

***California Almond
Export Association LLC***

**UNIFORM ALMOND
EXPORT CONTRACT**
("UAEC 2015")

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1. DEFINITIONS AND INTERPRETATION

"Aflatoxin Certificate" means a certificate issued by a laboratory approved by USDA, or a laboratory undergoing the USDA approval process, regarding the presence or absence of aflatoxin in the Goods. ;

"Arrival of Goods" means the arrival of the Goods' at the Point of Discharge;

"Business Day" means any day other than a Saturday, Sunday, or public holiday in the United States;

"Buyer's Shipment Instructions" means shipping instructions as defined in Clause 4.6;

"Carrier" means the form of transport by which Goods are carried, including but not limited to vessel, truck or rail wagon;

"Condition" means a term of this contract which is of such vital importance that it goes to the root of the transaction and breach of which gives the innocent party a right to terminate the contract and claim damages for any loss;

"Contract Confirmation" means a written confirmation (sent by email) which evidences the existence of the contract. In the event of any inconsistency between these terms and the Contract Confirmation, the Contract Confirmation shall prevail;

"CWT" means a hundredweight, which is equal to 100 pounds avoirdupois. Pounds avoirdupois shall be converted to kilograms at the rate of 2.2046 pounds per kilogram or as per the specific prevailing industry norm;

"Days" means, unless specified to be Business Days, calendar days;

Delivery" means delivery of the Goods in accordance with in accordance with Incoterms and Clause 7, and Delivered should be interpreted accordingly;

"DFA" means the Dried Fruit Association of California;

"Documentary Collection Terms" means that Seller shall forward its draft and accompanying Original Documents to Buyer's Bank for collection, the documents to be delivered to Buyer against payment or acceptance of the draft, as agreed by Seller. The draft shall be payable upon first presentation and time for payment shall be a Condition;

"Goods" means the commodity of the quality and description stated on the Contract Confirmation;

"Letter of Credit Terms" means that Buyer shall establish and maintain an irrevocable documentary letter of credit, payable against sight draft or time draft as agreed and against presentation of Original Documents. Each letter of credit will be in favour of and acceptable to Seller; will be maintained in sufficient amount and for the period necessary to meet all payment obligations, and will be irrevocable, issued, and/or confirmed, by a bank satisfactory to Seller;

"Original Documents" means those documents set out in Clause 2.2;

"NVOCC" means non-vessel operating carrier which means a shipment consolidation or freight forwarder who does not own vessels but functions as a carrier by issuing its own bills of lading or air waybills and assuming responsibility for the shipments;

"Point of Discharge" means the port, terminal or place where the Goods are destined to be discharged from the Carrier, as specified in the Contract Confirmation or as otherwise agreed between the Parties;

"Point of Loading" means the port, landbridge, inland port of shipment or place where Goods are to be loaded onto the Carrier;

"Quality Certificate" means a certificate issued by USDA, DFA, or by any other body as agreed between the Buyer and Seller, stating the quality, size and condition of the Goods at the time of Delivery;

"Receipt of Documents" means that Original Documents have been presented to either Buyer or Buyer's bank either in Original hard copy form, or if otherwise agreed between the Parties, by email or telex;

"Remittance Prior to Shipment Terms" means that cash in the invoice amount shall be received by Seller by an agreed upon number of Days prior to scheduled shipment;

"Shipment Period" means the time period stated on the Contract Confirmation in which Seller is obliged to make Delivery of the Goods. Shipment within the Shipment Period is a Condition;

"USDA" means the United States Department for Agriculture;

"Unit Price" means the price for either a box or container of Goods, or a standard weight or count as defined on the Contract Confirmation;

Sale of goods terms used herein (**F.A.S., F.O.B., C.I.F., C.I.P., C.P.T., C.F.R.**, etc;) shall be interpreted in accordance with the Incoterms 2010 as published by the International Chamber of Commerce, or as amended from time to time. If any provisions of the relevant Incoterms conflict with the terms herein, the terms herein shall prevail.

2. PRICE AND PAYMENT

2.1. With respect to any purchase of Goods hereunder, Buyer shall pay Seller (a) the Unit Price for Goods for the number of units of Goods shipped by Seller, plus (b) the costs, if any, incurred by Seller for the account and expense of Buyer pursuant to these terms or as otherwise agreed in writing.

