

TERMS AND CONDITIONS

Introduction and Legal Terminology

- A. The website can be accessed at www.pipsfruit.co.za (the "Website") and is owned and operated by Pips Fruit (Proprietary) Limited with registration number 2016/087750/07 ("Seller", "we", "us" and "our").
- B. Unless replaced or superseded by an alternative written agreement between the Parties, these Website Terms and Conditions and the Seller's invoice(s) ("Terms and Conditions") govern the supply, ordering, sale and delivery of Fruit between the Parties from time to time.
- C. By ordering and purchasing Fruit from the Seller you acknowledge (as is also evident and noted on the Seller's invoices) that you have read and agreed to be bound by these Terms and Conditions.
- D. In this Agreement, unless the context requires a contrary interpretation, the following words and expressions shall have the meanings herein assigned to them:
- D.1. "Agreement" means this agreement consisting of the Terms and Conditions as contained herein and the Seller's invoice(s);
 - D.2. "Buyer" means the Buyer of the Fruit as indicated as such on the Seller's invoice(s);
 - D.3. "Confirmation of Sale Document" means the document to be issued by the Seller with each shipment of Fruit confirming the details of the sale between the Buyer and the Seller;
 - D.4. "Fruit" shall mean the fruit, as per the commodities, varieties, grades and sizes as described in the Seller's invoice(s) to be sold by the Seller to the Buyer in terms of this Agreement;
 - D.5. "Incoterms" means the "Incoterms 2010" version issued by the International Chamber of Commerce;s
 - D.6. "Parties" shall mean the Seller and the Buyer and "Party" shall mean any one of them as the context may require;
 - D.7. "POA" or "Port of Arrival" shall mean the place where a vessel is off-loaded and the shipments (i.e the Fruit) are dispersed to their respective consignees (i.e. the ultimate buyers thereof);
 - D.8. "Person" shall mean any corporation, company, partnership, other entity or individual, without limitation.
- E. This Agreement contains all the terms and conditions of the Agreement between the Parties. Where terms and conditions are contrary to this Agreement, the terms and conditions of this Agreement are to be considered by all Parties as superior terms and conditions.
- F. The Seller may, in its sole discretion, change any of these Terms and Conditions at any time. It is your responsibility to regularly check these Terms and Conditions and make sure that you are satisfied with the changes. Should you not be satisfied, you must not place orders and attempt to purchase Fruit from the Seller.

Sale, Delivery, Transfer of Title and Risk, Disputes

1. A Confirmation of Sale Document and/or Seller Invoice will be issued for each shipment of Fruit and will form part of this Agreement and will be legally binding.
2. The Fruit will be sent via sea freight or airfreight, to the destination specified by the Buyer and within the time period specified in the Confirmation of Sale Document and/or Seller Invoice.
3. Delivery, transfer of title and risk in the Fruit shall pass to the Buyer according to the Incoterms as specified in the relevant Confirmation of Sale Document and/or Seller Invoice.
4. The purchase consideration and payment thereof will be stipulated in the Confirmation of Sale Document and/or Seller Invoice.
5. Interest on late payments will be charged at the Prime interest rate as set by the Seller's bankers at the Seller's discretion from the due date of the payment until payment is received by the Seller.
6. The Fruit described in the Confirmation of Sale Document and/or Seller Invoice will remain the property of the Seller until all amounts payable by the Buyer in terms of this Agreement are received by the Seller.
7. In the event that the Buyer does not pay the amount payable on the relevant Bill of Lading, the Seller will be entitled to:
 - 7.1. take possession of the Fruit at the POA; and / or
 - 7.2. if the Seller is unable to take possession of the Fruit at the POA to cancel any other shipments destined to the Buyer (of similar value) in terms of this Agreement and sell same to any other buyer at any destination the Seller so chooses; and
 - 7.3. claim damages from the Buyer, without derogating from the remedies available to the Seller

in terms of this Agreement.

8. The Parties select as their respective domicilia citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement, the addresses as more fully described in the Seller invoices.
9. The law of the Republic of South Africa shall regulate this Agreement. Unless otherwise agreed to between the Parties in writing, any dispute arising from or in connection with this Agreement shall be determined in accordance with the *Commercial Rules* of the *Arbitration Foundation of South Africa* ("Foundation") by an arbitrator or arbitrators nominated by the Foundation. The Parties hereby submit to the jurisdiction of the Western Provincial Division of the High Court of South Africa (or such other competent court having jurisdiction as nominated by the Seller in writing to the Buyer from time to time, which jurisdiction the Buyer shall accept) for the purposes of any proceedings for urgent relief arising out of or in connection with this Agreement and for the purposes of enforcing any award made by an arbitrator under this clause 8.

