

Doc 2.1 TERMS AND CONDITIONS AND QUALITY CONTROL PROTOCOL

Introduction and Legal Terminology

- A. The website can be accessed at www.delecta.co.za (the “**Website**”) and is owned and operated by Delecta Fruit (Proprietary) Limited with registration number 2004/007472/07 (“**Delecta**”, “**we**”, “**us**” and “**our**”).
- B. Whereas Delecta as the principal and owner of the Fruit, is in the business of, inter alia, procuring, purchasing, marketing, selling, distributing, and exporting fruit worldwide.
- C. Unless replaced or superseded by an alternative written agreement between the Parties, these Website Terms and Conditions (including Quality Control Protocol) and Delecta’s invoice(s) (“**Terms and Conditions**”) govern the supply, ordering, sale, and delivery of Fruit between the Parties from time to time.
- D. By ordering and purchasing Fruit from Delecta you acknowledge (as is also evident and noted on Delecta’s invoices) that you have read and agreed to be bound by these Terms and Conditions and declare that you fully understand the information as stated herein and undertake to conform to the quality procedure prerequisites as indicated in the Quality Control Protocol below.
- E. In this Agreement, unless the context requires a contrary interpretation, the following words and expressions shall have the meanings herein assigned to them:
- E.1. “**Agreement**” means this agreement consisting of the Terms and Conditions as contained herein and Delecta’s invoice(s).
- E.2. “**Buyer**” means the Buyer of the Fruit as indicated as such on Delecta’s invoice(s).
- E.3. “**Confirmation of Sale Document**” means the document to be issued by Delecta with each shipment of Fruit confirming the details of the sale between the Buyer and Delecta.
- E.4. “**Fruit**” shall mean the fruit, as per the commodities, varieties, grades, and sizes as described in Delecta’s invoice(s) to be sold by Delecta to the Buyer in terms of this Agreement.
- E.5. “**Incoterms**” means the latest Incoterms version issued by the International Chamber of Commerce.
- E.6. “**Parties**” shall mean Delecta, and the Buyer and “**Party**” shall mean any one of them as the context may require.
- E.7. “**POD**” or “**Port of Discharge**” shall mean the place where a vessel is off-loaded and the shipments (i.e., the Fruit) are dispersed to their respective consignees (i.e., the ultimate buyers thereof).
- E.8. “**Person**” shall mean any corporation, company, partnership, other entity or individual, without limitation.

Document Number	2.1	Department	Quality and Product Safety Management System
Document Name	Quality Claim Procedure	Date of Compilation	01.06.2004
Page 1 of 7		Issue Number	17
Approved by	Mari Falck	Revision Date	31.10.2022

F. This Agreement contains all the terms and conditions of the Agreement between the Parties. Where terms and conditions are contrary to this Agreement, the terms and conditions of this Agreement are to be considered by all Parties as superior terms and conditions.

G. Delecta may, in its sole discretion, change any of these Terms and Conditions at any time. It is your responsibility to regularly check these Terms and Conditions and make sure that you are satisfied with the changes. Should you not be satisfied, you must not place orders and attempt to purchase Fruit from Delecta.

Sale, Delivery, Transfer of Title and Risk, Disputes

1. A Confirmation of Sale Document and Delecta invoice will be issued for each shipment and/or air carriage of Fruit and will form part of this Agreement and will be legally binding. All Products purchased by the Buyer from Delecta will be subject to these Terms and Conditions.
2. The Fruit will be sent via sea freight or airfreight, to the destination specified by the Buyer and within the time period specified in the Confirmation of Sale Document and Delecta invoice.
3. With respect to each transaction, delivery term, delivery time and delivery location shall be made in accordance with the applicable Purchase Order. The Seller represents and warrants to the Buyer that full legal and beneficial title to the Products shall pass from the Seller to the Buyer upon completion of delivery
4. Delivery and transfer of risk in the Fruit shall pass to the Buyer according to the Incoterms as specified in the relevant Confirmation of Sale Document and Delecta invoice. Ownership in the Fruit shall remain with Delecta and only pass to the Buyer once the Buyer are in possession of the original shipping and legal documentation of the shipment of fruit.
5. For avoidance of doubt, obligation to buy insurance shall be in accordance with the "Incoterms set out in each Purchase Order.
6. The purchase consideration and payment thereof will be stipulated in the Confirmation of Sale Document and Delecta invoice.
7. Interest on late payments will be charged at the Prime interest rate plus 5% as set by Absa Bank of South Africa Ltd from the due date of the payment until payment is received by Delecta.
8. The Parties select as their respective domicilia citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement, the addresses as more fully described in Delecta invoices.
9. The law of the Republic of South Africa shall regulate this Agreement. Unless otherwise agreed to between the Parties in writing, any dispute arising from or in connection with this Agreement shall be determined in accordance with the *Commercial Rules* of the Arbitration Foundation of South Africa ("Foundation") by an arbitrator or arbitrators nominated by the Foundation. The Parties hereby submit to the jurisdiction of the Western Provincial Division of the High Court of South Africa (or such other competent court having jurisdiction as nominated by Delecta in writing to the Buyer from time to time, which jurisdiction the Buyer shall accept) for the purposes of any proceedings for urgent relief arising out of or in connection with this Agreement and for the purposes of enforcing any award made by an arbitrator under this clause 9.