2.2. Unless Remittance Prior to Shipment Terms have been agreed or otherwise specified in the Contract Confirmation, payment for the Goods shall be made against presentation of the following Original Documents –

- (a) Commercial invoice;
- (b) Bill of Lading;
- (c) Phytosanitary Certificate;
- (d) Certificate of origin;

2.3. Seller may also furnish:

- (a) Weight Certificate;
- (b) Quality Certificate; and
- (c) Aflatoxin Certificate

2.4. Time for payment for the Goods and any sums due under the Contract shall be of the essence of the Contract and a Condition thereof.

- 2.5. Where Goods are sold in instalments, and Buyer fails to pay for an instalment when due, Seller shall have, on six (6) Days written notice to Buyer, the option (but not the obligation) either to:
- (a) treat that instalment for which payment has not been received as terminated by the Buyer, and Seller shall be entitled to re-sell the shipment in addition to Seller's other rights such as to damages, in which case Buyer shall remain obligated to take delivery of and pay for all subsequent instalments under the Contract; or
 - (b) treat the whole contract as terminated by the Buyer and Seller shall be entitled to resell the other instalments elsewhere in addition to Seller's other rights such as to damages.
- 2.6. Where Goods are sold in instalments, Buyer shall not refuse to receive or pay for any instalment because of the non-delivery or delay in delivery of any other instalment or the failure of any instalment to conform to contract requirements.
- 2.7. Payment of the purchase price shall be made without any offset, counterclaim, or deduction and shall be made in United States currency unless otherwise specifically provided. All banking charges incurred at the Seller's bank are for the account of Seller. All Buyer's bank charges are for account of Buyer.
- 2.8. Late payment shall incur interest of 1.5% per month for any overdue amount starting from the due date up to and including the date payment in full is actually received in the Seller's account.

3. NOTICE TO BUYER

- 3.1. Seller shall give notice to Buyer of the export container number and the quantity and quality of Goods shipped. Such notice, which is a Condition, must be given not later than 30 Days after Delivery, but always before arrival of the shipment at the Point of Discharge. If the Goods have been sold afloat, this notice shall be provided with the Contract Confirmation.

4. SHIPMENT

- 4.1. Seller may ship at any time it chooses within the Shipment Period.
- 4.2. Unless otherwise specifically agreed, Seller may ship the Goods by any route, whether all water or by landbridge, by one or more carriers, direct or indirect, with or without transshipment.
- 4.3. Bills of lading and received for shipment bills of lading may be issued by a NVOCC.
- 4.4. Where F.A.S. or F.O.B. terms apply, Seller shall (unless separately agreed between Buyer and Seller) nonetheless be responsible for arranging carriage, in which case:
- (a) All carriage arrangements made by Seller are made as agent for Buyer, the terms of which agency shall be limited to those set out in this Clause 4.4; and
 - (b) All costs occasioned by such arrangements including freight, insurance, storage, loading, unloading, handling and other charges, shall be for Buyer's account and expense from the moment of Delivery and Buyer shall indemnify Seller for such costs and expense.
- 4.5. Buyer shall provide, not less than 30 Days prior to the first day of the Shipment Period, instructions to Seller for shipment of the Goods including the Point of Discharge ("**Buyer's Shipment Instructions**"). Buyer may within Buyer's Shipment Instructions request a specified carrier or liner service. Where such request is made by Buyer, Seller shall exercise reasonable endeavours to comply with such request. However if compliance is not

reasonably practicable, Seller shall be entitled to select an alternative vessel line and/or carrier as may be appropriate in Seller's reasonable opinion.

4.6. If Buyer fails to give Buyer's Shipment Instructions within the time specified or at all, Seller shall have the option, on six (6) Days written notice to Buyer, of either:

(a) within thirty (30) Days of expiration of Shipment Period, delivering the Goods, or any part thereof, to a place which Seller reasonably considers appropriate (to be the Point of Delivery if known to Seller); or

(b) cancelling the contract (whether single shipment or instalment contract) and recovering damages from the Buyer for any loss caused (including any loss of profit and/or any indirect loss); or

(c) In the case of an instalment contract, treat that instalment as terminated by the Buyer, and Seller shall be entitled to re-sell the shipment in addition to Seller's other rights such as to damages, in which case Buyer shall remain obligated to take delivery of and pay for all subsequent instalments under the Contract .

4.7. Where Buyer's Shipment Instructions are late and Seller elects to continue with the contract, Seller shall be entitled (but not obliged) to extend the Shipment Period and the time for presentation of documents, by the same number of Days as Buyer delayed in giving Buyer's Shipment Instructions.

4.8. Except where a sale is made on DAP, DAT or DDP terms, Seller is not responsible for ensuring that the Goods arrive in the Point of Discharge by any particular date, unless otherwise agreed in writing.