QUALITY CONTROL

Seller's responsibility for inspection of Fruit prior to export

10. All Fruit must be inspected and passed for export by the relevant fruit export control board servicing the designated country of origin of the Fruit ("Export Board").
11. All Fruit must be packed according to or above the mandatory minimum market standards as prescribed by the relevant Export Board. The Seller at the request of the Buyer shall supply these standards.
Should the Buyer require additional specifications or standards, these are to be sent in writing by e-mail to the Seller within a reasonable period of time prior to export of the Fruit.

Buyer's responsibility for inspection and adherence to quality control procedure

12. Fruit must be inspected within 72 (seventy two) hours of arrival at POA.
13. If containers cannot be collected and inspected within the above timeframe, the Buyer must notify the Seller in writing, so that an exception to the time frames can be granted by the Seller.
14. On the arrival of the container at Buyers offloading facility, the vent setting of the container should be checked and recorded by the Buyer. If the vent setting is not correctly set in accordance to the accepted setting standards for the type of produce shipped, the Seller is to be immediately notified by telephone and by e-mail.
15. The container must be held by the Buyer until a representative of the relevant shipping line comes to inspect, or provides written approval that the container can be removed from Buyers offloading facility.
16. On the opening of the container doors, the temperature recorder must be taken from the marked box of the pallet at the door. The temperature information must be downloaded to establish if there has been any temperature malfunction(s) and / or fluctuation(s) during transit. If the temperature setting has malfunctioned and / or fluctuated during transit, the Seller is to be notified immediately by telephone and by e-mail. The Seller and Buyer are to put the shipping line on notice of claim, and invite the shipping company to come and do a survey.
A general overview of the shipment must be done and documented by the Buyer in a report delivered to the Seller within the above-mentioned timeframes via e-mail to quality@pipsfruit.co.za and to the relevant person at the Seller who was responsible for the sale ("General Overview Report").

General Overview Report

17. The General Overview Report must state whether the Buyer intends claiming on quality related issues and present sufficient information to the Seller to make an informed decision whether he should appoint an independent inspection authority to do a survey. The Seller is to confirm in writing and acknowledge receipt of the General Overview Report and more specifically any intended claims contained therein. If the Buyer has not received this acknowledgment receipt with 24 hours, the Buyer is to contact the Seller by phone, and resend the General Overview Report, requesting the acknowledgment receipt. The communication must include the reason(s) for the claim together with all necessary supporting information.
18. Reason(s) for the claim must be summarized into any one or combination of the following:
 - 18.1. claim based on major defects;
 - 18.2. claim based on minor defects;
 - 18.3. claim based on phytosanitary requirements;

- 18.4. claim based on packaging.
- 19. Supporting information must include the following minimum items:
 - 19.1. color photos to sufficiently demonstrate the quality issue;
 - 19.2. the Seller Reference Number, which is either the contract number or Seller's invoice number must be clearly indicated;
 - 19.3. in the case of multiple containers being claimed, the specific container numbers must be identified;
 - 19.4. the grower codes (PUC) being claimed;
 - 19.5. all affected pallet identification numbers for the pallets and the total number of cartons under claim;
 - 19.6. the vessel name / container number / variety / size;
 - 19.7. the detail of temperature recorder – temperature graph (the Buyer agrees and warrants that it will have in place the relevant software available to do the temperature downloads for the temperature recorder);
 - 19.8. the address where the pallets are stored and contact detail of person (to be used by the Seller or surveyor in case of insurance claim);
 - 19.9. the quantification of the claim (estimation of damage or loss).

Independent Survey

- 20. Should the General Overview Report indicate to the Seller that an independent survey is required, the Seller is required to contact and instruct the relevant inspection authority to conduct an independent survey.
- 21. The inspection authority to conduct any survey shall be nominated by the Seller and/or the growers of the Fruit. For these purposes the Seller and/or the growers of the Fruit will not accept a claim based on an inspection authority appointed by the Buyer.
- 22. If the Buyer wishes to have his own inspection authority do a joint survey together with the inspection authority appointed by the Seller, the Seller needs to first approve the joint survey and once approved the findings of the Buyer's inspection authority must be documented in the independent survey report of the inspection authority appointed by the Seller.
- 23. The Buyer is to do the following:
 - 23.1. isolate the pallets that are under claim, and stop the sale of affected pallets. Sales may only occur once the inspection authority (appointed by the Seller) has concluded the survey, and both Parties have agreed on the course of action;
 - 23.2. provide the inspection authority access to the storage facility where the claimed Fruit is situated;
 - 23.3. arrange that all claimed pallets at the time of inspection are easily accessible to the inspection authority;
 - 23.4. provide the inspection authority with a sufficiently light area to conduct survey;
 - 23.5. to present the inspection authority with pallets requested for survey by them.
- 24. The Parties must then ensure that the final survey report is distributed to the Buyer and Seller within 48 hours of the survey being held.
- 25. Should the outcome of the survey be in contradiction to the Buyer's claim (whether whole or only in part), the cost of the survey will be for the account of the Buyer.
- 26. The findings of the survey will be binding on both Parties and all claims will be settled within 14 (fourteen) days of receipt of the independent inspection authority's survey being presented to the Buyer (or within a reasonable period of time thereafter not exceeding 30 (thirty) days).
- 27. The Parties must agree together on a course of action to be taken that will minimize the commercial loss of affected Fruit. This course of action(s) shall include the following:
 - 27.1. repacking of the affected Fruit (see Repack Procedure below);
 - 27.2. discount(s) applied to the affected Fruit (see Discount Sale Procedure below);
 - 27.3. open consignment sale of the affected Fruit (see Open Consignment Sale Procedure below);
 - 27.4. buy back of the affected Fruit (see Buy Back Procedure below).

