



GENERAL PURCHASE TERMS & CONDITIONS

These general purchase terms and conditions ("Terms") shall be applicable to all purchase transactions between the Seller and the Purchaser in addition to the terms and conditions set out in the Purchase Order.

1. Definitions

The following words used in these Terms shall have the following meanings unless the context otherwise requires:-

"Effective Date" means the effective date as specified in the Purchase Order;

"Intellectual Property" means intellectual property rights including, without limitation, all patents, registered designs, copyrights, database rights, design rights, semiconductor chips, topography rights, trademarks, service marks, trade secrets, confidential information and rights in unpatented know-how and any other proprietary right or form of intellectual property (whether protectable by registration or not);

"Price" means the price of the Products as specified in the Purchase Order;

"Products" means the products supplied by the Seller as specified in the Purchase Order;

"Purchase Order" means the purchase order issued by the Purchaser and accepted by the Seller relating to the purchase of the Products by the Purchaser;

"Purchaser" means Olam Orchards Australia Pty Ltd ACN 139 442 532;

"Seller or Supplier" means the vendor or supplier to whom the Purchase Order has been issued by the Purchaser relating to the purchase of the Products by the Purchaser;

"Specifications" means the quality, quantity and any other specifications detailed under the Products and Special Conditions items of the Purchase Order; and

"Supply" means the supply of Products by the Seller to the Purchaser.

2. General

- 2.1 The Purchaser agrees to buy and the Seller agrees to sell the Products in accordance with these Terms and the terms set out in the Purchase Order. No offer to sell or supply any Products shall be binding upon the Purchaser unless a Purchase Order has been issued by the Purchaser and both parties have signed the Purchase Order.
- 2.2 The Seller acknowledges that the Seller has read and understands these Terms and the Purchase Order and the Seller acknowledges and agrees that all orders placed by the Purchaser are subject to these Terms and the terms of the Purchase Order.
- 2.3 The Purchaser's agents and/or representatives have no authority to make any oral representations, statements, warranties, conditions or agreements that conflict with these Terms or the terms of the Purchase Order.
- 2.4 The Seller shall supply the Products to the Purchaser in accordance with these Terms and the terms of the Purchase Order. Each order for Products (whether or not subject to the same Purchase Order) shall constitute a separate contract, and any default or cancellation by the Purchaser in relation to the payment or otherwise of any one order shall not entitle the Seller to treat any other order for Products as terminated or cancelled.
- 2.5 In the event there is a conflict between these Terms and the terms of the Purchase Order, the terms of the Purchase Order will prevail.
- 2.6 All Products supplied by the Seller pursuant to these Terms and the Purchase Order shall conform in all respects to the Specifications.

2.7 The Seller shall at its own expense be responsible for obtaining and maintaining in force all licences, permits, consents, approvals, certificates, registrations and authorisations or other requisite documents as required by any law, if any, from appropriate federal, state, municipal or other governmental or administrative bodies, to permit the supply of the Products to the Purchaser as contemplated by these Terms.

3 Payment

3.1 The Purchaser agrees to pay the Price for the Products as set out in the Purchase Order. All payments made by the Purchaser to the Seller shall be paid in the currency specified in the Seller's invoice.

3.2 Subject to clauses 3.3 and 4.2, the price set forth in the Purchase Order is firm and is the total amount due from the Purchaser for the Products, including without limitation, duties, taxes or any other charges agreed upon by Purchaser. The Purchaser shall not be responsible for any amount above the total amount expressly stated in the Purchase Order. The Seller shall not add any charges or expenses payable by the Purchaser under the Purchase Order without the Purchaser's prior written consent.

3.3 Where a supply made by the Seller is subject to Goods and Services Tax ("GST") as defined by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), the Purchaser will upon receipt of a valid tax invoice pay, in addition to any other consideration payable as specified in the Purchase Order, an amount equal to GST on that supply. All other taxes payable in Australia shall be the liability of the Seller.

3.4 The Seller shall submit tax invoices to the Purchaser as per the instalments specified in the Price section of the Purchase Order.