4.9. Seller shall pay any demurrage and storage costs incurred after the Goods reach the Point of Discharge and before Receipt of Documents, unless any delay in Receipt of Documents is a result of Buyer's actions.

5. INSURANCE

5.1. Seller shall not be responsible for arranging insurance unless the Goods are sold on C.I.F. or C.I.P. terms or unless separately agreed in writing between Buyer and Seller.

5.2. If Goods are sold on CIF or CIP or if separately agreed in writing that Seller shall arrange insurance, then:

(a) Seller shall procure a policy of marine insurance against the risks of carriage. The insurance shall be on Institute Commodity Trade Clauses (A) ('All Risks'), if obtainable, or otherwise on the best terms reasonably obtainable. The policy of marine insurance will cover the C.I.F. or C.I.P. contract price, as the case may be, plus ten percent (10%).

(b) If, in addition to the insurance described in paragraph (a) above, Buyer requests war risk insurance and/or comprehensive general liability insurance (including third party and product liability, broad form vendor's liability, participants' and contractual liability, personal injury, property damage, costs of recall, destruction and similar heads of claim), Seller shall exercise reasonable endeavours to procure such insurance in the United States market for Buyer's account and expense. If the requested insurance is unobtainable in the United States market, Seller shall notify Buyer accordingly. If in Seller's opinion it is appropriate, and Buyer agrees in writing, Seller shall obtain such insurance for Buyer's account and expense in any other available market.

6. TITLE AND RISK

6.1. SELLER RETAINS TITLE TO THE GOODS UNTIL SELLER HAS BEEN PAID IN FULL. IF THE GOODS ARE MIXED OR MODIFIED PRIOR TO SELLER BEING PAID, SELLER WILL OWN THE NEW PRODUCT UNTIL SUCH TIME AS SELLER HAS BEEN PAID. BUYER SHALL ENSURE THAT THE GOODS CAN BE IDENTIFIED AND SEPARATED EASILY FROM OTHER GOODS HELD BY BUYER BY STORING THEM SEPARATELY OR LABELLING THEM AND BY KEEPING STOCK RECORDS. SELLER CAN RECOVER THE GOODS AT ANY TIME IF BUYER IS IN BREACH OF THIS CONTRACT OR SELLER CONSIDERS ITS OWNERSHIP OF THE GOODS MAY BE JEOPARDISED BY BUYER CONTINUING TO HOLD THEM. SELLER MAY ENTER BUYER'S PREMISES WITHOUT NOTICE AT ANY TIME WITHIN NORMAL BUSINESS HOURS TO RECOVER THE GOODS OR TO ENSURE THAT BUYER IS COMPLYING WITH THIS CLAUSE.

6.2. Risk of loss and/or damage to Goods shall pass from Seller to Buyer upon Delivery.

7. DELIVERY

7.1 Delivery to Buyer of Goods pursuant to a F.O.B., C.I.F., or C.F.R. sale shall be deemed to have been made by Seller to Buyer as the Goods are placed in the vessel at the Point of Loading.

7.2 Delivery to Buyer of Goods pursuant to a F.A.S. or F.C.A. sale shall be deemed to have been made by Seller to Buyer as the Goods are made available to the vessel carrier or its agent, at the Point of Loading.

7.3 Delivery of Goods pursuant to a C.P.T or C.I.P shall be deemed to have been made when the Goods are taken in charge by the Carrier or its agent at the Point of Loading.

7.4 Delivery of the Goods pursuant to a D.A.P or D.D.P. sale shall be deemed to have been made when the Goods are made available for discharge at the Point of Discharge.

8. QUALITY, GRADE, SIZE AND CONDITION

8.1. Goods at the time of Delivery shall be of the size, and shall be equal to or better than, the quality or grade, specified in the Contract Confirmation. Goods sold on a sample basis shall average equal to, or better than, sample. Seller makes no other warranties, express or implied, as to quality or fitness for purpose.

8.2. If a Quality Certificate is issued and is either presented with the Original Documents or otherwise furnished to Buyer prior to Arrival of the Goods at the Point of Discharge, it shall constitute final and conclusive evidence as to quality, grade, size and condition of the Goods, except as provided in Clause 8.5.

8.3. If no Quality Certificate is issued or furnished to Buyer, Goods shall be deemed to be of the size, quality and specification stated in the Contract Confirmation.

8.4. Where an Aflatoxin Certificate has been issued, and such certificate is either attached to the payment documents or otherwise furnished to Buyer prior to Arrival of Goods at the Point of Discharge, such certificate shall constitute final and conclusive evidence as to aflatoxin content of the Goods at Delivery.