Document Number	2.1	Department	Quality and Product Safety Management System
Document Name	Quality Claim Procedure	Date of Compilation	01.06.2004
Page 2 of 7		Issue Number	17
Approved by	Mari Falck	Revision Date	31.10.2022

10. The terms and conditions in respect of insurance over the Fruit shall be determined by the relevant INCOTERM selected in the Confirmation of Sale Document.
11. Should the performance of any Party to the Agreement be rendered impossible through events beyond the control of such Party, which shall include, without limitation, an act of God or state of war or sabotage, fire, drought, floods, excessive rainfall, outbreak, epidemic, pandemic, civil commotion, riot, strike, lock-out or change in the law or statutory license or permission affecting the performance of such obligation (but excluding such cause for which the Party claiming such inability is responsible or should have been able to avert had reasonable care been taken), and whether or not the events affects Delecta or Delecta's suppliers, the performance of such Party will be varied by the extent to which proper performance was rendered impossible.
12. In the event of any of the Parties (the "**Defaulting Party**") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from another Party (the "**Aggrieved Party**") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice, and to claim and recover damages from the Defaulting Party.

QUALITY CONTROL PROTOCOL

1. INTRODUCTION

Delecta is contractually bound to take responsibility for Fruit in transit and to inform the original producers of the Fruit regarding the quality status of the Fruit on arrival.

2. DELECTA'S RESPONSIBILITY FOR INSPECTION OF FRUIT PRIOR TO EXPORT

All Fruit must be inspected and passed for export by the relevant export control board ("**Export Control Board**"). All Fruit must be packed according to or above the mandatory minimum market standards as prescribed by the Export Control Board. Delecta, at the request of the Buyer, shall supply these standards. Should the Buyer require additional specifications or standards, these are to be sent in writing by e-mail to Delecta within a reasonable period prior to export of the Fruit.

3. BUYER'S RESPONSIBILITY FOR INSPECTION AND ADHERENCE TO QUALITY CONTROL PROCEDURE

- 3.1. It is the Buyer's responsibility to ensure that all containers should be opened and inspected within seven (7) days from arrival at the applicable Port of Discharge (Inspection includes checking the temperature logger data and recording the vent setting of the container.). It is also the Buyer's responsibility to then ensure that all potential claims or quality reports are submitted to Delecta within 48 hours ("**Inspection Period**") (i.e., two business days) after receiving the shipment at the Buyer's facility (or that of its respective service provider).
- 3.2. If the vent setting is not correctly set in accordance with the accepted setting standards for the type of produce shipped, Delecta is to be immediately notified by telephone and by e-mail.
- 3.3. In the event of a potential claim, the container must be held by the Buyer until a representative of the seller or seller's insurance company arrives to inspect or provides written approval that the container can be removed from the Buyer's offloading facility.

Document Number	2.1	Department	Quality and Product Safety Management System
Document Name	Quality Claim Procedure	Date of Compilation	01.06.2004
Page 3 of 7		Issue Number	17
Approved by	Mari Falck	Revision Date	31.10.2022