3.5 Payment for all undisputed tax invoices shall be made by the Purchaser within 30 days from the end of the month in which

a tax invoice is submitted by the Seller to the Purchaser in accordance with the instalments in clause 3.4. If the Purchaser has a claim against the Seller resulting from the Purchase Order or any other transaction, the Purchaser shall be entitled to deduct or set off the disputed amounts from the Seller's claims for amounts due. Disputed amounts will be dealt with by the parties as per the dispute resolution process outlined in clause 14.2.

4 Delivery

4.1 If the Product has a critical shipping and critical delivery date, as specified purchase order, the Supplier must ship and deliver the Product in accordance with the shipping and delivery terms specified in the purchase order and the terms in this clause 4.

4.2 If the Product has a critical delivery only, the Supplier must deliver the product in accordance with the delivery terms specified in the purchase order and the terms in this clause 4.

4.3 The Seller must ship and deliver the Products in accordance with the delivery terms specified in the Purchase Order and the terms in this clause 4.

4.4 Time is of the essence under these Terms and the terms of the Purchase Order. If the Products are not shipped by the date(s) stated in the Purchase Order, the Purchaser may, without liability and in addition to its other rights:

4.4.1 deduct 10 per cent of the Price by way of liquidated damages. Any right to liquidated damages under this clause 4.2.1 may be deducted or set off the final instalment of the Price payable by the Purchaser under this Purchase Order. Parties confirm that the liquidated damages sum under this clause 4.2.1 represents a genuine

pre-estimate of damages suffered as a result of a breach of the Seller's obligation to deliver the Products on time. The parties further confirm that these liquidated damages are reasonable and proportionate to protect both parties' legitimate interests;

- 4.4.2 terminate or reschedule the order for the Products by notice to the Seller; and/or
- 4.4.3 buy substitute Products elsewhere and charge the Seller for costs incurred for all or part of the price for the substitution of the Products.
- 4.5 The Seller shall prepare and pack the Products in accordance with the Purchase Order and if no packing terms are specified, the Seller shall prepare and pack the Products in accordance with usual commercial and industry practices. The Purchaser will not pay charges for packing, crating, shipping or delivery, unless otherwise stated in the Purchase Order. If the Seller delivers the Products in a more expensive manner than as specified in the Purchase Order to comply with the Purchaser's required delivery date, the Seller shall pay all increased costs, unless the Purchaser solely causes the necessity for and agrees in writing to pay such increased costs.

5 Purchaser's Rights

- 5.1 The Purchaser's inspection, testing, payment or use of the Products shall not constitute acceptance thereof and shall not affect the Seller's obligations and warranties set forth in these Terms, which shall survive the Purchaser's inspection, testing, acceptance and/or use. Nothing contained in these Terms shall relieve the Seller in any way from its obligations to test, inspect and control the quality of the Products. The Purchaser may reject or revoke acceptance of any Products that are, in the Purchaser's judgment, defective and/or do not conform to the

terms of the Purchase Order ("non-conforming Products") at any time.

- 5.2 In addition to any other rights available to the Purchaser, upon the Purchaser's rejection or revocation of acceptance of the Products or the Seller's failure to meet the terms of the Purchase Order in whole or in part, the Purchaser shall, in its sole discretion, direct the Seller to, at the Seller's sole cost and expense:

- 5.2.1 refund to the Purchaser the Price of such Products as well as any associated costs incurred by the Purchaser; or
- 5.2.2 upon a written replacement order from the Purchaser, replace or correct any such Products at no additional cost to the Purchaser within seven (7) days of the Purchaser's demand or within another timeframe agreed by the parties if seven (7) days is not practically possible; or
- 5.2.3 credit the Purchaser's account with an amount equal to the amount paid for such Products, as well as any associated costs incurred by the Purchaser. The Purchaser may also choose to replace any non-conforming Products from any other source, and the Seller will reimburse the Purchaser for any incremental costs incurred by the Purchaser in connection therewith.