8.5. . If any shipment is denied entry by authorised government inspector into the country of the Point of Discharge due to aflatoxin levels exceeding permitted legal limits:

(a) Buyer shall be entitled by written notice to reject the Goods.

(b) Where such a rejection occurs, Buyer shall provide a copy of the inspector's determination and findings, in accordance with Clause 12. In this event, Seller shall, at Seller's option, either:

(i) ship substitute Goods to Buyer within thirty (30) Days of Seller receiving Buyer's notice of rejection, on the same terms as the rejected consignment other than the Shipment Period; or

(ii) wash out the contract (or in the case of an instalment contract, washout that instalment) at the market price prevailing on the day that Seller received Buyer's notice of rejection.

(c) Buyer shall exercise best efforts to return rejected Goods to Seller at Seller's reasonable cost. However, if by reason of a governmental decision the rejected Goods cannot be returned to Seller, Seller shall reimburse Buyer for Buyer's reasonable costs and expenses incurred for freight, demurrage, inspection and/or port charges as a result of the Goods containing excessive aflatoxin levels.

Point of Discharge

9. WEIGHTS

9.1. If a sworn Weight Certificate or Public Weightmaster's Certificate of Weight at the packing or Point of Loading is attached to the payment documents or otherwise furnished to Buyer prior to arrival of the Goods at the Point of Discharge, such certificate shall be final and conclusive as to weight. If such a certificate is not furnished, Seller shall reimburse Buyer for any shortage in invoice weight in excess of one percent (1%) as determined by a governmental or officially authorized weighing agency at the Point of Discharge, provided, that any claim for a shortage of weight is made by Buyer within ten (10) calendar days from the date at which both arrival of Goods at the Point of Discharge and Receipt of Documents occurred.

10. QUANTITIES

10.1. Where the quantity or weight of goods contracted is qualified by the word "about", it shall be construed as meaning within five per cent (5%) of the contracted quantity or weight. Seller shall invoice Buyer for the quantity of goods Delivered, at the Unit Price.

10.2. Each instalment of an instalment contract shall be separable and Buyer shall not refuse to receive any instalment because of the non-delivery or delay in delivery of any other instalment or the failure of any instalment to conform to contract requirements. .

11. PRESENTATION OF DOCUMENTS

11.1. Original Documents shall be presented to Buyer by arrival of the Goods at the Point of Discharge at the latest. If Original Documents are not available, Buyer shall give Seller six (6) Days written notice to present the Original Documents, failing which, Buyer may treat the contract (or, in the case of an instalment contract, that instalment) as at an end. Presentation of Original Documents is a Condition.

12. CLAIMS

12.1. When Receipt of Documents and arrival of Goods at the Point of Discharge have both occurred, Buyer shall be deemed to have accepted the Goods and waived any and all claims with respect to the Goods, unless Buyer gives Seller:

(a) written notice of claim within ten (10) calendar days of Receipt of Documents and arrival of Goods, and

(b) a full statement in writing including details of the basis for the claim, and supporting documentary evidence, within twenty-one (21) calendar days of Receipt of Documents and Arrival of Goods.

12.2. Notwithstanding the pendency of any claim with respect to a shipment of Goods, or with respect to any other shipment of Goods, Buyer shall pay Seller the full amount of the

invoice for such shipment without offset, discount or other deduction, within the time specified in the Contract Confirmation.

- 12.3. Except as otherwise provided herein, neither party shall be liable to the other for any consequential loss whether direct or indirect, whether foreseeable or not including but not limited to loss of business opportunity, loss of goodwill, loss of production, recall, market withdrawal and/or destruction of the Goods (whether required by governmental authorities or not) unless otherwise agreed. Each party irrevocably waives any right to punitive damages. Any claim whether in contract, tort (including negligence) or any claim of whatever nature, howsoever arising shall be limited to the contract value of the goods or, in the case of an instalment contract, that instalment.

