



AUSTRALIAN MACADAMIA GROWERS POOL TERMS AND CONDITIONS - 2019

PART A - GENERAL

1. INTRODUCTION

- 1.1 **These terms.** These terms apply to any supply of Inshell made to a Pool operated within Stahmann Trading Pty Ltd in relation to macadamia nuts. You cannot vary these terms without our written approval.
- 1.2 **Us.** All references to "Pool Manager", "ST", "us", "we", "our" etc, refer to Stahmann Trading Pty Ltd ABN 64 141 868 313, in its capacity as Pool Manager (unless expressly stated otherwise), and its officers, employees and agents.
- 1.3 **You.** All references to "you", "your", etc refer to the Pool Member and their representatives and, if more than one, each of them jointly and severally.

1.4 DEFINITIONS

- (a) **AMS** is the Australian Macadamia Society;
- (b) **BASE LOAD VALUE (BLV)** is the expected amount that you will receive for any given load of Inshell delivered, as estimated by the Pool Manager by reference to the Macadamia NIS Price Table;
- (c) **BASE POOL VALUE (BPV)** is the total sum of the Base Load Value for every delivery of Inshell to the Pool;
- (d) **BONUS PAYMENTS** and **REBATES** are additional payments offered by us to you at our discretion and do not form part of the Pool Distribution Value (PDV);
- (e) **CONSOLIDATION DEPOTS** All Receival Depots excluding Toowoomba;
- (f) **CONTRACT** The Contract is comprised of the "Terms and Conditions", the "Offer Document" and the "NIS Agreement";
- (g) **CUMULATIVE** refers to current season-to-date amounts;
- (h) **FINAL DELIVERY DATE** The last day (as nominated by the Pool Manager) that Inshell can be delivered to a Receival Depot under this contract;
- (i) **GROSS SALES VALUE (GSV)** is the gross sales value of the Pool representing the proceeds of sale or disposal (or in the event the Pool is not 100% sold at the time of calculating the PDV and Pool Management and Marketing Costs, the gross sales value of the Pool at that time and an estimate of the expected proceeds from unsold kernel) of Inshell, Sound Kernel and Reject Kernel;
- (j) **HAND CRACK-OUT (HCO)** is the kernel yield percentage of Inshell as measured by an approved laboratory from samples taken on delivery of the Inshell or at some other time and place as may be directed by us;
- (k) **INSHELL** has the meaning usually given to that term in published AMS guidelines and standards;
- (l) **LEVY** is the amount deducted from your payments as dictated by the Department of Agriculture and Water Resources levy authority;
- (m) **LOGISTICS COSTS** include without limitation, all costs associated with transporting finished goods to customers. All Logistics Costs for the Pool can be found in Schedule 2;
- (n) **MACADAMIA NIS PRICE TABLE** is a price table (published by the Pool Manager) indicating the value of Inshell at different SKR levels that is subject to adjustment by the Pool Manager at its sole discretion in the event of a material change in market circumstances;
- (o) **NON-POOL OPERATING COSTS** include without limitation, depot service charges, Levies, skips and small load charges;
- (p) **PPSA** means the Personal Property Securities Act 2009 (Cth);
- (q) **POOL** means a quantity of macadamia Inshell aggregated by us from 1 or more Pool Members, processed, marketed and sold by us;
- (r) **POOL DISTRIBUTION VALUE (PDV)** is the net return available for distribution to Pool Members represented by the difference between the Gross Sales Value and the Pool Operating Cost as calculated in accordance with clause 4.1;
- (s) **POOL MEMBER** is a participant who delivers Inshell to the Pool with the intention of receiving payment through the Pool's marketing program;
- (t) **POOL MEMBER DISTRIBUTION** is a Pool Member's individual Pool Distribution Value based on the volume and Sound Kernel Recovery of NIS delivered to the Pool;
- (u) **POOL OPERATING COST (POC)** is the total cost of operating the Pool and includes, without limitation:
- (i) Costs of processing (either shelling into kernel or bagging as Inshell) for sale as determined under clause 4.2;
- (ii) Costs of selling, including direct sales commissions, logistics, freight and handling as determined under clause 4.3; and
- (iii) Costs of sale and Pool management (including storage and financing of inventory) as determined under clause 4.4;
- (v) **RECEIVAL DEPOT** is any location nominated by ST to accept Inshell for delivery to the Pool by a Pool Member;
- REJECT KERNEL** is all kernel material recovered from the Inshell that is not Sound Kernel, measured by HCO (or by actual factory yield as the case may be) as a percentage of Inshell, according to published AMS guidelines and standards;
- (w) **SOUND KERNEL (SK)** is fully matured kernel that is free from any defects such as insect damage, mould, decay, immaturity, discolouration, germination or rancidity, measured by HCO (or by actual factory yield as the case may be) as a percentage of Inshell, according to published AMS guidelines and standards;
- (x) **SOUND KERNEL RECOVERY (SKR)** is the combined total of premium grade and commercial grade kernel measured by HCO as a percentage of Inshell, according to published AMS guidelines and standards;
- (y) **SURPLUS POOL VALUE (SPV)** is the Pool Distribution Value less the Base Pool Value available for distribution to Pool Members;
- (z) **SURPLUS LOAD VALUE (SLV)** is the amount of the Surplus Pool Value that you will receive for any given load of Inshell delivered; and
- (aa) **VENDOR DECLARATION** is a declaration to be given by each Pool Member certifying that all Inshell delivered will be free from infestation and contamination by other crops or foreign materials.

