

TERMS OF TRADE

BOSTOCK New Zealand Limited Terms and Conditions of International Trade

1. General Conditions

All Goods sold by the Seller are sold subject to the Contract Terms.

2. Definitions

2.1 "Seller" means BOSTOCK New Zealand Limited or any person acting on behalf of and with the authority of BOSTOCK New Zealand Limited

2.2 "Buyer" means the person who buys or whose order for the Goods is accepted by the Seller and to whom the Sales Confirmation is made out

2.3 "Goods" means the goods supplied by the Seller to the Buyer

2.4 "Sales Confirmation" means the written confirmation of the sale of Goods provided by the Seller to the Buyer and may be represented by an exchange of emails.

2.5 "Price" means the price for the Goods payable under the Contract Terms

2.6 "Conditions" means the standard terms and conditions of sale set out in this document.

2.7 "Contract Terms" means the Conditions together with the terms set out in the Sales Confirmation and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Seller.

3. Contract

3.1 A contract for the sale of Goods shall be formed when the Seller provides the Buyer with a Sales Confirmation.

3.2. If the basis of sale is FOB, CIF or CFR, such term shall be interpreted in accordance with Incoterms 2010 edition or any document in substitution for that document

3.3. Any dates quoted for delivery of the Goods are approximate only and time for delivery shall not be of the essence. The Seller shall not be liable for any delay in delivery of the Goods.

3.4. No variation to the Contract (including any purported cancellation) shall have any force or effect unless agreed in writing between the Buyer and Seller.

4. Installment Shipments

Goods may be shipped in installments on separate vessels, and in any such case each such shipment shall be regarded as a separate contract and payment made accordingly. The failure to make any shipments shall not vitiate any contract as to other shipments. If the Buyer fails to pay for any one or more of the said installments of deliveries of the Goods, the Seller may, at its sole option, be entitled to suspend without notice to the Buyer further deliveries of the Goods pending payment by the Buyer and/or to treat the Contract/s as repudiated by the Buyer.

5. Samples and weight

Notwithstanding the prior submission of samples by the Seller to the Buyer, Goods are supplied solely as described in the Sales Confirmation and the Bill of Lading or Waybill shall be conclusive evidence as at the date of shipment of the weight or quantity of the Goods.

6. Price

Unless otherwise stated in the Sales Confirmation or implied by the basis of sale, the Buyer shall be liable for all applicable freight, taxes, customs duties and levies in addition to the Price.

7. Payment

7.1. Payment of the Price must be made by the Buyer in accordance with the payment terms specified in the Sales Confirmation. If the Sales Confirmation fails to specify payment terms, payment will, at the option of the Seller, be on the same terms as any previous transaction between the Buyer and the Seller or be made for 100% of invoice value prior to dispatch to the load port.

7.2 The Buyer shall not, for any reason, withhold payment nor make any deduction or set off.

7.3. Unless otherwise agreed in writing, all payments are to be wire/SWIFT transfer in cleared funds to the Seller's nominated account and are not deemed to have been made until the Seller has received notice of receipt from the Seller's bank.

7.4 Where terms stated on the Sale Confirmation require a Deposit payment or issue of Letter of Credit the respective Deposit payment or Letter of Credit shall be due within 7 calendar days from the issue date of the Sales Confirmation. If the respective Deposit payment or Letter of Credit is not received by the Seller within 7 days, the Sale Confirmation shall be deemed by the seller to be void, and the goods offered may either be sold elsewhere without notice to the buyer, or the terms and prices stated in the Sales Confirmation may be renegotiated or accepted solely at the discretion of the seller.

8. Title

Ownership of the Goods shall not pass to the Buyer until payment in full is made to the Seller. The Seller reserves all rights and remedies it may have under applicable law to recover the Goods sold and or delivered to the Buyer if the Buyer does not pay for such Goods by the payment due date. This includes the right to divert Goods on the water, or to enter upon the Buyer's or other premises and remove such

Goods. Such rights are cumulative and not in substitution for any other rights that the Buyer may have in the circumstances

9. Limits of Seller's liability

9.1 The Seller shall not be liable for any act or omissions whether by reason of negligence or otherwise in breach of the Contract Terms unless such breach is notified by the Buyer to the Seller in accordance with the Seller's claims procedure and the Seller's liability including but not limited to consequential, special or aggravated loss shall not in any event whatsoever exceed the invoiced price for the Goods in respect of which the breach is notified.

