of a 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 rejections. 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 (SUNRAYSLIA OPERATIONS ONLY)

5.1 Pooling process

- (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) 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 then allocated to each grower whose produce was sold as part of the pool.

5.2 Degradation of Produce during pooling

- (a) The Grower acknowledges and agrees that during the Pooling process described in clause 5.1 the Produce may be degraded as a result of amended or updated customer specifications, decrease in Produce quality, or external factors outside Nutrano's control.
- (b) Where a situation described in clause 5.2(a) occurs, the Grower agrees and accepts that any resulting loss will be shared equally between the growers in the pool.
- (c) The Grower also acknowledges that Nutrano may determine from the outset that the quality of the Grower's Produce may compromise the amount of revenue the pool may yield and so the Produce may be rejected, degraded or not placed in a pool at all.

6. SALE OF GROWER'S PRODUCE

6.1 Appointment as Agent

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.

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) Subject to subclause 6.2(c), Nutrano will pay the Grower the proceeds of a sale of the Grower's delivered Produce, less commission and any fees or expenses set-off against the proceeds in accordance with clause 16.
- (c) 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 an exclusive or proprietary brand or other marketing program. The market levy will be as outlined in the Schedule or otherwise agreed by the parties.

6.4 Payments to Grower

- (a) Nutrano will make payments to the Grower in the manner specified in Item 11 of the Schedule.
- (b) Payments will be made to a bank account nominated by the Grower in Item 13 of the Schedule.

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 Final return report

- (a) Nutrano will give the Grower a final report setting out the following:
 - (i) the date on which the Produce was delivered to Nutrano;
 - (ii) the date or dates of the sale of the Produce by Nutrano;
 - (iii) the type, quality grading, size and quantity of the Produce sold;

- (iv) the price received for the Produce sold;
- (v) details of each amount deducted by Nutrano from the sale price of the Produce; and
- (vi) 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 7.2(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.
- (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 incur as a result of any act or omission of the Grower.

10 COLLECTION OF DEBTS FOR PRODUCE SALES

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 unpaid debts owed by a customer will be a cost allocated to the relevant pool.

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 for Nutrano 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 for Nutrano 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,
 - (iii) what should be done to rectify the dispute, and
 - (iv) what outcome the Grower wants
- (c) Despite the Grower issuing the Dispute Notice, Nutrano may still deduct the disputed invoice from the proceeds of sale of the packed Produce. Any amounts deducted will be held in trust in an alternative account to Nutrano's day to day trading account, until the dispute is finalised to the acceptance of both parties.

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 within three weeks after the original notice being given, 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.

- (d) Each party to the settlement conference will be responsible for their own costs of preparing for and attending settlement conference.
- (e) The costs of the settlement conference will be borne equally between the parties.

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

During the dispute resolution process the parties must continue to perform their obligations under the Agreement.

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 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

13.1.1 This Agreement may be assigned by Nutrano subject to providing the Grower a written communication advising the same.

13.1.2 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

- (a) 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.

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

15 LIEN

- (a) The Grower grants to Nutrano a lien over the Produce and all proceeds from the sale of 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 create any Security Interest over the Produce or the proceeds from the sale of the Produce, except 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) This right is additional to any right or rights conferred upon Nutrano 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 the Agreement.

17 CONFIDENTIALITY

All details contained in this Agreement or acquired as a result of this Agreement or in any agreement as to price shall 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.

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.
- (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 the Grower to Nutrano, or from Nutrano to the Grower, 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 GENERAL OBLIGATIONS

For the avoidance of doubt, any right or exercise of any right under this Agreement by Nutrano, is subject to clause 3.5 and Nutrano's obligations under the Horticulture Code.

EXECUTED by the parties

SIGNED FOR AND ON BEHALF OF SEVEN FIELDS OPERATIONS LTD

Signature: _____

Name: _____

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

Signature: _____

Name: _____

Schedule

Item 1	Commencement Date																			
Item 2	Initial Term	12 Months																		
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	The orchard known as “[insert]”	Estimated number of bins per variety to be delivered (Nutrano agrees to a 10% variance) 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%;">Orange & Grapefruit (over minimum bin run)</td> <td style="width: 20%;"></td> </tr> <tr> <td>Orange & Grapefruit (under minimum bin run)</td> <td></td> </tr> <tr> <td>Mandarin & Tangelo (over minimum bin run)</td> <td></td> </tr> <tr> <td>Mandarin & Tangelo (under minimum bin run)</td> <td></td> </tr> <tr> <td>Lemon (over minimum bin run)</td> <td></td> </tr> <tr> <td>Lemon (under minimum bin run)</td> <td></td> </tr> <tr> <td> </td> <td> </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%;"></td> </tr> <tr> <td>Storage after 48 hours (contract packing services only)</td> <td></td> </tr> </table>	Orange & Grapefruit (over minimum bin run)		Orange & Grapefruit (under minimum bin run)		Mandarin & Tangelo (over minimum bin run)		Mandarin & Tangelo (under minimum bin run)		Lemon (over minimum bin run)		Lemon (under minimum bin run)				Re-run (if requested by Grower)		Storage after 48 hours (contract packing services only)	
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Re-run (if requested by Grower)																				
Storage after 48 hours (contract packing services only)																				

		If the Term is extended, including under clause 2(c), then at the start of the extended term the Bin Tipping Charges will be increased in accordance with movements in the consumer price index (all groups Melbourne).	
Item 7	De greening	De greening 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, Victoria 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	
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 and to ensure it does not exceed estimated bin return</i>):</p> <ul style="list-style-type: none"> ▪ per bin tipped for Oranges & Grapefruit ▪ per bin tipped for all Mandarins (excl Afourer) & Lemons ▪ 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, 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 3</p> <p>To Nutrano:</p> <p>Address: PO Box 1200 Red Cliffs, Victoria, 3496</p> <p>Email:</p> <p>Mobile:</p> <p>Attention:</p>
Item 13	Bank account details	<p>Bank: _____ Branch: _____</p> <p>BSB: _____ A/C No: _____</p>
Item 14	Reporting Period	<p>For each lot run of Produce delivered by the Grower to Nutrano, the period beginning from delivery and ending when payment for the Produce is received by Nutrano. Reports will be block and variety specific to the Grower.</p>
Item 15	Statement Period	<p>Within one Business Day of the Reporting Period ending.</p>