- 5.3 In addition, the Purchaser may, at the Seller's risk, return to the Seller non-conforming Products supplied in excess of quantities ordered and may charge the Seller for all expenses related to the return. If the Seller fails to take any of the corrective actions described in this clause 5, the Purchaser, upon notice to the Seller, may take such action and charge the Seller for all associated costs incurred by the Purchaser. Unless specified otherwise, all Products delivered hereunder shall not be in excess of the quantity ordered.

- 5.4 The Purchaser may, at any time prior to delivery, upon reasonable notice to the Seller, change the Specifications for the Products and delivery thereof. The Seller will accept any changes, so far as the Seller is capable of meeting such changes, provided that if a change increases or decreases the cost or time required for performance, the parties will equitably adjust and modify the terms hereof in writing accordingly. The Seller shall inform the Purchaser in advance of any material change, intentional or otherwise, to the Products, including without limitation, changes in composition, quality specifications, manufacturing processes, labelling, functionality, safety, manufacturing locations, and any suppliers or subcontractors.
- 5.5 Any revisions to the Purchase Order, price or otherwise, must be in writing and approved by the Purchaser.

6 Risk and Title to Products

- 6.1 Risk (but not title) in respect to the Products will remain with the Seller until delivery to the Purchaser (including unloading and completion of any inspection/performance testing of the Products to Olam's satisfaction).
- 6.2 Title in the Products shall pass to the Purchaser once the Purchaser has paid the final instalment invoice in full.

7 Warranties and limitations of liability

- 7.1 The Seller agrees to supply the Products detailed in a Purchase Order.
- 7.2 In addition to the Purchaser's rights under statutory consumer protection laws, including the *Competition and Consumer Act 2010* (Cth), the Seller represents and warrants to the Purchaser, its successors, assigns, customers, and users of the Seller's Products, that all the Products shall:
- 7.2.1 Match the description of the Products ordered;

- 7.2.2 conform to the terms of the Purchase Order and the Specifications and/or all applicable samples, drawings, standards, specifications, performance criteria and any other description requested, furnished or provided to or adopted by the Purchaser;
- 7.2.3 match the quantity of the Products ordered;
- 7.2.4 be free from defects in material and workmanship;
- 7.2.5 be of acceptable and merchantable quality, safe and appropriate for the purpose for which Products of this kind are normally used;
- 7.2.6 together with their packaging, labelling and accompanying materials be properly contained, packaged, marked and labelled;
- 7.2.7 be fit for the particular purpose for which Purchaser intends to use the Products;
- 7.2.8 meet any additional standards, quality or other criteria as required by the Purchaser from time to time and agreed in writing by the Seller; and
- 7.2.9 not infringe the rights of any third parties.
- 7.3 In addition, the Seller shall comply and the Products shall comply with all applicable federal, state and local laws, ordinances, orders, rules, actions, regulations and industry standards.
- 7.4 The Seller further warrants and represents that no liens, encumbrances, security interests, or other third party claims shall attach to any Products and that the Seller has all right, title and interest in the Products to allow the products to be sold to the Purchaser.
- 7.5 If there are any damages or defects that had occurred to the Products prior to their delivery to the Purchaser, the Seller shall replace such damaged or defective Products at no cost to the Purchaser.

8 Indemnification

- 8.1 The Seller, its parents and affiliates shall defend, indemnify and hold the Purchaser and its officers, employees, agent and servants harmless from and against any and all claims, demands, actions, causes of action, proceedings, judgments and other liabilities, obligations, losses, damages (both direct and indirect losses/damage), costs and expenses (including reasonable legal fees and costs) of any nature (collectively, the "Claim") to the extent they are due to or arise from:
- 8.1.1 the breach of any representation, warranty or obligation contained in these Terms and/or the Purchase Order by the Seller;
 - 8.1.2 the sale or supply of the Products to the Purchaser by the Seller under these Terms and/or the Purchase Order;
 - 8.1.3 the use or application of the Products by the Purchaser;
 - 8.1.4 the Products failing to perform in accordance with the Seller's instructions regarding timing, rate, technique or otherwise for the use/application of the Products;
 - 8.1.5 the negligence or wilful misconduct of the Seller or any of its directors, officers, employees, or agents;
 - 8.1.6 alleged patent, copyright, trademark, trade secret or other intellectual property right infringement; and
 - 8.1.7 any defects in or contamination of the Products sold or supplied to the Purchaser by the Seller and/or any other product liability relating to the same.
- 8.2 The foregoing indemnification obligations shall not apply to the extent the Claim is due to or arises from the gross negligence or wilful misconduct of the Purchaser.

