



T&G Pipfruit General Terms and Conditions

These are the General Terms and Conditions that apply to the following agreements (each an "**Agreement**" for the purposes of these General Terms and Conditions):

- the purchase of pipfruit by T&G Pipfruit under its Pipfruit Supply Agreement
- the provision of packhouse and logistics services by T&G Pipfruit under its Post Harvest Services Agreement

Note: These General Terms and Conditions may be updated to identify further agreements to which these General Terms and Conditions are to apply.

These General Terms and Conditions comprise:

- Part A: General Provisions (which apply to all Agreements); and
- Part B: Post Harvest Services Provisions (which apply only to the Pipfruit Post Harvest Services Agreement).

In respect of the Post Harvest Services Agreement, to the extent that the General Provisions in Part A conflict with any of those in Part B, the provisions in Part B shall prevail.

PART A: GENERAL PROVISIONS

1 PAYMENTS

- 1.1 All payments made under the Agreement are stated exclusive of GST and other taxes and duties and there will be added to such amounts all applicable GST, taxes and duties.
- 1.2 Payments will be made by cash, cheque, bank cheque, direct credit or any other method as agreed to between the Supplier and T&G Pipfruit.
- 1.3 T&G Pipfruit shall be entitled to apply payments received from the Supplier in respect of any amount owed by the Supplier to T&G Pipfruit to the oldest outstanding balance shown in T&G Pipfruit's records unless otherwise agreed in writing with the Supplier.
- 1.4 Without prejudice, and in addition, to any right of set-off, combination of accounts, lien or other right to which T&G Pipfruit is at any time entitled (whether by law, contract or otherwise), any amount owed by the Supplier to T&G Pipfruit or T&G under the Agreement or otherwise may be set off against or deducted from any amount owed by T&G Pipfruit or T&G to the Supplier and, where applicable, T&G Pipfruit shall pay such sum to the relevant T&G company.
- 1.5 The Supplier will not set off against any amounts payable by the Supplier under the Agreement or otherwise any amounts due from T&G Pipfruit whether under the Agreement or otherwise.
- 1.6 If the Supplier defaults in payment of any invoice when due, the Supplier will indemnify T&G Pipfruit from and against all of T&G Pipfruit's costs and disbursements including legal costs on a solicitor and own client basis and in addition all debt collection costs.
- 1.7 If a dispute arises between T&G Pipfruit and the Supplier regarding the accuracy of any invoice or amount payable, any amount due and not in dispute must be paid in accordance with the Agreement.

2 DISPUTE RESOLUTION

- 2.1 Any dispute or difference arising out of or in connection with the Agreement, or the subject matter of the Agreement ("**Dispute**") will be resolved in accordance with this clause 2.
- 2.2 A party will notify the other in writing of any Dispute. If the Dispute is not resolved by the parties within seven days of the notice, the Dispute will be referred to and resolved by arbitration by a sole arbitrator under the Arbitration Act 1996.
- 2.3 The arbitral proceedings will commence on the date that a written request for the dispute to be referred to arbitration is received by the recipient of that request. If the parties cannot agree on an arbitrator within three working days after the date of receipt of the written request, upon the application of either party, the President of the Arbitrators' and Mediators' Institute of New Zealand Inc for the time being will nominate the arbitrator.
- 2.4 The arbitration will be final and conclusive. Each party waives any right of appeal (including on questions of law) under the Arbitration Act 1996 (to the extent permitted by law).
- 2.5 Clause 2, 3 and 6 of the Second Schedule of the Arbitration Act 1996 shall apply to any arbitral proceedings under the Agreement. All other clauses in the Second Schedule shall not apply.



