

***California Almond
Export Association LLC***

**UNIFORM ALMOND
EXPORT CONTRACT**

("UAEC 2007")

17 December 2007

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DEFINITIONS

1. "**Aflatoxin Certificate**" means a certificate issued by a laboratory approved by the United States Department of Agriculture ("USDA"), or a laboratory undergoing the USDA approval process, which has been accredited in accordance with EN/ISO/IEC 17025, regarding the presence or absence of aflatoxin in the Goods. For consignments destined to the EU, the Aflatoxin Certificate shall comply with Decision 2006/504/EC as amended by Decision 2007/563/EC.
2. "**Arrival of Goods**" means the arrival of the Goods' shipping container at the port of final destination.
3. "**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.
4. "**Contract Confirmation**" means a confirmation which evidences the existence of a contract. In the event of any inconsistency between these terms and the Contract Confirmation, the Contract Confirmation shall prevail.
5. "**Days**" means calendar days, rather than business days.
6. "**Delivery**" means delivery of the goods in accordance with clause 24.
7. "**DFA**" means the Dried Fruit Association of California.
8. "**Documentary Collection Terms**" means that Seller shall forward its draft and accompanying 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.
9. "**Goods**" means the quality, quantity and description of the commodity stated on the Contract Confirmation.
10. "**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. 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.
11. "**Receipt of Documents**" means that original documents have been presented to either Buyer or Buyer's bank.
12. "**Remittance Prior to Shipment Terms**" means that cash in the invoice amount shall be received by Seller at an agreed upon number of Days prior to scheduled shipment.
13. "**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.
14. "**Unit Price**" means the price for a box or container of Goods of a standard weight or count as defined on the Contract Confirmation.
15. Sale of trade terms used herein (**F.A.S.**, **F.O.B.**, **C.I.F.**, **C.I.P.**, **C.F.R.**, etc;) shall be interpreted in accordance with the latest Incoterms as published by the International Chamber of Commerce, or as amended from time to time.

PRICE AND PAYMENT

16.

- (a) 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.
- (b) Unless otherwise specified in the Contract Confirmation, payment for the Goods shall be made against presentation of the following original documents –
 - (i) Commercial invoice;
 - (ii) Bill of Lading;
 - (iii) Phytosanitary Certificate;
 - (iv) Certificate of origin;
 - (v) Weight certificate; and
 - (vi) Quality certificate.
- (c) Time for payment for the Goods and any sums due under the contract shall be of the essence.

17. Payment of the purchase price shall be made without offset or any 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.

18. 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 is actually received in the Seller's account.

NOTICE TO BUYER

19. Seller shall give notice to Buyer of the export container number, the quantity and quality of Goods shipped. Such notice, which is a Condition, must be given not later than 30 Days after Delivery. The provisions of this clause shall be inoperative if the Goods have been sold afloat.

SHIPMENT

20. Seller may ship at any time it chooses within the Shipment Period. Unless otherwise specifically agreed, Seller may ship the Goods by any route, whether all water or by landbridge, may be by one or more carriers, direct or indirect, with or without transshipment. The date of shipment shall be deemed to be the date of Delivery. Bills of lading and received for shipment bills of lading may be issued by a Non-Vessel Operating Common Carrier (NVOCC). Where F.A.S. or F.O.B. terms apply, Seller shall nonetheless be responsible for arranging carriage (unless separately agreed between Buyer and Seller), in which case, clause 21 shall apply.

21. This clause applies to F.A.S. and F.O.B. contracts unless otherwise agreed between Seller and Buyer.

- (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 21. 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.

- (b) 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 port of destination ("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.
- (c) 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: (1) 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 place of Delivery if known to Seller, whether landbridge or port of departure); or (2) cancelling the contract, or, in the case of an instalment contract, that instalment, and recovering damages from the Buyer for any loss caused (including any loss of profit and/or any indirect loss). Where Buyer gives late Buyer's Shipment Instructions and Seller elects to continue with the contract, Seller shall be entitled (but not obliged) to extend the time for Delivery of the Goods and the time for presentation of documents, by the same number of Days as Buyer delayed in giving Buyer's Shipment Instructions.
- (d) Seller is not responsible for ensuring that the Goods arrive in the port of final destination by any particular date, unless otherwise agreed in writing.
- (e) Seller shall pay any demurrage and storage costs incurred after the Goods reach the port of final destination and before Receipt of Documents.

INSURANCE

22. 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; in either case, this clause 22 applies.
- (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 22(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 that 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 available market.

TITLE AND RISK

23.

- (a) **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.

- (b) Risk of loss and/or damage to Goods shall pass from Seller to Buyer on Delivery.

DELIVERY

24. Delivery to Buyer of Goods pursuant to a F.O.B., C.I.P., C.I.F., or C.&F. sale shall be deemed to have been made by Seller to Buyer as the Goods cross or have crossed the ship's rail at the port of loading, whichever is earlier. Delivery to Buyer of Goods pursuant to a F.A.S. sale shall be deemed to have been made by Seller to Buyer as the Goods are delivered to the vessel carrier or its agent, at the port of loading, landbridge, or inland port of shipment.

