



PROUDLY CELEBRATING
50 YEARS
★★ IN AUSTRALIA ★★

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STAHMANN FARMS ENTERPRISES NIS FIXED PRICE OFFER TERMS AND CONDITIONS - 2018

PART A - GENERAL

1. INTRODUCTION

- 1.1 **These terms.** These terms apply to any supply of inshell made to Stahmann Farm Enterprises Pty Ltd. You cannot vary these terms without our written approval.
- 1.2 **Us.** All references to "SFE", "us", "we", "our" etc, refer to Stahmann Farm Enterprises Pty Ltd ABN 85 130 195 470, and its officers, employees and agents.
- 1.3 **You.** All references to "you", "your" "supplier", etc refer to the Grower Supplier 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) **BONUS PAYMENTS** and **REBATES** are additional payments offered by us to you at our discretion, as defined under the relevant terms of the offer;
- (c) **CONTRACT:** The Contract is comprised of the "Terms and Conditions", the "Offer Document" and the "NIS Agreement"
- (d) **CUMULATIVE** refers to current season-to-date amounts;
- (e) **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;
- (f) **INSHELL** is the meaning usually given to that term in published relevant industry body guidelines and standards;
- (g) **LEVY** is the amount deducted from your payments (if applicable) as dictated by the Department of Agriculture and Water Resources levy authority;
- (h) **PPSA** means the Personal Property Securities Act 2009 (Cth).
- (i) **RECEIVAL DEPOT** is any location nominated by SFE to accept inshell for delivery to SFE by a Grower;
- (j) **REJECT KERNEL** is all kernel material recovered from the inshell that is not Sound Kernel, measured by HCO as a percentage of inshell, according to published relevant industry body guidelines and standards;
- (k) **SOUND KERNEL (SK)** is fully matured kernel that is free from any defects such as insect damage, mould, decay, immaturity, discolouration, germination or rancidity;
- (l) **SOUND KERNEL RECOVERY or SALEABLE KERNEL RECOVERY (SKR)** is the combined total of premium grade and choice grade kernel for pecans, or the combined total of premium grade and commercial grade kernel for macadamias measured by HCO as a percentage of inshell, according to published relevant industry body guidelines and standards;
- (m) **VENDOR DECLARATION** is a declaration to be given by each supplier 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 SFE. 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 Vendor Declaration.
- 3.3 **Quality of Nuts Delivered**
 - (a) All inshell delivered to a Receival Depot must be free from infestation and contamination by other crops or foreign materials, especially where these may be toxic or allergenic. SFE will define an acceptable quality standard for delivery on a load by load basis as per Schedule 1.
 - (b) If your delivery of inshell fails to meet the quality required under clause 3.3(a), SFE may reject the delivery.
 - (c) You indemnify SFE for any cost incurred or loss suffered as a result of SFE rejecting the delivery.
- 3.4 **On Delivery**
 - (a) All deliveries of inshell must be booked prior to delivery with the Receival 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 SFE 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 relevant industry body 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 Toowoomba factory and consolidation depots, however there is an additional cost of administration and sampling associated with parcels that fall below our minimum delivery quantity. SFE therefore reserves the right to impose a charge of up to \$110 plus GST for each delivery which does not meet the following minimum quantities:
 - (i) Macadamia NIS - 1000kgs for macadamia NIS delivered to Toowoomba factory or any consolidation depot
 - (ii) Pecan NIS – 500kgs for pecan NIS delivered to Toowoomba factory. There is no minimum delivery to the Southridge depot.



4. REFUND OF ADVANCE PAYMENTS

- 4.1 **Application.** This clause 4 applies in the event that we have made any advance payments to you under this agreement.
- 4.2 **Right of Recovery.** If you fail to meet your commitment to us in respect of the volume of inshell that you agreed to provide to SFE, we may adjust the calculation of your payment and, in the event that you have been overpaid, we may demand reimbursement from you and such amount will be recoverable as a debt.
- 4.3 **Security.** You agree that as security for our right of recovery under clause 4.2, and in consideration for the advance payments made to you under these terms (if any), 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.

5. GENERATION AND PROCESSING OF PAYMENTS

- 5.1 **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.
- 5.2 **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.
- 5.3 **Direct Credit.** We will make payments to you by direct credit and will obtain and hold your banking details for this purpose.
- 5.4 **Management of GST.** All payments will include GST if GST is required to be imposed by law.
- 5.5 **Deductions.** Each Supplier gives authority to SFE to deduct any operating costs incurred by SFE that are directly related to the Supplier's loads.

6. ADMINISTRATION

- 6.1 **Title.** Legal and beneficial title of inshell will pass to us upon acceptance of the inshell by SFE following receipt of the delivery at a Receival Depot. You warrant that you are the lawful owner of the inshell and it is free from any lien or other encumbrance.
- 6.2 **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.

7. COMMUNICATION & REPORTING

- 7.1 **Payment Advice.** We will issue an electronic payment advice for each payment made.
- 7.2 **Receival Report.** A Receival Report will be issued to you indicating delivery details.
- 7.3 **Hand Crack Out (HCO) Report.** A HCO report will be issued for each delivery.

8. LIABILITY

- 8.1 **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.
- 8.2 **Limitation of Liability.** Subject to clause 8.1 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;
 - Information contained in any of our publications (including catalogues, brochures, photographs, illustrations, website or any advertising material) may represent generally the subject matter and terms of our commercial offers but will not be taken as necessarily representing the subject of any particular offer nor indicating a 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.

9. GENERAL

- 9.1 **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.
- 9.2 **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.
- 9.3 **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.
- 9.4 **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.



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9.5 **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.

10. RISK AND INSURANCE

10.1 **Risk.** Risk in all inshell remains with the Supplier until legal and beneficial title passes to SFE in accordance with clause 6.1. 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.

11. WARRANTY AND FURTHER ASSURANCES

11.1 **Further information.** You must provide us with any further information that we require immediately upon our request.

11.2 **Accreditation.** We warrant that SFE's Toowoomba laboratory and its technical staff are accredited (by relevant industry body) and all HCO processes are undertaken in accordance with industry guidelines.



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SCHEDULE 1

QUALITY REQUIREMENTS

All deliveries of inshell to Stahmann Farms or any of its 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, crustacean, egg, milk, fish, peanuts, sesame seeds, sulphites, soybeans and any products of these declared allergens.

In order to qualify for standard terms and conditions, all deliveries of inshell to Stahmann Farm Enterprises should meet the following minimum quality parameters:

- Reject kernel not greater than 5% by weight of NIS;
- Pecan: Sound kernel not less than 40% by weight of NIS;
- Macadamia: Sound kernel not less than 25% by weight of NIS.

SFE 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 receival depot in “unsorted” form will be conditional upon the level of extraneous matter being at a manageable level as determined by SFE 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 or labour compared to that required for a sorted load
- Where additional time and/or other resources are required to receive and handle a load due to excessive extraneous matter then an Additional Service Labour Charge may be applied.