3 TERMINATION

- 3.1 If either party is subject to receivership, insolvency, liquidation or bankruptcy, the other party may, by notice to that party, terminate the Agreement.
- 3.2 If either party is in breach of any material obligation under the Agreement or, in the case of the Supplier, any other agreement in place between T&G and the Supplier, (the “**Defaulting Party**”), and such breach is capable of remedy, but is not remedied within seven days of notice by the other party of that breach, the other party may, without prejudice to any other remedy, by notice to the Defaulting Party, terminate the Agreement.
- 3.3 If T&G Pipfruit reasonably believes that there has been a material change in the legislative or regulatory environment which has the effect of:
- (a) making the operation of any material part of the Agreement impractical for T&G Pipfruit;
 - (b) making T&G Pipfruit incapable of performing a material part of its obligations under the Agreement; or
 - (c) materially altering the benefit or burden of the Agreement for T&G Pipfruit,
- then T&G Pipfruit may either:
- (d) give the Supplier written notice which shall specify that the Agreement has been varied as at the date of that notice to address the legislative or regulatory change so that the balance of rights under the Agreement that existed immediately prior to that legislative or regulatory change taking place are preserved and provide a full description of the amendments that have been made to the Agreement; or
 - (e) terminate the Agreement, without prejudice to any other remedy, by giving written notice to the Supplier.
- 3.4 The rights and obligations of the parties under the Agreement which are intended to continue beyond the termination or expiry of the Agreement (including any accrued rights) will include these General Terms and Conditions.
- 3.5 Where T&G Pipfruit has the right to terminate the Agreement, T&G may, at its discretion and without liability, terminate any or all other agreements that are in place between T&G and the Supplier.

4 CONFIDENTIALITY

- 4.1 Subject to clause 4.2 of this Part A, if, in the performance of its obligations under the Agreement, a party becomes aware of confidential information belonging to another party (including information which may not be relevant to the subject matter of the Agreement) such party shall keep confidential and not disclose the same to any third party (except those of its officers and employees who must necessarily know the same for the purpose of carrying out their duties). By way of illustration, but not of limitation, confidential information may include services, trade secrets, T&G Pipfruit's net returns, know how, intellectual property, varietal rights, marketing and sales information, estimates, contracted volumes, forecasts, opinions, projections and other financial information. Each party shall ensure that those of its officers and employees to whom confidential information belonging to the other party may be disclosed or who may become aware of such information, are instructed that they are dealing with confidential information belonging to the other party and that it is to be treated as such.



- 4.2 T&G Pipfruit shall be entitled to hold any personal information that it receives from the Supplier for the purposes of its own or T&G's marketing and product development, account administration and credit purposes. The Supplier agrees that T&G Pipfruit or T&G may ask for and disclose personal information about the Supplier to any person named by the Supplier as a credit reference in connection with the Supplier's account, and to any person in circumstances reasonable deemed necessary by T&G Pipfruit or T&G in order to protect their respective interests in respect of their relationship with the Supplier.
- 4.3 Each party recognises and acknowledges that the confidential information received by one another in the normal course of doing business may constitute valuable, secret, special and a unique asset of such other party and agrees to be bound by the terms set forth in this clause 4. Therefore the parties agree to not use the confidential information in any way which is in furtherance of competition with the disclosing party and/or which is otherwise directly or indirectly detrimental to the interests of the disclosing party.

5 AMENDMENT

- 5.1 T&G Pipfruit may vary or replace these General Terms and Conditions at any time and from time to time. Where minor changes are made to these General Terms and Conditions which, in the reasonable opinion of T&G Pipfruit, are beneficial and/or of immaterial consequence to the Supplier, no notice of the changes will be given to the Supplier and they shall have immediate effect. In all other circumstances T&G Pipfruit will notify the Supplier of any variation to or replacement of these General Terms and Conditions and such amendment or variation shall take effect from the commencement of the next Season.

6 AUTHORITY

- 6.1 None of T&G Pipfruit's agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed in the Agreement nor is T&G Pipfruit bound by any such unauthorised statement or variation.