2. CONTRACTUAL MATTERS

- 2.1 **Contract.** This agreement will be binding on the parties only when notice of acceptance has been given to you by us.

3. OPERATIONAL MATTERS

- 3.1 **Delivery of Inshell.** All Inshell must be delivered to a Receival Depot nominated by ST by the Final Delivery Date. The Pool Manager reserves the right to negotiate a different price for Inshell delivered after this date. Subject to clause 3.3(b), Inshell will be considered delivered at the point at which it is accepted by us.



- 3.2 **Vendor Declaration.** No delivery will be accepted by us unless you have provided us with a signed Vendor Declaration.
- 3.3 **Quality of Nuts Delivered**
- (a) All Inshell delivered to a Receiving Depot must be free from infestation and contamination by other crops or foreign materials, especially where these may be toxic or allergenic. The Pool Manager will define an acceptable quality standard for delivery on a pool by pool basis as per Schedule 3.
 - (b) If your delivery of Inshell fails to meet the quality required under clause 3.3(a), the Pool Manager may reject the delivery.
 - (c) You indemnify the Pool Manager for any cost incurred or loss suffered as a result of the Pool Manager rejecting the delivery.
- 3.4 **On Delivery**
- (a) All deliveries of Inshell must be booked prior to delivery with the Receiving Depot.
 - (b) All deliveries must be accompanied by an approved Delivery Docket. The issuing of a Delivery Docket by us does not constitute acceptance by the Pool Manager that the Inshell meets the quality required under clause 3.3(a).
 - (c) Any Inshell deliveries made directly to our Toowoomba depot must be accompanied by a weighbridge docket from a registered scale that is located not more than 20 km from depot.
 - (d) Samples, in accordance with AMS Guidelines, will be taken on delivery for HCO purposes.
- 3.5 **Delivery of Small Loads**
- (a) We encourage growers to deliver nuts regularly so as to ensure maintenance of optimal product quality. Small loads can be received at our Consolidation Depots, however there is an additional cost of administration and sampling associated with parcels of less than one metric tonne. The Pool Manager therefore reserves the right to impose a charge of up to \$110 plus GST for each delivery of less than one metric tonne (received weight) to defray such costs.
- 4. CALCULATION OF POOL DISTRIBUTION VALUE (PDV)**
- 4.1 For all Inshell supplied to the Pool, a Pool Distribution Value (PDV) will be determined in accordance with the following formula:
Gross Sales Value (GSV) less Pool Operating Costs (POC) equals Pool Distribution Value (PDV)
- 4.2 **Processing Costs.** In determining the final PDV, we will deduct from the GSV the costs of bagging of Inshell and of processing of Inshell into Kernel (**Processing Costs**). Without limitation, Processing Costs include all costs associated with receiving, drying, sorting, bagging or processing and packaging as necessary for the production of finished goods. All Processing Costs for the Pool can be found in Schedule 2.
- 4.3 **Selling Costs.** In determining the final PDV, we will deduct the costs of freight and handling of finished goods and any transaction-specific cost of sale such as third party brokerage charges (**Selling Costs**).
- 4.4 **Pool Management and Marketing Costs.** The costs of managing and marketing the Pool (**Pool Management and Marketing Costs**) will be calculated as a percentage of the difference between GSV and Logistics Costs and such costs will be deducted from the Pool return. Such costs include, without limitation, Pool administration, marketing and sales administration, the financing of crop payments and warehousing of finished goods. All Pool Management and Marketing Costs for the Pool can be found in Schedule 2.