10. Claims

- 10.1 Written notification via email to BNL within 5 days of container arrival at the final destination declared on the Bill of Lading or Waybill.
- 10.2 Written notification must include a series of photographs which clearly show quality issues as well as an initial estimate of defect percentages. Data from the temperature recorder also needs to be emailed as part of this written notification.
- 10.3 Upon receipt of written notification, BNL will send individual grower breakdown and quantities to a buyer. The buyer needs to be aware that defects are commonly limited to just one orchard or packhouse but that a single container can contain produce from multiple grower and packhouses. Reasonable effort from the buyer must be made to assess the cargo on an individual grower basis.
- 10.4 Buyer must take all reasonable steps to preserve the cargo and any other evidence relevant to the claim until the issue has been resolved in full
- 10.5 If required, allow BNL and or a nominated independent surveying agency to access the fruit
- 10.6 BNL will always act with reasonable promptness in reviewing and considering any claim but acceptance of any claim is at its absolute discretion

11. Default by Buyer

11.1 Should the Buyer, fail to tender due and punctual payment of the Price, or advise the Seller that the Buyer is unable or unlikely to be able to make due and punctual payment of the Price by the due date, or advise the Seller that the Buyer does not intend to tender due and punctual payment of the Price, the Seller may forthwith, and without prejudice to any other rights and remedies it may have, exercise any one or more of the following rights. The Seller may:

- (a) retain any documents of title to the Goods, and for avoidance of doubt it is agreed that the Seller shall not be required to release documents of title to the Goods until such time as payment in full of the Price has been made;

(b) (in the case of default in payment only) charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 10% per annum (or such other rate as shall from time to time be fixed by the Seller as payable on overdue amounts), until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). All monies received by the Seller from the Buyer shall be applied first in payment of accrued interest and secondly in satisfaction of the Price.

(c) Resell the Goods;

(d) Divert the Goods (at sea or on shore);

(e) Claim damages for all losses suffered by and costs incurred by the Seller as a result of termination.

(f) Enter upon the premises where the Goods or any part thereof are situated and take possession and remove the same without being responsible for any damage caused thereby.

11.2. The Buyer agrees to pay to the Seller, on demand, all costs and expenses incurred by the Seller or the Seller's agents relating to the recovery of any amounts payable by the Buyer to the Seller (including legal costs on a solicitor own client basis).

12. Cancellation

12.1 The Customer does not have the right to cancel or suspend any order after the Company has issued a Sales Contract for that order.

12.2 The Company may cancel or suspend a Contract (or any part of a Contract) if: (a) the Customer breaches any provision in any Contract; (b) the Customer seeks relief under any insolvency or bankruptcy law or (c) a Force Majeure Circumstance occurs before a Contract is fully performed.

12.3 In the event that a Contract is fully or partially cancelled or suspended, whether pursuant to clause 4 or clause 12.2(a) or (b), without prejudice to any other rights or remedies the Customer must reimburse the Company for any costs incurred as a consequence of such cancellation or suspension, including without limitation, packaging and re-packaging costs, storage costs, financing costs, foreign exchange losses, loss of profits and any diminution in the value of the Goods due to price movements. The Customer expressly acknowledges the Company has no obligation to obtain the same market price for the on sale of the Goods in this event as other similar products due to the comparative age of the Goods at that point and the circumstances of the cancellation or suspension. If a Force Majeure Circumstance arises the Company may select Sales Contracts to partially or fully cancel or suspend in accordance with clause 11.2(c), entirely in its sole discretion.

13. Arbitration

All differences which may arise between the parties arising out of or in relation to this contract or its performance shall be referred to arbitration in New Zealand, unless the parties otherwise agree in writing to a different location. The appointment of arbitrators and process of arbitration shall be conducted in accordance with the Arbitration Act 1996 or any amendments thereof

14. Force Majeure

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract Terms by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any Force Majeure Event. If a Force Majeure Event continues for 30 days or more, the Seller may rescind the contract and in that case the Buyer shall have no claim against the Seller. Force Majeure Event" means any cause beyond the Seller's reasonable control including, without limitation, act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance or requisition, acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party), difficulties in obtaining raw materials, labour, fuel, parts or machinery, power failure or breakdown in machinery.

15. Written Communications

Any communication required to be in writing may be by letter, facsimile or email. A facsimile communication is received when the sender has a successful transmission report showing transmission to the correct facsimile number of the recipient. An email communication is received when the sender receives a reply email (other than an automated out of office reply) or other acknowledgement from the recipient.

16. Exclusion of Vienna Convention

The parties agree that notwithstanding the domicile of the Seller and or the Buyer and or the applicable laws applying to the contract the Buyer and the Seller expressly agree that the United Nations Convention on Contracts for the International Sale of Goods (1980) ("the Vienna Convention") shall not apply and no terms or conditions shall be implied into the contract by virtue of the Vienna Convention.

17. General

17.1. No waiver by the Seller of any breach of any Contract Terms by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

17.2. If any provision of the Contract Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract Terms and the remainder of the provision in question shall not be affected.

17.3. The Contract Terms shall be governed by the laws of New Zealand and the parties submit to the jurisdiction of the Courts of New Zealand and New Zealand arbitrators.

17.4 The Buyer represents that it is acquiring the Goods for the purposes of a business and accordingly the Consumer Guarantees Act 1993 shall not apply.

17.5 If the Buyer's account in respect of Goods ordered from the Seller exceeds the credit limit set solely at the discretion of the Seller, the Seller shall have the right as its option to cancel the contract in whole or in part without liability on the part of the Seller

17.6 The headings in these Conditions are for convenience only and shall not affect their interpretation.