7 GENERAL

- 7.1 The Agreement, together with these General Terms and Conditions, constitutes the entire agreement between the parties relating to the Seasons the subject of the Agreement and supersedes and cancels any previous agreement, understanding and arrangement relating thereto whether written or oral (including any terms of trade or other document produced by the Supplier even if those terms of trade or other document are provided after the date of Agreement).
- 7.2 In the event of any conflict or inconsistency between these General Terms and Conditions and any provisions in the Agreement, the provisions of the Agreement shall prevail.
- 7.3 The Agreement may be executed in several counterparts (including facsimile copies or email), all of which when signed and taken together constitute a single agreement between the parties.
- 7.4 Other than a variation or amendment pursuant to these General Terms and Conditions, any amendment to the Agreement is to be in writing and signed by or on behalf of the parties.
- 7.5 A failure to exercise, or delay in exercising, a right or remedy does not constitute a waiver of that right or remedy.
- 7.6 The Supplier may not assign to any person any right, benefit or other interest under the Agreement without T&G Pipfruit's prior written consent (not to be unreasonably withheld). The Supplier acknowledges that T&G Pipfruit may assign the Agreement and T&G Pipfruit may grant a Security Interest in the Agreement to secure advances from time to time.



- 7.7 Subject to clauses 7.8 and 7.9 of this Part A, notices under the Agreement are to be in writing and are to be delivered personally, by mail with postage prepaid, by facsimile or by email to the address set out at the front of the Agreement. Such notices are deemed to have been received:
- (a) if delivered by hand, on delivery;
 - (b) if mailed with postage prepaid, 5 days after deposit for mailing;
 - (c) if faxed, immediately following transmission of the facsimile as indicated on the transmission report;
 - (d) if emailed, the next working day following transmission of the email as indicated by the sender's delivery receipt or other proof.
- 7.8 Any notice of a breach of the Agreement must be delivered personally, by mail or by facsimile.
- 7.9 Any notice which would be deemed to be received after 5.00pm on a working day or on a day which is not a working day will be deemed to be received at 9.30am on the next working day.
- 7.10 If any provision of these terms and conditions is or is determined to be invalid, void or illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not be affected, prejudiced or impaired.
- 7.11 The Agreement, including these General Terms and Conditions, is to be governed by New Zealand law.
- 7.12 If there is any conflict between the Agreement and these General Terms and Conditions, the terms of the Agreement will prevail.
- 7.13 Where the Agreement creates a benefit for the directors, employees, agents and contractors of T&G Pipfruit, T&G or the directors employees, agents and contractors of T&G, such benefit is to be enforceable by such persons pursuant to the Contracts (Privity) Act 1982.
- 7.14 In these General Terms and Conditions, unless the context otherwise requires:
- Buyer** means the person who has agreed to purchase the relevant Product from the Supplier. This may include, but is not limited to T&G Pipfruit and T&G. There may be more than one Buyer for the Product.
- Fruit** means pipfruit grown or sourced by the Supplier during the relevant Season specified in the Agreement.
- GST** means goods and services tax as defined in the Goods and Services Tax Act 1985.
- Product** means the Fruit, vegetables and/or other goods owned by the Supplier and placed into the possession of T&G Pipfruit for sale, packing, storage and/or other agreed services.
- Season** means a 12 month period from 1 January to 31 December during the term of the Agreement.
- Security Interest** means any bill of sale (as defined in any statute), mortgage, charge, letter of credit, lien, pledge, hypothecation, title retention arrangement, trust or power, as or in effect as security for the payment of a monetary obligation or the observance of any other obligation and includes a security interest (as that term is defined in the Personal Property Securities Act 1999).



Supplier means the person identified as the Supplier in the Agreement.

T&G means T&G Global Limited and any subsidiary of T&G Global Limited.

T&G Pipfruit means ENZAFruit New Zealand International Limited and its successors and assigns.

T&G Pipfruit's Inventory means an electronic inventory maintained by T&G Pipfruit of all Product purchased by T&G Pipfruit in a Season for sale in any market.

