



Purchase Commitments and Guidelines

1. Introduction

1.1 It is agreed that these Purchase Commitments and Guidelines, the Purchase Order, and the My Berries Supplier Information Form will together comprise the Agreement between the parties for the provision of the Goods and/or Services specified in the Purchase Order (**Agreement**).

2. Precedence of Documents

2.1 In the event of any inconsistency or conflict with the documents stated in 1 above, the Purchase Order shall prevail.

2.2 To the extent of any inconsistency, the terms of the Agreement prevail over the Supplier's terms and conditions (if any).

3. Price and Payment

3.1 Price

The price of the Goods shall be specified in the Purchase Order and cannot be varied without written agreement of both My Berries and the Supplier. The price is inclusive of GST (where applicable) and includes all expenses incurred by the Supplier in relation to provision of the Goods.

3.2 Payment

3.2.1 The Supplier is entitled to invoice My Berries for payment in respect of the Goods and/or Services, when the Goods have been supplied and accepted under clause 5, and the Services have been supplied in accordance with this Agreement.

3.2.2 Unless otherwise stated in the Purchase Order, the terms of payment are 30 days after the end of month from receipt of a correctly rendered Supplier's invoice by My Berries, including receipt and acceptance of the Goods.

3.2.3 A correctly rendered invoice includes, as a minimum, the Purchase Order number and is a tax invoice for the purposes of GST.

3.2.4 My Berries reserves the right to return to the Supplier any invoice not deemed to be correctly rendered.

4. Packaging of Goods

4.1 All Goods supplied by the Supplier shall be packed as specified in the Purchase Order. If not specified, the Goods shall be packed in a food safe manner and to avoid the Goods being damaged during transportation, delivery and storage.

5. Inspection and Testing of Goods

5.1 My Berries is entitled to inspect and test the Goods at the Supplier's and any subcontractor's premises upon reasonable notice. The Supplier must allow My Berries access to the Supplier's and any subcontractor's premises for this purpose. The Supplier must make this a condition of any subcontract.

5.2 My Berries may inspect the Goods to determine whether to accept or reject the Goods.

5.3 My Berries must accept the Goods if they conform to the requirements of this Agreement.

5.4 The Goods are deemed to be accepted either:

5.4.1 upon delivery, if My Berries notifies the Supplier that it accepts the goods; or

5.4.2 subject to clause 5.5, if no notice is issued by My Berries, then 30 days from the end of month after the delivery of the Goods to the place of delivery.

5.5 If the Goods are found not to conform to the Purchase Order, then My Berries may reject the Goods under clause 5.6.

5.6 If My Berries rejects the Goods due to non-conformity with the requirements of this Agreement, then My Berries must notify the Supplier as soon as possible and require the Supplier at its sole cost, and at My Berries request to resupply the Goods and remove the non-conforming Goods from the place of delivery.

5.7 Acceptance of the Goods does not relieve the Supplier of any of its obligations under this Agreement.

6. Delivery, Risk and Title

6.1 The Supplier is responsible for the delivery and all costs associated with the delivery of

the Goods to My Berries' premises or such other location that is specified in the Purchase Order.

6.2 Title to and property in the Goods immediately passes to My Berries upon payment or delivery, whichever occurs first, and the Goods must be appropriately marked and identified as the property of My Berries.

6.3 Risk in the Goods remains with the Supplier until delivery to My Berries unless otherwise stated in the Purchase Order.

7. Delays

7.1 Time is of the essence in the Supplier's performance of the Purchase Order. If it ever appears that the provision of Goods will not be met within the time specified, the Supplier must immediately notify My Berries of the delay, with complete information regarding the cause and the earliest possible delivery date. In such event, My Berries may (without prejudice to any other rights) do whatever is necessary to expedite the provision of the Goods at the Supplier's expense and may terminate the Purchase Order.

8. Supplier's Obligations

8.1 The Supplier will ensure that the Supplier's Personnel comply with all reasonable directions given by My Berries and will fully abide by the Purchase Commitments and Guidelines of this Agreement.

8.2 The Supplier must, at its own expense, comply with all statutory requirements, regulations, approvals, rules and requirements necessary for the safe and lawful delivery of the Goods and/or supply of the Services to My Berries.

9. Transportation of Goods by Supplier

9.1 This clause applies where the Supplier is providing transport of raw materials including packaging, to My Berries or an address as directed by My Berries.

9.2 The Supplier warrants that:

9.2.1 the vehicles used for transportation will be suitable for the purpose, maintained in good repair and are in a clean and hygienic condition.

