

## Honduras

### Melon marketing agreement

This marketing agreement is made between ..... (name of a company) (hereinafter the Sales Agent) represented by ..... (name of a representative), grower of fresh melon in Honduras (hereinafter the Exporter) represented by ..... (name of a representative) and ..... (name of a marketing company) (hereinafter the Marketing Company) represented by ..... (name of a representative) as marketing representative.

Whereas, the Exporter desires to retain Sales Agent as his agent for the purpose of the sale of Exporter's produce and for the performance of such other services in connection therewith, and whereas Sales Agent is agreeable to acting as Sales Agent on the terms and for the charges set forth below, and whereas the parties agreed to the terms of the agreement and wish to acknowledge the same.

Now, therefore, it is agreed as follows:

**FIRST:** The Exporter shall ship the Sales Agent, between .... (dates) at least ... (times) each week of fresh melon containing ..... (specify weight) pounds of the produce per box. Shipment of produce by the Exporter to the Sales Agent shall be contingent to market conditions and price levels that warrant such operation to be economically feasible. Shipments of produce shall be made according to the following shipping schedule:

Starting on ..... (date), .... (number of boxes) boxes of ..... (produce) shipped on refrigerated containers should arrive each week at the Sales Agent's warehouse facility up to ..... (hours) ..... (date). Such produce must be packed in ..... (weight) lb boxes, palletized in 40" x 48" standard pallets, 20 pallets per 40' refrigerated container. All wooden pallets must be fumigated, treated and must have the appropriate seal.

**SECOND:** The exporter shall only ship the Sales Agent produce that meets the US#1 grade for fresh melon as set forth by the United States Department of Agriculture (USDA). Specifically the produce must meet the following specifications:

**THIRD:** Exporter hereby retains Sales Agent and entrusts him for the purpose of the sale with possession and control of Exporter's produce.

**FOURTH:** Exporter hereby warrants that he has the right, title, and authority to sell said produce as described above and that the produce is free from all liens and encumbrances that may cause a third party claim to payment for same.

**FIFTH:** Exporter warrants that above mentioned produce is free from unlawful insecticides and pesticides and is grown in accordance with standards set by the Food and Drug Administration (FDA) and USDA.

**SIXTH:** Exporter agrees that Sales Agent has the full right and authority to use its best judgment in marketing, distributing and selling the produce subject to the market conditions and quality and grade of available produce. The Sales Agent, however, shall always exercise its best efforts in order to maximize the financial return to the Exporter from the marketing, distribution and selling of the produce. Likewise, the Sales Agent shall keep the Marketing Company informed of its activities/strategies to achieve the highest return possible to the Exporter.

**SEVENTH:** Exporter agrees that Sales Agent has the right to handle all claims with carriers, including the right to the claims in its own name or that of the designee (including the Exporter); to litigate such claims; and to settle such claims on such terms as it considers reasonable. Further, the Exporter agrees that Sales Agent shall be authorized to grant credits, make adjustments in invoice prices or abandon shipment when the circumstances justify such action previous consultation with the Marketing Company. However, a USDA inspection shall be necessary by Sales Agent to document such actions. The cost of such inspection shall be borne by the Exporter when the inspection shows that the produce in question does not meet USDA specifications as indicated in the Second Paragraph. Exporter acknowledges that Sales Agent shall from time to time at its discretion elect to purchase any or all of Exporter's produce and sell for its own account for the purpose of expediting the completion of the sales report.

**EIGHTH:** Exporter appoints the Marketing Company to act as its Marketing Agent under which capacity, the Marketing Company will conduct quality inspections of arrivals, will liaise with Sales Agent to undertake promotional activities that might be necessary to achieve sales objectives, will promptly resolve any quality issues or otherwise that Sales Agent might have during the course of its sales activities of the Exporter's produce, will check final liquidations and make sure that payments from Sales Agent are promptly made within established terms. Sales Agent will provide the Marketing Company a weekly price list showing the prices at which the exporter's produce is being offered to the Sales Agent's clients. Likewise a weekly sales report will also be prepared by the Sales Agent showing actual sales, sales prices, remaining inventory and problem invoices if any. Payment for the Marketing Company's services will be done by the Sales Agent on the account of the exporter at US\$ .... (amount) per 20 kg box sold and liquidated or prorated if different weight boxes are sold.