7.15 In the Agreement any reference to:

the singular, includes the plural, and vice versa.

person, includes a partnership, company or trust.

a statute or statutory instrument will be construed as a reference to such statute or statutory instrument as amended or re-enacted from time to time, and shall include all orders or regulations made under such statute or statutory instrument.

a party is to a party to the Agreement and will be deemed to include its successors and permitted assigns.

related company shall have the same meaning as in section 2(3) of the Companies Act 1993 construed as if company included any body corporate, wherever incorporated and related companies shall be construed accordingly.

a clause or Schedule is to a clause or Schedule of the Agreement.

"including" and similar words do not imply any limitation.

7.16 The schedules to the Agreement form part of the Agreement.

7.17 Headings are for ease of reference and will be ignored in construing the Agreement.

7.18 If a party comprises more than one person, each of those person's liability is joint and several.



PART B: POST HARVEST SERVICES PROVISIONS

1. PRICE AND PAYMENT

- 1.1 In the event that the Supplier commits to a level or volume of a Service and does not use the committed level or volume of the Service, T&G Pipfruit reserves the right to invoice the Supplier for the committed level or volume of the Service and the Supplier agrees to pay such invoice.
- 1.2 Interest on overdue invoices may accrue daily from the date when payment becomes due until the date of payment at a rate of 1.5% per calendar month and may accrue at such a rate after as well as before any judgment.

2. DEFAULT AND CONSEQUENCES OF DEFAULT

- 2.1 Without prejudice to any other remedies T&G Pipfruit may have, if at any time the Supplier is in breach of any obligation (including those relating to payment), T&G Pipfruit may suspend the supply of Services to the Supplier and any of its other obligations under the Agreement. T&G Pipfruit will not be liable to the Supplier for any loss or damage the Supplier suffers because T&G Pipfruit exercised its rights under this clause.
- 2.2 In the event that the Agreement is terminated by T&G Pipfruit pursuant to clause 3.1 or 3.2 of Part A of these General Terms and Conditions, T&G Pipfruit may:
 - (a) retain and resell Product in its possession and apply the proceeds towards payment of any amounts owed by the Supplier to T&G Pipfruit under the Agreement (with shortfall to be made up by the Supplier); and/or
 - (b) recover from the Supplier or deduct from or set-off against any amount T&G Pipfruit or T&G may owe the Supplier, any amounts for damage, loss or cost (including legal costs on a solicitor-own client basis) T&G Pipfruit may suffer or incur as a result of the non-performance.

3. FORCE MAJEURE

- 3.1 Neither party will be liable for any default due to any act of God, war, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 3.2 Each party must notify the other as soon as reasonably practicable of any occurrence of any incident referred to in clause 3.1 of this Part B which will affect its ability to properly perform its obligations under the Agreement.

4. SUBCONTRACTING

- 4.1 T&G Pipfruit may subcontract the performance of the Services or any other obligation of T&G Pipfruit under the Agreement.

5. GUARANTEE

- 5.1 In return for T&G Pipfruit entering into the Agreement at the request of the Guarantor, the Guarantor:
 - (a) guarantees to T&G Pipfruit the due and punctual performance by the Supplier of all the obligations and liabilities of the Supplier under the Agreement; and



- (b) agrees to indemnify and hold harmless T&G Pipfruit from any default by the Supplier of any of its obligations and liabilities under the Agreement.

5.2 The Guarantor will observe and perform all the obligations and liabilities, set out in the Agreement as matters to be observed and performed by the Supplier as fully and to the same extent as would bind the Guarantor if all those matters were set out in full in this clause.

6. PERSONAL PROPERTY SECURITIES ACT 1999

6.1 Without prejudice to any other rights which T&G Pipfruit may have in respect of the Product, the Supplier grants to T&G Pipfruit a security interest (as defined in the PPSA) in the Product. Such a security interest secures payment of all amounts payable by the Supplier to T&G Pipfruit under the Agreement.

6.2 The Supplier undertakes to:

- (a) sign any further documents and provide any further information, such information to be complete, accurate and up-to-date in all respects, which T&G Pipfruit may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) not register a financing change statement or a change demand without the prior written consent of T&G Pipfruit; and
- (c) give T&G Pipfruit not less than 14 days prior written notice of any proposed change in the Supplier's name and/or any other change in the Supplier's details (including but not limited to, changes in the Supplier's address, facsimile number, or business practice).