9 Non-Disclosure of information

- 9.1 The Seller, its employees, agents and representatives, shall consider as the Purchaser's "Confidential Information", all non-public information provided by the

Purchaser, all specifications or other documents prepared by the Seller in connection herewith, the fact that the Purchaser has contracted to purchase the Products from the Seller, and all other non-public information relating to the Purchase Order.

- 9.2 The Seller agrees with and undertakes to the Purchaser that it shall not, without the prior written consent of the Purchaser:

- 9.2.1 disclose or use the Confidential Information for any purpose other than performing the Purchase Order;
- 9.2.2 announce, publicise or discuss with third parties the subject matter of the Purchase Order;
- 9.2.3 include the Purchaser's name or trademarks in any marketing materials; or
- 9.2.4 disclose that the Purchaser is the Seller's customer.

- 9.3 The foregoing provisions shall be subject to the terms of any other written agreement executed by the parties relating specifically to confidentiality, non-disclosure and/or publicity.

10 Termination

- 10.1 In addition to the Purchaser's other rights and without liability, upon notice to the Seller, the Purchaser may terminate the Purchase Order, or any part hereof, for cause in the event of any default by the Seller of the terms or conditions of the Purchase Order, including, without limitation, no delivery, late delivery, delivery of nonconforming or defective Products, and/or the Seller's failure to provide the Purchaser, upon request, with reasonable assurances of future performance.

- 10.2 Upon notice to the Seller, the Purchaser may also terminate a Purchase Order for cause:

- 10.2.1 if the Seller fails any quality requirements, including, but not limited to, audits and inspections by

- Purchaser, a third party or the government or any governmental agency; or
- 10.2.2 if any Controller, Receiver, Receiver and Manager, Voluntary Administrator, Provisional Liquidator, Liquidator or Trustee in Bankruptcy is appointed to the Seller.
- 10.3 Upon receipt of the Purchaser's notice of termination, the Seller shall immediately stop and cause all suppliers and subcontractors to stop all performance hereunder.

11 Insurance

- 11.1 The Seller shall maintain insurance coverage for the minimum amounts in relation to the following areas:
- 11.1.1 Product Liability Insurance – for a minimum amount of \$10,000,000 for each occurrence of accidental contamination, malicious product tamper or product extortion;
- 11.1.2 Public Liability Insurance – for a minimum amount of \$20,000,000 for each occurrence.
- 11.2 At the Purchaser's request, the Supplier shall provide copies and proof of the currency of the insurance policies referred to above.
- 11.3 If required by the Purchaser, the Seller shall add the Purchaser as an additional insured to the above policies.

12 Technical Advice

- 12.1 The Seller shall provide the Purchaser with such technical advice and directions relating to the Products as may be necessary or useful to the Purchaser in respect of the use or application of such Products, and acknowledges that the Purchaser purchases the Products on the basis that the Products perform in accordance with the technical advice and directions provided by the Seller to the Purchaser.

13 Force Majeure

- 13.1 The Purchaser shall not be considered to be in default in the performance of its obligations under the Purchase Order, to the extent and for the period of time that performance of any such obligation is prevented, interrupted, or delayed by disease, virus, epidemic, quarantine, fire, flood, earthquake or other natural disaster, strike, riots, governmental regulations restricting normal operations, war or other cause, which is beyond the reasonable control of Purchaser ("Force Majeure Event").

If the Force Majeure Event causes an extension of delivery time such that the use of Products is not possible, the Purchaser may terminate this Purchase Order.

- 13.2 If the delivery of the Products is delayed or expected to be delayed by reason of any Force Majeure Event, the Seller must promptly inform the Purchaser of any such delay or expected delay and then the time for delivery of the Products may be extended by the Purchaser by a period of time equal in length to the period of such delay.