9.2.2 refrigeration units for transporting of chilled and frozen foods shall be maintained in good repair and regular calibration of temperature gauges shall be undertaken and records maintained.

9.2.3 where Goods are susceptible to product cross contamination, procedures shall be in place to minimise the risk of cross contamination. Where the material transported is susceptible to taint uptake from other foods or previously transported materials, procedures shall be in place to minimise the risk of contamination.

9.2.4 where temperature-controlled transport is used, documented procedures shall be in place to ensure product temperature requirements are met.

9.2.5 procedures shall be in place in the case of vehicle or refrigeration equipment breakdown. All incidence of vehicle or refrigeration equipment breakdown shall be recorded, and corrective action documented.

10. Warranties

10.1 The Supplier warrants that it has good and unencumbered title for the Goods and that the Goods:

10.1.1 conform with any description applied and any sample provided by the Supplier;

10.1.2 conform with the Purchase Order;

10.1.3 conform to My Berries quality specifications;

10.1.4 conform to the agreed varietal and provenance specifications, where applicable;

10.1.5 conform to any applicable Australian Standards or other standards nominated in this Agreement;

10.1.6 are of merchantable quality; and

10.1.7 are fit for their intended purpose.

10.2 If Services are being supplied under this Agreement then the Supplier warrants that the Services will:

- 10.2.1 conform with the Purchase Order or comply with these Purchase Commitments and Guidelines;
- 10.2.2 be provided with due care and skill;
- 10.2.3 be provided in a timely and efficient manner;
- 10.2.4 be provided in accordance with the best practices current in the Supplier's industry; and
- 10.2.5 be performed by the Supplier and/or the Supplier's Personnel.

10.3 These warranties are in addition to any statutory warranties applicable to the Goods.

10.4 If any part or aspect of the Goods are found to be defective at the point (date) of use by My Berries, the Supplier must without delay and at no cost to My Berries do all things necessary to remedy the defect in the Goods. This can be by way of replacement or other means acceptable to My Berries. If the Supplier does not do so, within a reasonable period following notice of the defect from My Berries, then My Berries will be entitled to re-order the Goods (from another Supplier in order to rectify or remedy the defect) and recover costs so incurred from the Supplier.

10.5 The Supplier warrants that the information provided by them in the Supplier Information Form is accurate and warrants that it will notify My Berries of any changes to the information provided in the form in writing within 7 days of the change.

11. Liability and Indemnity

11.1 The Supplier must indemnify and keep indemnified, My Berries and its officers, employees and agents against all claims, demands, proceedings, liabilities, costs, charges and expenses suffered by My Berries and its officers, employees and agents arising as a result from any act, neglect or fault of the Supplier, its officers, employees and agents related to its obligations under the Agreement.

11.2 My Berries will not be liable to the Supplier for any indirect or consequential loss or damage under the Agreement.

11.3 The maximum sum, for which My Berries may be liable to the Supplier under the Agreement, is limited to the price of the Goods.

12. Insurances

12.1 The Supplier shall take out and maintain:

- 12.1.1 comprehensive public liability insurance with a limit of not less than \$20,000,000 per claim;
- 12.1.2 workers compensation insurance as required by law;
- 12.1.3 motor vehicle third party liability insurance as required by law;
- 12.1.4 product liability insurance with a limit of not less than \$20,000,000 per claim, where Goods are provided under this Agreement;
- 12.1.5 insurance covering the Suppliers own property, equipment, materials owned, hired, leased or used by the Supplier for the purpose of this Agreement; and
- 12.1.6 any additional insurance required by any applicable law.

12.2 The Supplier will at the request of My Berries provide copies of all certificates of currency in respect of the insurances required to be taken out by Supplier.

13. Force Majeure

13.1 My Berries and the Supplier shall not be liable to the other for any default or delay in performing its obligations pursuant to this Agreement caused by any occurrence beyond its reasonable control including, without limitation, fire, strike, disturbance, riot, war, Act of God, government order or regulation, epidemic or pandemic, provided that the party affected by such occurrence notifies the other party in writing as soon as practicable. When the party ceases to be affected by the force majeure event, it must immediately recommence performing its obligations under the Agreement and notify the other party accordingly. However, if as a result of any such force majeure event, supply of all or part of the Goods is delayed more than 30 days after the delivery date specified in the Purchase Order, My Berries may, without penalty, cancel this Agreement to the extent it relates to such delayed Goods.

14. Disputes

14.1 My Berries and the Supplier agree to work together to quickly settle disputes or issues between the parties. In the event that any such dispute or issue cannot be amicably resolved between the parties within 30 days after the dispute/issue was first raised, then the parties agree that the dispute may be referred to an independent mediation service, or commencement of legal action as the case may be.