6.3 The Supplier will indemnify T&G Pipfruit from and against all T&G Pipfruit's costs and disbursements including legal costs on a solicitor and own client basis in registering a financing statement, releasing any Goods from the security interest, or enforcing T&G Pipfruit's security interest.

6.4 The Product will only be released from the security interest when all amounts due to T&G Pipfruit by the Supplier have been paid in cleared funds.

6.5 If the Product is disposed of by T&G Pipfruit to enforce its security interest, the proceeds will firstly be applied to all outstanding amounts due to, and costs incurred by, T&G Pipfruit. The balance will be payable to the Supplier.

6.6 Unless otherwise agreed to in writing by T&G Pipfruit, the Supplier waives its right to receive a verification statement in accordance with section 148 of the PPSA.

7. INSURANCE

7.1 Where the Supplier supplies Fruit to T&G Pipfruit pursuant to a Pipfruit Supply Agreement, T&G Pipfruit will insure the Fruit from the time of entry of the Fruit into T&G Pipfruit's Inventory and otherwise in accordance with the terms of the Pipfruit Supply Agreement.

7.2 Where clause 7.1 of this Part B does not apply, if the Supplier wishes its Product to be insured while in the custody of T&G Pipfruit, the Supplier must arrange this, and pay all costs of such insurance. T&G Pipfruit strongly recommends that the Supplier should insure their Product.



8 LIMITATION OF LIABILITY

8.1 Subject to clause 8.3, if T&G Pipfruit breaches any of the provisions of the Agreement or is otherwise liable to the Supplier on any other ground whatsoever (including in contract or tort, including negligence), the liability of T&G Pipfruit and/or T&G and their respective directors, employees, agents and contractors in respect of each claim by a Supplier:

(a) which relates to loss or damage to Product of that Supplier in the control or possession of T&G Pipfruit arising out of an event or series of related events ("**Product Claim**") will not exceed:

(i) where the Supplier is party to a Pipfruit Supply Agreement with T&G Pipfruit in respect of the Product, the aggregate of the deductible for that Claim under the relevant insurance policy and the amount of any insurance proceeds actually received by or on behalf of T&G Pipfruit in relation to that Claim by that Supplier; and

(ii) where the Supplier is not party to a Pipfruit Supply Agreement with T&G Pipfruit in respect of the Product, the amount of any insurance proceeds actually received by or on behalf of T&G Pipfruit in relation to that Claim by that Supplier; and

(b) which relates to loss or damage to which sub-clause (a) does not apply, the lesser of:

(i) the fees payable by the Supplier to T&G Pipfruit under this Agreement during the current season; and

(ii) \$10,000.

8.2 Where clause 8.1(a) applies, T&G Pipfruit will use its reasonable endeavours to obtain payment of insurance proceeds from its insurer(s). However, T&G Pipfruit shall not be required to act contrary to its own commercial interests or to incur unreasonable expense in making a claim against its insurer(s).

8.3 To the extent permitted by law, neither T&G Pipfruit, nor any of the officers, employees or agents will be liable to the Supplier in contract or in tort, including negligence, for:

(c) any indirect loss, consequential loss, loss of profit, loss of revenue, loss of use, loss of contract or loss of goodwill; or

(d) any loss resulting from the liability of the Supplier to the Buyer or any other person or for losses arising from the acts or omissions by third parties.

9 DEFINITIONS

9.1 In this Part B of these General Terms and Conditions, unless the context otherwise requires:

Agent means any person acting on behalf of and with the authority of the Supplier and specified as such in the Agreement.

Guarantor means that person (or persons), or entity who agrees in the Agreement to be liable for the debts of the Supplier on a principal debtor basis and specified as such in the Agreement.

PPSA means Personal Property Securities Act 1999.



Services means the packhouse and/or logistics services to be provided by T&G Pipfruit as set out in the Agreement.

Term means the term of the Agreement as set out in the Agreement.