- 4.5 **Pool Distribution Value Allocation.** The PDV will be allocated to the Pool Members in accordance with each Pool Member's Pool Member Distribution Calculation as calculated and paid in accordance with clauses 5.1, 5.2, and 5.3.
- 5. POOL MEMBER DISTRIBUTION (PMD)**
- 5.1 **PMD calculation.** Each Pool Member's PMD is calculated in accordance with the following formula:
Pool Member Distribution (PMD) = Base Load Value (BLV) + Surplus Load Value (SLV)
- 5.2 **Surplus Load Value (SLV) calculation.** The Surplus Load Value is calculated in accordance with the following formula:
Surplus Load Value (SLV) = Base Load Value (BLV)/Base Pool Value (BPV) x Surplus Pool Value (SPV)
- 5.3 **Payment Schedule.** The payment of each Pool Member's PMD is set out in Schedule 1.
- 6. REFUND OF ADVANCE PAYMENTS**
- 6.1 **Application.** This clause 6 applies in the event that we have made any advance payments to you under this agreement.
- 6.2 **Right of Recovery.** If you fail to meet your commitment to us in respect of the amount of Inshell that you agreed to provide to the Pool, we may adjust the calculation of your PMD and, in the event that you have been overpaid, we may demand reimbursement from you and such amount will be recoverable as a debt.
- 6.3 **Security.** You agree that as security for our right of recovery under clause 6.2, and in consideration for the advance payments made to you under these terms, we may maintain a registration on the register created under the PPSA (in any manner we consider appropriate) over any crop that you contract for supply to the Pool and/or any proceeds from the sale of that crop. You agree that these terms are a security agreement for the purposes of the PPSA and that the nuts that you deliver to the pool, and the proceeds from the sale of those nuts, are collateral for the purposes of the PPSA. You agree to do anything necessary (including executing any document) to facilitate the registration and maintenance of any security interest. Unless otherwise defined, terms used in this clause 6.3 have the meaning given to them in the PPSA.
- 7. GENERATION AND PROCESSING OF PAYMENTS TO POOL MEMBERS**
- 7.1 **Recipient Created Tax Invoices.** All payments to you will be calculated by us according to the terms of this agreement and a Recipient Created Tax Invoice (RCTI) will be generated by us for each payment.
- 7.2 **ABN/ACN.** If applicable, you must provide us with your Australian Business Number (**ABN**). If you do not provide us with your ABN, we will make any payments due to you in accordance with Australian Taxation Office requirements.
- 7.3 **Direct Credit.** We will make payments to you by direct credit and will obtain and hold your banking details for this purpose.
- 7.4 **Management of GST.** All payments will include GST if GST is required to be imposed by law.
- 7.5 **Deductions.** All Pool Members give authority to the Pool Manager to deduct any Non-Pool Operating Costs incurred by ST that are directly related to the Pool Member from the Pool Member's Distribution.
- 8. POOL ADMINISTRATION**
- 8.1 **Title.** Legal and beneficial title of Inshell will pass to us upon acceptance of the Inshell by the Pool Manager following receipt of the delivery at a Receiving Depot. You warrant that you are the lawful owner of the Inshell and it is free from any lien or other encumbrance.



