

SUBSTANDARD WALNUT USER AGREEMENT

THIS AGREEMENT made and entered into at Folsom, California, this _____ day of _____, between the CALIFORNIA WALNUT BOARD, established pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.) and Marketing Order No. 984, as amended (herein called "Board"), and _____, (herein referred to as "Company"), a corporation organized under the laws of the State of California.

WITNESSETH:

WHEREAS, the Board, pursuant to the provisions of Section 984.64 and 984.464(b) of Marketing Order No. 984, as amended, expects to dispose of substandard walnuts by diversion into oil or animal feed during the _____ marketing year; and

WHEREAS, the Company is engaged in the business of crushing oil bearing materials for the production of oils, or selling agricultural products for manufacturing or processing into animal feed.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

- (1) The Board agrees to sell, and the Company agrees to buy, not less than 1,000 pounds kernelweight basis, of such substandard walnuts and walnut materials as it shall have available for oil stock during the _____ marketing year. The Company agrees to accept delivery of up to 500,000 pounds of walnuts, kernelweight basis, which shall be crushed for oil, sold for production of oil or sold for use as livestock feed directly or as an ingredient in animal feed and shall not be used for any other purpose whatsoever.
- (2) The Company agrees to pay the Board _____ cents per pound of kernelweight for all walnuts delivered.

The company may also negotiate with and pay directly to the handler a fair market price beyond the _____ cents payable to the Board for all walnuts purchased.

At any time after December 1, _____, the Board or the Company may, in writing, request renegotiation of the Board selling price herein provided for deliveries after a date specified in the request.

The kernelweight of each lot shall be determined on the basis of inspection certificates issued by the DFA OF CALIFORNIA.

The Board will invoice the Company monthly for all walnuts delivered. Each invoice will list the applicable inspection certificate number, the net weight of each lot as evidenced by the Public Weighmaster certificates, the kernel percentage, and the kernelweight.

The Company will pay each invoice within thirty (30) days of the receipt thereof, which date of receipt shall be the date following the date said invoices are placed in the United States mail.

- (3) Delivery will be made by the Board to the Company, FOB point of origin of the walnuts. The weight of each lot delivered shall be evidenced by a Public Weighmaster's certificate secured at the point of origin.

The Company has, prior to the effective date of this Agreement, accepted from handlers deliveries of substandard walnuts to its premises. For the purpose of this Agreement, such substandard walnuts are deemed to have been delivered to the Company, as of the date hereof.

- (4) The Company will pay all transportation costs of the substandard walnuts delivered by the Board.
- (5) The walnuts will be at the risk of the Company, from the time the Board delivers them at the FOB point to the Company, or its order.
- (6) It is understood and agreed that if the walnuts are used for purposes other than as prescribed in this Agreement, serious and substantial damage will be sustained by the Board, the Walnut Industry and the Walnut Marketing Order Program. Since it will be difficult, if not impossible, to prove the full amount of such damages, the Company will pay to the Board by way of compensation and not as a penalty, liquidated damages in the sum of \$2,000.00 per ton of kernelweight for any of the walnuts and walnut material delivered to the Company under this agreement and not crushed for oil, sold for production of oil or sold for use as livestock feed directly or as an ingredient in animal feed.
- (7) It is further agreed that the provisions for liquidated damages shall not preclude the Board from using any and all legal remedies available to it to enforce the terms and conditions of this Agreement.
- (8) The Company will accept deliveries at such intervals and such times as the Board shall elect to make them, beginning with the date of this Agreement and continuing through August 31, _____. The company agrees that all walnuts and walnut materials delivered hereunder shall be fully processed by January 31, _____.

The Company may, for the purpose of crushing into oil, transfer substandard walnuts delivered to it by the Board under this Agreement, to crushers approved by the Board to receive such substandard walnuts. The Company may also, for the purpose of processing into animal feed or feeding directly to livestock, transfer any substandard walnuts to feed mills, dairies and cattle feeders as the Board may certify as approved to receive substandard walnuts. The Company will report to the Board the quantities of substandard walnuts so transferred to any of the aforementioned outlets and agrees to maintain ownership and responsibility in accordance with the terms of this Agreement for such walnuts until they are crushed into oil, manufactured into animal feed or fed to livestock.

- (9) If the operations of the Board shall be prevented or materially interfered with by the exercise of Government authority or by embargo, civil uprising, fire, strikes, or any other conditions beyond the control of the Board, it shall be excused from performance

hereunder to such extent as such conditions prevent or interfere with performance hereunder.

- (10) If the Company fails to take delivery of walnuts pursuant to this Agreement, it shall be liable for damages, including any expenses incurred by the Board because of such failure, unless the Company is prevented from taking delivery because of material interference by Government authority, embargo, civil uprising, fire, strikes, or other like conditions beyond the control of the Company.
- (11) The books and records of the Company with respect to transactions under this Agreement shall be open for inspection by the Board through its authorized representatives, which shall include, without being limited to, employees of the United States Department of Agriculture. Such books and records will be kept at the principal office of the Company and will be maintained by the Company for the period of three (3) years after the completion of this agreement for such inspection by the Board and the Department of Agriculture.
- (12) As a further guarantee of the faithful performance of the provisions of this Agreement, the Company has delivered to the Board herewith a Surety Bond in the sum Twenty-five Thousand and 00/100 Dollars (\$25,000.00), and it is agreed between the parties that any adjustment or extension of time beyond August 31, _____ may be granted only with the consent of surety on said Bond, or delivery of a new Bond; and the Company further agrees that, should the sureties on Bond delivered herewith, or any Bond delivered hereafter in connection with the Agreement become unsatisfactory to the Board, the Company will, within thirty (30) days from receipt of demand, furnish a new Bond with sureties solvent and satisfactory to the Board.

WITNESS our hands as of the date first written above.

CALIFORNIA WALNUT BOARD

COMPANY

By: _____ By: _____
Dennis A. Balint

Title: _____ Title: _____
Executive Director

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