QUALITY, GRADE, SIZE AND CONDITION

25. Goods at the time of shipment shall be of the size, and shall be equal to or better than, the quality or grade, specified in the contract. Goods sold on a sample basis shall average equal to, or better than, sample. Seller makes no warranties, express or implied, as to quality or fitness for purpose.
26. If a quality certificate is issued by the USDA or DFA or otherwise agreed between Buyer and Seller, and such certificate is either attached to the payment documents or otherwise furnished to Buyer prior to arrival of the Goods at the port of discharge, such certificate shall (subject to Clause 27) constitute final and conclusive evidence as to quality, grade, size and condition of the Goods.
- 27.
- (a) 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 port of discharge, such certificate shall constitute final and conclusive evidence as to aflatoxin content of the Goods at Delivery.
- (b) For shipments to a country within the European Union, clause 27(c) shall apply (and 27(c) shall not apply to any other shipments).
- (c) Where an inspector acting in accordance with Decision 2006/504EC as amended by 2007/563/EC determines that the Goods contain aflatoxin which exceeds the level permitted within the European Union, Buyer shall be entitled by written notice to reject the Goods and shall return the Goods to Seller, at Seller's cost. Where such a rejection occurs, Buyer shall provide a copy of the Inspector's determination and findings, in accordance with clause 34. In this event, Seller shall, at Buyer'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 that instalment of the contract at the market price prevailing on the day that Seller received Buyer's notice of rejection. Buyer shall exercise best efforts to return rejected Goods to Seller at Seller's cost. However, if by reason of a governmental decision the rejected Goods cannot be returned to Seller, Seller shall reimburse Buyer for the contract price and for Buyer's reasonable costs and expenses incurred for freight, demurrage, inspection and/or port charges as a result of the Goods failing the European aflatoxin test.

- (d) Subject to clause 27(c), the costs of and associated with inspection at discharge shall be for the Buyer's account.

WEIGHTS

28. Pounds avoirdupois shall be converted to kilograms at the rate of 2.2046 pounds per kilogram or as per the specific prevailing industry norm. CWT, or hundredweight, shall mean 100 pounds avoirdupois. Almonds are sold on a net weight basis.
29. If a sworn Weight Certificate or Public Weightmaster's Certificate of Weight at the packing or shipping point is attached to the payment documents or otherwise furnished to Buyer prior to arrival of the Goods at the port 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 port of discharge; provided, that claim therefore is made by Buyer within thirty (30) Days from the date at which both Arrival of Goods and Receipt of Documents occurred.

QUANTITIES

30. Seller may ship, and Buyer must accept, a variation in quantity of up to five per cent (5%) more or less than the quantities named for each item of Goods sold.
31. 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. Where tenders or deliveries are within this tolerance, Seller shall be deemed to have purchased the deficiency from, or sold the excess to, the Buyer at the time of tender or Delivery. Seller shall thus multiply the deficient / excess quantity by the difference between contract price and market price at the time of tender or Delivery and deduct or add this sum, as appropriate, to their invoice (2) for the goods so tendered or delivered.
32. Each contract for the purchase of Goods shall be deemed separable as to all Goods sold thereunder and Buyer shall not refuse to receive any lot or portion because of non-delivery or delay in delivery of any other lots or portion or the failure of any lot or portion to conform to contract requirements. Seller may ship the Goods in one or more instalments within the Shipment Period but shall not, following shipment of ninety-five percent (95%) of the total contracted quantity, ship additional quantities unless such previous shipment has been noted as "partial delivery". 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) to consider the contract 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.

PRESENTATION OF DOCUMENTS

33. Documents shall be presented latest on Arrival of the Goods at the port of final destination. If documents are not available, Buyer shall give Seller six (6) Days written notice to present the documents, failing which, Buyer may treat the contract (or, in the case of an instalment contract, that instalment) as at an end. Presentation of documents is a Condition.

CLAIMS

34. When Receipt of Documents and Arrival of Goods 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) 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) Days of Receipt of Documents and Arrival of Goods.

35. 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.
36. Except as otherwise provided, neither party shall be liable to the other for any consequential or indirect loss, 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.

FORCE MAJEURE AND LIABILITY

37. 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.
38. 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.
39. For all contracts entered into on or after May 1 of a particular year and pertaining to crops to be harvested during that year, if the Director of Agriculture of the State of California or any governmental body exercising control over or regulating production of the crop sold shall determine that there has been 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 so determined.

SUBSTITUTION

40. If Seller is unable to furnish the full quantity of any item 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) business 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 to 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.

GOVERNING LAW

41. Unless otherwise agreed in the Contract Confirmation, this contract shall be governed by English law.

ARBITRATION

42. Unless otherwise agreed in the Contract Confirmation, dispute resolution to be by arbitration in accordance with the Arbitration Rules of the Combined Edible Nut Trade Association (CENTA) whose arbitrators, international participation permitted, shall be competent for final settlement of all and any dispute arising here from.

MISCELLANEOUS

43. 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.
44. 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.
45. 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.
46. 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. 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. Individual contracts of purchase and sale of Goods may be executed in any number of counterparts, each of which may be deemed an original, but all of which shall constitute one and the same instrument.
47. Any notices to be given by either party to the other shall be given in writing. Notices given by mail shall be deemed effective on the fifth (5th) Day after mailing and notices given by facsimile or electronic mail shall be deemed effective on the Day next occurring after their dispatch.
48. Buyer and Seller shall act in good faith at all material times.
49. Incoterms 2000 shall apply unless inconsistent with these terms or the Contract Confirmation.