Repacking Procedure

- 28. Should the quality of the affected Fruit be such that the Parties agree to repack the affected Fruit, such repacking shall commence within 24 hours of the agreement to repack in accordance with

the repacking procedure detailed below.

- 29. The cost of repacking must be negotiated and agreed to in writing between the Seller and the Buyer before repacking commences. The affected Fruit, once repacked, will be subject to the original purchase price and payment terms agreed to between the Parties before such Fruit was deemed affected Fruit (i.e. the Fruit will then be treated as Fruit that arrived according to the agreed quantity, quality and specifications).
- 30. A final repacking report must be supplied by the Buyer to the Seller within 48 hours of repacking. The Seller agrees to reimburse the Buyer for the repacking cost, as per the cost agreed to. If cost are higher than those agreed to, the Seller has the right to request copies of the service provider's invoices to prove justification of the higher billing.
- 31. Any deviation from the repacking procedure mentioned herein, must first be negotiated and agreed to between the Parties in writing.
- 32. The following repacking procedure must be followed:
 - 32.1. select one pallet at a time and note the following:
 - 32.1.1. Barcode Number;
 - 32.1.2. Variety;
 - 32.1.3. Grade;
 - 32.1.4. Count;
 - 32.1.5. Grower Code;
 - 32.2. after all the Fruit has been graded and repacked, the following should be documented:
 - 32.2.1. Date Repacked;
 - 32.2.2. Time taken to repack pallet;
 - 32.2.3. Percentage Class 1 Fruit;
 - 32.2.4. Percentage Class 2 Fruit;
 - 32.2.5. Percentage Waste Fruit;
 - 32.2.6. Major defects found;
 - 32.2.7. Expected cause of defects;
 - 32.2.8. Report compiled by Name _____, Signature _____, Date _____.

Discount Sale- Open Consignment Sale- and Buy Back Procedure(s)

- 33. Subject to all the correct procedures being followed as highlighted herein; and subject to any claim(s) made by the Buyer falling in one or a combination of the categories mentioned in clause 18 above being validated and/or sufficiently approved and / or approved but with certain amendments as indicated by the independent inspection authority appointed by the Seller; and subject to the Parties reaching agreement on a course of action to be taken that will minimize the commercial loss of affected Fruit, the following procedures must be followed by the Parties:
 - 33.1. **Discount Sale Procedure**: either Party shall be entitled to issue to the other Party a written request indicating the discount it wishes to give / receive on the affected Fruit sold;
 - 33.2. should the Parties be unable to reach agreement within 7 (seven) business days, from the date of receipt of the written request, on the amount of discount to be given/received for the affected Fruit sold, the Parties shall proceed to the following procedure:
 - 33.3. **Open Consignment Sale Procedure**: either Party shall be entitled to issue to the other Party a written request indicating that the affected Fruit must be sold on open consignment to the general public on such terms and conditions it may deem appropriate at the time;
 - 33.4. should the Parties however be unable to reach agreement within 7 (seven) business days, from the date of receipt of the written request, on the terms and conditions on which the affected Fruit must be sold in the open market, the Parties shall proceed to the following procedure:
 - 33.5. **Buy Back Procedure**: the Seller shall then be entitled to issue to the Buyer a written offer indicating the terms and conditions on which the affected Fruit should be bought back from the Buyer;
 - 33.6. should the Parties however be unable to reach agreement within 7 (seven) business days, from the date of receipt of the written request, on the terms and conditions on which the affected Fruit should be bought back by the Seller from the Buyer, the Parties shall proceed to arbitration with the Fresh Produce Exporter Forum of South Africa (FPEF).