13. FORCE MAJEURE AND LIABILITY

- 13.1. In the event that Buyer or Seller is unable to perform its obligations with respect to any sale to which these terms and conditions apply due to events of force majeure, including but not limited to crop disease, destruction, acts of God, governmental action, fires, floods, explosions, strikes, slowdowns or other concerted acts of workers, war or hostilities, insurrections, rebellions, riots or any other civil disorder, embargoes, wrecks or delays in transportation, criminal conduct of third parties, or any failure of the other party to act as required but specifically excluding a party's lowered profit, cost of financing or other business considerations, then in that event and then only to the extent so justified, the party unable to perform shall, upon written notice to the other party, be relieved of its obligations, but only to the extent of the effects of force majeure and only for so long as the event of force majeure continues. The party unable to perform shall use its best efforts to remedy the effects of force majeure. Seller shall not be obligated, by reason of force majeure circumstances, to purchase Goods from others in order to enable it to deliver Goods to Buyer. If a force majeure event occurs within the meaning of this Clause and continues for more than twenty-one (21) Days, then either party may by notice to the other terminate the contract or, in the case of an instalment contract, that instalment, and be relieved of its obligations.
- 13.2. In no event shall Seller be liable for a delay in shipment of the Goods or for non-delivery, short delivery, or loss or damage to the Goods caused or contributed to by the withdrawal of, postponement of, departure of, or the leaving of the Goods by the carrier otherwise scheduled to depart within the Shipment Period on which Seller has engaged space. In the case of a delay in shipment for any cause relating to carriage and/or the route, if Seller notifies Buyer before expiration of the Shipment Period, or within eight (8) Days thereafter, of the fact and cause of delay, the Shipment Period shall be extended for the period during which such cause shall operate, unless Buyer shall, within ten (10) Days of the effective date of Seller's notice, instruct Seller to ship the Goods by an alternate route, in which case Seller shall, if practicable, ship by the alternate route. All additional costs for such alternative routing shall be for Buyer's account and expense.
- 13.3. In the event the Seller is the party directly affected by a Force Majeure event which causes a substantial reduction in or damage to that portion of the crop of which the Goods are a part Seller may pro-rate deliveries in any reasonable manner among all its customers (including Buyer) in accordance with the percentage of loss or damage suffered.

14. SUBSTITUTION

- 14.1. If Seller is unable to furnish the full quantity of Goods specified in a contract by reason of force majeure, Buyer shall be notified in writing and given the privilege of selecting and substituting other items of Goods then available, the price to be paid for such substituted item to be the contract price for the original item plus or minus the differential between such items as set forth on Seller's price list existing at the date of the Contract Confirmation, or, if such price list does not include both the original and substituted items, the differential between such items on Seller's most recent price list which does contain a price for both such items. The sale of such substituted item of Goods shall otherwise be subject to all the terms and conditions of the original contract. Buyer's selection shall be made and notified to Seller within three (3) Days from the effective date of Seller's notice, failing which Seller shall

be relieved from the obligation of delivering the substitute items. Any other substitutions mutually agreed by Seller and Buyer shall be priced in the manner set forth above and shall otherwise be subject to all the terms and conditions of original contract.

15. GOVERNING LAW

15.1. Unless otherwise specified in the Contract Confirmation, this contract shall be governed by the laws of England and Wales.

16. ARBITRATION

16.1. Unless otherwise specified in the Contract Confirmation, dispute resolution shall be by arbitration in accordance with the Arbitration Rules of The Nut Association in London whose arbitrators shall be competent for final settlement of all and any dispute arising herefrom.

16.2. The seat of the arbitration will be London unless otherwise specified in the Contract Confirmation.

17. MISCELLANEOUS

17.1. These Terms shall be binding upon and inure to the benefit of the respective successors and assigns of Buyer and Seller. Neither Buyer nor Seller may assign its respective rights and obligations with respect to any sale governed by these terms and conditions without the prior written consent of the other party, such consent not to be unreasonably withheld.

17.2. Where the contract involves two or more instalments, it shall, be a question of degree as to whether a breach of obligations in respect of any instalment shall be considered as a breach of Condition to the contract as a whole, except as expressly provided herein.

17.3. These Terms are severable, and the holding of any provision hereof void or unenforceable shall not affect the validity or enforceability of any other provision.

17.4. Every order given to or for Seller shall be governed by these Terms which, with the accompanying terms and conditions on the face of the Contract Confirmation, shall constitute the entire agreement between Buyer and Seller and shall supersede any prior written communication between the parties. No modification or waiver of these Terms shall be binding upon Seller unless approved in writing by an authorised representative. Any term or condition in any order, confirmation or other document furnished by Buyer which is in any way inconsistent with or in addition to the terms and conditions hereof is hereby expressly rejected, and Seller's acceptance of any offer or order of Buyer is hereby expressly made in reliance on Buyer's assent to all of these Terms.

17.5. Individual contracts of purchase and sale of Goods may be executed in any number of counterparts, exchanged by email, each of which may be deemed an original, but all of which shall constitute one and the same Contract.

17.6. Notices to be given by either party to the other shall be valid only by email or facsimile and shall be deemed effective on the next Business Day after their dispatch. All notices given by mail shall not be deemed effective unless also sent by facsimile or email.

17.7. Buyer and Seller shall act in good faith at all material times.