- 8.2 **Breach of Contract.** In the event of breach of this agreement, all reasonable measures shall be taken to remedy the breach. If the breach remains un-remedied after 30 days from the date of the breach, the parties will engage an independent mediator who will act as a mediator not an arbitrator. If the breach is still not remedied following reasonable attempts at mediation, either party may commence legal action.
9. **POOL MEMBER EXIT**
- 9.1 **Default Pool Member Exit.** The default exit for Pool Members is the date of the final distribution payment nominated in Schedule 1 (**Default Exit Date**).
- 9.2 **Exit Before Default Exit Date.** A Pool Member may, with our agreement, negotiate an exit from the Pool at a time that is earlier than the Default Exit Date nominated in Schedule 1. Such exit will be on commercial terms nominated by us.
- 9.3 **Calculation of Pool Distribution Value (PDV) on exit.** In respect of a Pool Member exiting pursuant to clauses 9.1 or 9.2, the Pool Manager will calculate a notional PDV (**NPDV**) based on market conditions and the Pool performance at the time of exit. The Pool Member's PMD will be calculated using the NPDV.
- 9.4 **No Recourse After Exiting.** Following the Pool Member's exit pursuant to clauses 9.1 or 9.2, the Pool Member will have no recourse against the Pool Manager for any loss suffered by the Pool Member as a result of any change in the Pool performance that results in a PDV that is higher than the NPDV at exit or that would have resulted in the Pool Member receiving a PMD greater than that which was received upon exit.
- 9.5 **Extended Default Exit Date.** If, in the opinion of the Pool Manager, a substantial quantity of the Pool intake is likely to remain unprocessed or unsold at the Default Exit Date:
- the Pool Manager reserves the right to extend the Default Exit Date until such time as a closing value can reasonably be determined (**Extended Default Exit Date**);
 - growers will be offered the opportunity to exit at the Default Exit Date on the basis of a deemed Pool value at that time;
 - the Pool Manager will review, update and republish the Payment Schedule;
 - the Extended Default Exit Date will be latest 15 April 2020.
10. **COMMUNICATION & REPORTING**
- 10.1 **Payment Advice.** We will issue an electronic payment advice for each payment made.
- 10.2 **Receival Report.** A receival report will be issued to you indicating delivery details.
- 10.3 **Hand Crack Out (HCO) Report.** A HCO report will be issued for each delivery.
- 10.4 **Final Distribution Report.** Following exit from the Pool, each Member will be provided with a report summarising their deliveries of Inshell and all distribution payments including any Bonus Payments, Rebates and Deductions.
11. **LIABILITY**
- 11.1 **Exclusion of Legislation.** The provisions of all legislation, including the *Competition & Consumer Act* (Cth) and the *Fair Trading Act 1989* (Qld), do not apply to these terms except to the extent that they are unable to be excluded by legislation.
- 11.2 **Limitation of Liability.** Subject to clause 11.1 and other product warranties set out in these terms:
- In no case will our liability extend to any direct, incidental or consequential damage to property, personal injury or loss of profit;
 - all information contained in any of our publications (including our catalogues, brochures, photographs, illustrations, website or any advertising material) represent generally the subject matter and price of our offer but will not be taken as necessarily representing the subject of any offer or the correct price and will not form part of any contract or agreement for supply, and you acknowledge that we would not have entered into any contract with you if any of the above were not true.
12. **GENERAL**
- 12.1 **Force Majeure.** We will not be liable for any delays or loss or damage you suffer arising from any cause beyond our control including but not limited to delays in transportation, handling or supply, accidents, fire, strikes and other labour disputes, terrorist acts, acts of God (or gods), the requirements of any law or Government agency or other circumstance whether or not of a similar nature beyond our control, until that cause has ceased to have effect.
- 12.2 **Relevant Law.** These terms will be construed in accordance with the laws of Queensland and the parties submit to the jurisdiction of the Queensland Courts.
- 12.3 **Waiver.** The failure of either party to exercise any rights under these terms will not waive that right, nor will any practice developed between us waive or lessen our respective rights under these terms.
- 12.4 **Severance.** Any provision of these terms which is found by a Court of competent jurisdiction or any competent Government authority to be invalid, illegal or unenforceable, will be severed from these terms and will be deemed never to have been part of them.
- 12.5 **Confidentiality.** You must treat all information which we give you as private and confidential, and must not disclose that information to any person nor use it in any way which may cause us injury or loss unless that information is public knowledge or was known by you before we gave it to you.
13. **RISK AND INSURANCE**
- 13.1 **Risk.** Risk in all Inshell remains with the Pool Member until legal and beneficial title passes to the Pool Manager in accordance with clause 8.1. This includes any occasion for which we agree to collect Inshell from you, whether or not we arrange for the transport of the Inshell to us.
14. **WARRANTY AND FURTHER ASSURANCES**
- 14.1 **Understanding and Acceptance of the Nature of the Pool.** You warrant and represent that you fully understand that in entering into this Pool agreement you are accepting a market-based return for the nuts that you deliver to the Pool and that all notional prices quoted by the Pool Manager are indicative only.
- 14.2 **Further Information.** You must provide us with any further information that we require immediately upon our request.
- 14.3 **Accreditation.** We warrant that SFE's Toowoomba laboratory and its technical staff are accredited (by AMS) and all HCO processes are undertaken in accordance with industry guidelines.