14.2 In the event of any unresolved dispute the Supplier must ensure the continued performance of this Agreement and the delivery of Goods.

15. Termination

15.1 My Berries may suspend the performance of, or cancel, the Purchase Order without any liability to My Berries, if the Supplier breaches any terms contained in the Purchase order or these Purchase Commitments and Guidelines, or if the Supplier's business fails. The Supplier's business will be treated for this purpose as having failed if:

- 15.1.1 the Supplier makes any voluntary arrangement with its creditors;
- 15.1.2 (being an individual or firm) the Supplier become bankrupt;
- 15.1.3 (being a company) the Supplier becomes subject to an administration order or goes into liquidation;
- 15.1.4 any third party takes possession of, or enforces rights over, any of the Supplier's property or assets under any form of security;
- 15.1.5 the Supplier stops or threatens to stop carrying on business;
- 15.1.6 the Supplier suffers any process equivalent to any of these, in any jurisdiction;
- or
- 15.1.7 My Berries reasonably believes that any of the events mentioned above is about to occur and My Berries notifies the Supplier accordingly.

15.2 Any right of cancellation or suspension under this section is additional to any rights available to My Berries under the law of the relevant jurisdiction.

16. Confidentiality

16.1 Any information provided by My Berries to the Supplier or the Supplier's Personnel which is noted as confidential, or the Supplier or the Supplier's Personnel ought reasonably to know to be

confidential, must not be disclosed to any third party by the Supplier or the Supplier's Personnel without the prior written consent of My Berries.

17. Jurisdiction

17.1 Unless otherwise stated, this Agreement and these Purchase Commitments and Guidelines will be governed and construed by the laws in the State of Queensland. The Supplier irrevocably and unconditionally submits to the non-exclusive jurisdictions of the Courts of the State of Queensland.

18. Effect of ending this Agreement

18.1 Despite the termination of this Agreement by either party, this clause 18 and clauses 10, 12 and 16 shall remain in force and survive.

19. Subcontracting and Assignment

19.1 The Supplier is not permitted to assign or sub-contract all or any part of its obligations under the Purchase Order without the prior written consent of My Berries.

19.2 The Supplier remains responsible for obligations performed by any approved subcontractors to the same extent as if such obligations were performed by the Supplier.

20. GST

20.1 Words defined in the GST Law have the same meaning in these Purchase Commitments and Guidelines unless specifically defined in this clause.

20.2 For each taxable supply under or in connection with the Purchase Order:

20.2.1 The Supplier will be entitled to charge My Berries for any GST payable by the Supplier in respect of the taxable supply (if applicable).

20.2.2 My Berries must pay to the Supplier the amount of the GST at the same time as the relevant charge applicable to the supply becomes payable under the Purchase Order.

20.2.3 The Supplier must provide a correctly rendered and valid tax invoice (or a valid adjustment note) to My Berries in respect of the taxable supply.



21. Non-exclusivity

21.1 The Purchase Order, or these Purchase Commitments and Guidelines, do not confer on the Supplier any right to be a sole or exclusive supplier of the Goods to My Berries.

22. Notices

22.1 A notice is treated as having been duly given and received when delivered, in writing, to the other party's address. The addresses of the parties are as stipulated in the Purchase Order.

23. General

23.1 Each word, phrase, sentence, paragraph and clause of this Agreement is severable.

23.2 Severance of any part of this Agreement will not affect any other part of this Agreement.

23.3 The Supplier is not My Berries' agent in any way. The Suppliers' personnel will not under any circumstances be considered employees of My Berries for any purpose.

23.4 The Agreement comprises the entire agreement between My Berries and the Supplier and supersedes all prior agreements, representations, warranties or arrangements. No failure or delay on the part of My Berries in exercising any of its rights under this Agreement shall be construed as constituting a waiver of any such rights.

24. Definitions

24.1 "My Berries" means Berried Treasure Pty Ltd ABN 27 169 700 136.

24.2 "Goods" means the goods to be supplied by the Supplier to My Berries as identified in the Purchase Order.

24.3 "Services" means all services to be supplied by the Supplier to My Berries as identified in the Purchase Order.

24.4 "GST" means the *Goods and Services Tax as defined in A New Tax System (Goods and Services Tax) Act 1999*.

24.5 "Purchase Order" means the purchase order provided to the Supplier by My Berries;

24.6 "Supplier" means the person/entity supplying the goods or performing the services as identified in the Purchase Order.

24.7 "Supplier's Personnel" means the Supplier's, employees, agents, subcontractors and any other person employed or engaged by the Supplier to perform this Agreement.