14 Miscellaneous

- 14.1 These Terms shall be and are to be construed in accordance with the laws of Queensland and the Seller hereby submits to the non-exclusive jurisdiction of the Queensland courts.
- 14.2 The parties will attempt in good faith to promptly resolve any dispute arising out of these Terms and/or the Purchase Order by negotiations between representatives who have authority to settle the controversy.
- If unsuccessful, the parties shall engage in non-binding third-party mediation, with fees and expenses of such mediation apportioned equally to each side provided, however, that no party is required to mediate any dispute in case of irreparable harm or if there is a threat to public health or safety by continuing

- performance under these Terms and/or the Purchase Order.
- 14.3 These Terms and the terms in the Purchase Order set forth the entire agreement and understanding between the parties in connection with the Supply and supersedes all prior communications and negotiations in relation to the Supply. These Terms and the terms in the Purchase Order do not incorporate any terms or conditions submitted by the Seller with any quotation, invoice, order acknowledgement, bill of lading or any other document, unless agreed in writing and signed by authorised representatives of each of the parties.
- 14.4 These Terms and the terms in the Purchase Order do not create an exclusive relationship between the Purchaser and the Seller in relation to the Supply.
- 14.5 It is agreed that if any provision of these Terms should be determined to be void by any court of competent jurisdiction, then such determination shall not affect any other provision hereof and each such other provision shall remain in full force and effect.
- 14.6 Any waiver of any breach of these Terms and/or the terms in the Purchase Order shall not be deemed to apply to any succeeding breach of the provision or of any other provision of these Terms and the terms in the Purchase Order. No failure to exercise and no delay in exercising on the part of any of the parties any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 14.7 The obligations or responsibilities contained in these Terms or in the Purchase Order which are continuing in nature shall survive the expiration or termination of these Terms and the Purchase Order. The rights and remedies provided in these Terms and the terms in the Purchase Order are cumulative and not exclusive of any rights or remedies otherwise available (whether at law or in equity) to the parties under these Terms.
- 14.8 Nothing in these Terms or in the Terms of the Purchase Order shall constitute a partnership or establish a relationship of agent or any other relationship of a similar nature between or among the parties.
- 14.9 Seller may not assign, delegate or sub-contract its rights or obligations under the Purchase Order without the express written consent of Purchaser. These Terms and the terms in the Purchase Order shall inure to the benefit of and be binding upon the parties and to their respective successors and legal representatives. Nothing in these Terms or the terms of the Purchase Order are intended to confer any rights or remedies on any persons other than the parties to them and their respective successors and permitted assigns.
- 14.10 Nothing in these Terms or the terms of the Purchase Order are intended to relieve or discharge the obligation or liability of any third persons to any party.
- 14.11 No purported variation of these Terms and/or the terms in the Purchase Order shall be effective unless made in writing signed by authorised representatives of each of the parties.
- 14.12 The Seller agrees to comply with all applicable safety regulations, standards, and practices while performing work under this order. The Seller shall provide all necessary safety equipment and training to their employees and subcontractors. The Seller must ensure all risk assessments and permits are completed and signed by an approved ofi employee before commencing work on any ofi site. In the event of an accident or injury, the Seller must immediately notify ofi and provide a report detailing the incident. Failure to adhere to safety

protocols may result in penalties, including termination of this purchase order.

15 Intellectual Property

15.1 Where the Purchaser supplies or provides the Seller with any artwork, documents or materials containing the Purchaser's Intellectual Property, the Seller acknowledges that the Purchaser is the exclusive owner and retains ownership of all Intellectual Property rights including but not limited to all Intellectual Property in the artwork, documents or materials provided to the

Seller. The Seller further agrees not to assert any claim to this Intellectual Property or claim any interest in the Intellectual Property belonging to the Purchaser nor will it in any way attempt to or allow the copying or reverse engineering of the Intellectual Property belonging to the Purchaser except with the prior written consent of the Purchaser.

15.2 All brochures, manuals and other literature provided by the Purchaser to the Seller remain the property of the Purchaser and shall be held in confidence by the Seller.