SCHEDULE 1

PAYMENT SCHEDULE

NUMBER	DISTRIBUTION PAYMENT DATE	METHOD OF CALCULATION	AMOUNT	OPTIONS/COMMENTS
1	Within 10 working days of our receipt of your signed NIS Agreement	Committed Weight of Inshell (kg) multiplied by \$1.00	\$1.00	Payment on Contract is available anytime from 15 th January 2019. Pool Members may alternatively elect to receive this payment on Delivery (2) or as a July Distribution (3).
2	Within 21 working days of delivery of Inshell to Receival Depot	Base Load Value Delivered Weight of Inshell (kg) @ 10% MC multiplied by calculated price per kg based on SKR and the Macadamia NIS Price Table	60% of Base Load Value	Pool Members may alternatively elect to receive this Distribution as per the July Distribution (3). Relevant industry body levies are deducted from each delivery payment. Load specific Rebates, Subsidies and Non-Pool Operating Costs are applied to this payment.
3	1 st Friday of July of Current Pool Year	Any distribution outstanding on Contract (1) and Delivery (2) Distribution		Pool Members may elect to receive the Signed Agreement (1) and Inshell Delivery (2) Distribution on the first Friday of July of the Current Pool Year. Unless the Pool Manager is otherwise notified in writing, all payments will default to Number 1 and/or 2.
4	Mid-Month August	68% of the Cumulative Base Load Value (BLV) less any distributions received year to date.	68% of Base Load Value	
5	Mid-Month September	76% of the Cumulative Base Load Value (BLV) less any distributions received year to date.	76% of Base Load Value	
6	Mid-Month October	84% of the Cumulative Base Load Value (BLV) less any distributions received year to date.	84% of Base Load Value	
7	Mid-Month November	92% of the Cumulative Base Load Value (BLV) less any distributions received year to date.	92% of Base Load Value	
8	15 th December (Default Exit Date)	100% of the Cumulative Pool Member Distribution (PMD) plus Quality Bonuses (if applicable) less any Distributions received.	100% of Base Load Value	