**NINTH:** Sales Agent shall be responsible for invoicing all produce sold to customers in North America, and in other markets agreed by both parties, and shall also be responsible for the collection of accounts receivable due from customers.

**TENTH:** All risk of loss or of damage to the produce shall be borne by the Exporter, except in case of prolonged storage (more than 10 days, from arrival at the port of destination) at the warehouse of the Sales Agent and/or negligence in the handling of the produce by the Sales Agent. Upon request by the Exporter, the Sales Agent shall make available a USDA inspection and/or an independent survey and shall otherwise assist the Exporter in pursuing claims against carriers, other providers of services and/or the Sales Agent's own clients. However, all risks of financial loss involved in the collection of receivables from Sales Agent clients shall be borne by the Sales Agent.

**ELEVENTH:** The parties acknowledge that daily fresh produce prices quoted in the trade press, including such publications as the Market News Service and/or other publications of the United States Department of Agriculture or relevant state agencies, are compiled retrospectively and may accurately reflect market prices in specific geographical markets. The parties agree, therefore, that while those published prices may serve as a guide, Sales Agent cannot and does not guarantee that sales at such prices will always be obtained. Nonetheless, Sales Agent will provide the Marketing Company a weekly sales report of the Exporter's produce indicating quantity and prices at which the produce was actually sold.

**TWELFTH:** Sales Agent shall receive shipments of the produce at designated warehouses for the purpose of selling the same. Upon arrival at the warehouse, each shipment shall be assigned a lot number for identification purposes. The cost of transporting the product from Honduras to ..... (port name) or any other port designated by the Sales Agent, and other expenses associated with the importation, handling, storage and distribution of the

product shall be paid by the Sales Agent for the account of the Exporter. These expenses shall be reimbursed to the Sales Agent upon final liquidation of each shipment, or lot. Upon arrival of produce at the Sales Agent warehouse and verification that its quality meets the specifications, Sales Agent will transfer to ..... (bank of the exporter) for the account of the exporter US\$ ..... (amount) per box as per the following instructions:

THIRTEENTH: All produce accepted on consignment by Sales Agent will be billed to customers in the name of Sales Agent. In return for its services and responsibilities as set forth herein, Sales Agent will receive a commission equal to .....% (percentage) of the ultimate sales price to customers.

FOURTEENTH: Final accounting and/or final payment shall be made to the Exporter by lot within 21 to 28 days after arrival of the product at the Sales Agent warehouse at the port of destination. The parties recognize, however, that longer periods of time may be necessary to dispose of produce that does not meet acceptable quality conditions as stated in the Second Paragraph, and final liquidation on this produce therefore maybe delayed. Exporter agrees that Sales Agent shall have the right to deduct any advances made to Exporter by Sales Agent. Exporter agrees that Sales Agent shall remit to Exporter final sales price less Sales Agent's commission, the Marketing Company's fees, freight, inspection, customhouse broker charges, and other expenses related to the sale of the merchandise and the selling charges and advances as outlined in Paragraphs Twelfth and Thirteenth.

FIFTEENTH: It is understood and agreed by all parties that all rights and obligations under PACA (Perishable Agricultural Commodities Act -7U.S.C. 499a et seq.)-as well as all PACA regulations, apply to this contract.

SIXTEENTH: In case of *force major* events such as natural disasters, diseases and pests, revolutions, wars, strikes and other events and acts of God that are not under the control of the parties in this contract, the parties shall not be held accountable for the implementation of the contract for as long as the force major events remain in place. However, all pending liquidations and other accounts shall be settled and all outstanding payments executed.

In Witness Whereof, the parties have signed this agreement that day and year first above and forth.

SALES AGENT:

\_\_\_\_\_

Date: \_\_\_\_\_

EXPORTER:

\_\_\_\_\_

Date: \_\_\_\_\_

MARKETING REPRESENTATIVE

\_\_\_\_\_

Date: \_\_\_\_\_