SCHEDULE 2

POOL OPERATING COSTS

POOL OPERATING COST TYPE	COST/CALCULATION
PROCESSING COSTS	
Inshell Processing	\$0.96/kg @ 10% Weight
Inshell Bagging	\$0.57/kg @ 10% Weight
Additional Services	As may be required on a commercial basis at the discretion of the Pool Manager
POOL MANAGEMENT AND MARKETING COSTS	
Pool Management Fee (Kernel Sales)	13% of Gross Sales Value less Logistics Costs
Pool Management Fee (Inshell Sales)	13% of Gross Sales Value less Logistics Costs
LOGISTIC COSTS	
Freight Costs on Inventory	
Freight Costs	Based on actual cost incurred
Export Container Charges:	
Container Inspection Certificate (per container)	\$150
Load or Unload 20' Container	\$470
Load or Unload 40' Container	\$1,000
Shipping Documentation (per container)	\$150
Container Insulation: (if required)	
Supply and Install Container Insulation – 20' Container	\$350
Supply and Install Container Insulation – 40' Container	\$600
Phytosanitary Certificate	
Inspection and certification as requirements of country of destination (per shipment)	\$150
Export Documentary Number and Port Receival Advice	
Australian Government Requirement (per container)	\$50
Consolidation Charge	
For goods loaded with other Stahmann product or trucked to port for LCL shipment – Administration Charge (per container)	\$53
Pack on Export Pallets	
Supply Export Pallets (per pallet)	\$32
Logistics Management	
Management of delivery to nominated Distribution Centre within Australia, including generation of paper or electronic delivery instruction and order tracking (per shipment) – DOMESTIC	\$53
Management of delivery to nominated International Port or Distribution Centre within Australia, including generation of paper or electronic delivery instruction and order tracking (per shipment) – INTERNATIONAL	\$105
Additional Services	
Additional Service Labour Charge – Hourly Charge	\$53/hr
Additional Service Third Party Charge	As may be required on a commercial basis at the discretion of the Pool Manager

SCHEDULE 3

QUALITY REQUIREMENTS

All deliveries of Inshell to Stahmann Trading or any of its Receival Depots must meet the following general quality standards:

- Be generally cleaned of extraneous matter;
- Be physically, chemically and biologically safe for handling and processing into food products;
- Be free from and uncontaminated by the following allergens: cereals containing gluten, lupins, crustacean, egg, milk, fish, peanuts, sesame seeds, sulphites, soybeans and any products of these declared allergens.

In order to qualify for standard Pool terms and conditions, all deliveries of Inshell to the Australian Macadamia Growers Pool should meet the following minimum quality parameters:

- Reject Kernel not greater than 5% by weight of NIS;
- Sound Kernel not less than 25% by weight of NIS; and
- Inshell greater than 17mm in diameter.

The Pool Manager may at its discretion and by prior agreement choose to accept Inshell that falls outside of the above quality parameters on such terms as it deems appropriate.

Acceptance of Inshell at a Consolidation Depot in “unsorted” form will be conditional upon the level of extraneous matter being at a manageable level as determined by the Pool Manager or the depot manager on presentation of the load.

- “Extraneous matter” in this context is defined as orchard material including: sticks, stones, soil and miscellaneous **non-hazardous** matter;
- “Manageable” means that the depot is able to receive and handle the load without excessive expenditure of time, labour or other resources compared to that required for a sorted load;
- Where additional time and/or resources are required to receive and handle a load due to excessive extraneous matter then an Additional Service Labour Charge may be applied as defined in Schedule 2.