- 3.4. Upon opening of the container doors, the temperature recorder must be taken from the marked box of the pallet at the door. The temperature information must be downloaded to establish if there has been any temperature malfunction(s) and / or fluctuation(s) during transit. If the temperature fluctuated and/or the recorder malfunctioned during transit, Delecta is to be notified immediately by telephone and by e-mail. Delecta and the Buyer are to put the shipping line on notice of a potential claim and invite the shipping company to conduct a survey.
- 3.5. The Buyer must, prior to expiry of the Inspection Period, do a general overview of the shipment ("**Quality Report**"). This overview must be documented into a written quality report (which shall include all potential claims) and delivered to Delecta via e-mail to:
- 3.5.1. the relevant person from Delecta who was responsible for the sale; and
- 3.5.2. always copy in dqcr@delecta.co.za; and logistics@delecta.co.za.
- 3.6. If claims or damages are not reported within the Inspection Period, Delecta has the right to reject any financial losses associated with a claim.
- 3.7. The **Quality Report** must state whether the Buyer intends claiming on quality related issues and present sufficient information to Delecta to make an informed decision whether he should appoint an independent inspection authority to do a survey. Delecta is to confirm in writing and acknowledge receipt of the **Quality Report** and more specifically any intended claims contained therein. If the Buyer has not received this acknowledgment receipt with 24 (twenty-four) hours, the Buyer is to contact Delecta by phone, and resend the **Quality Report**, requesting the acknowledgment receipt. The communication must include the reason(s) for the claim together with all necessary supporting information.
- 3.8. Delecta needs to control all stock (i.e., the Fruit) be it sold or unsold and the specific Buyer must supply Delecta with weekly updates regarding stock (i.e., the Fruit) levels and sales details. If stock (i.e., the Fruit) must be stored for prolonged periods without notifying Delecta, all potential claims as a result of storage will not be accommodated by Delecta. Therefore, Delecta indemnifies itself from any quality claim if the decision was made by the Buyer to store Fruit for later sales and if not informed of this intension within the Inspection Period.
- 3.9. Reason(s) for the claim must be summarized into an Insurance Claim, a Specification Claim and/or a Condition Claim (see below):
- 3.9.1. **Insurance claim** - Potential failures or poor management of equipment covered by insurance i.e., shipping line equipment failure, cold store cooling failure, incorrect vent settings, etc. Please note that by distributing / dumping Fruit prior to inspection could affect the insurance claim negatively. Therefore, please ensure that a representative sample is always available
- 3.9.2. **Specification claim** - For example incorrect pack specifications, incorrect packaging, incorrect sizing, low brix percentage, poor color etc.
- 3.9.3. **Condition claim** - For example Low Pressure, Decay, dehydrated Fruit, etc.

Document Number	2.1	Department	Quality and Product Safety Management System
Document Name	Quality Claim Procedure	Date of Compilation	01.06.2004
Page 4 of 7		Issue Number	17
Approved by	Mari Falck	Revision Date	31.10.2022

4. QUALITY REPORT – SUPPORTING INFORMATION

The following minimum items must be added to- and support the Quality Report:

- 4.1. a definition of the sample size inspected.
- 4.2. color photos to sufficiently demonstrate:
 - 4.2.1. the quality issue and the box end labels of the inspected cartons.
 - 4.2.2. Delecta Reference Number (i.e., the Delecta Invoice number) must be clearly indicated.
 - 4.2.3. the specific container number(s) must be identified.
 - 4.2.4. the grower codes (PUC) being claimed must be identified
 - 4.2.5. all affected pallet identification numbers for the pallets and the total number of cartons under claim.
 - 4.2.6. the vessel name / container number / variety / size.
 - 4.2.7. the detail of temperature recorder – temperature graph (the Buyer agrees and warrants that it will have in place the relevant software available to do the temperature downloads for the temperature recorder – the Delecta Logistics Coordinators would be able to assist in setting this up prior to shipment).
 - 4.2.8. the address where the pallets are stored and contact detail of person (to be used by Delecta or surveyor in case of insurance claim).
 - 4.2.9. the quantification of the claim (estimation of damage or loss).

5. INDEPENDENT SURVEY

- 5.1. Should the **Quality Report** indicate to Delecta that an independent survey is required, Delecta is required to contact and instruct the relevant inspection authority to conduct an independent survey. The inspection authority to conduct any survey shall be nominated by Delecta. For these purposes Delecta will not accept a claim based on an inspection authority appointed by the Buyer.
- 5.2. If the Buyer wishes to have his own inspection authority to do a joint survey together with the inspection authority appointed by Delecta, Delecta needs to first approve the joint survey and once approved the findings of the Buyer's inspection authority must be documented in the independent survey report of the inspection authority appointed by Delecta.
- 5.3. The Buyer is to do the following:
 - 5.3.1. isolate the pallets that are under claim and stop the sale of affected pallets. Sales may only occur once the inspection authority (appointed by Delecta) has concluded the survey, and both Parties have agreed on the course of action.
 - 5.3.2. provide the inspection authority access to the storage facility where the claimed Fruit are situated.
 - 5.3.3. arrange that all claimed pallets at the time of inspection are easily accessible to the inspection authority.
 - 5.3.4. provide the inspection authority with a sufficiently lightened area to conduct a survey.
 - 5.3.5. to present the inspection authority with pallets requested for a survey by them.

Document Number	2.1	Department	Quality and Product Safety Management System
Document Name	Quality Claim Procedure	Date of Compilation	01.06.2004
Page 5 of 7		Issue Number	17
Approved by	Mari Falck	Revision Date	31.10.2022

- 5.4. The Parties will ensure that the final survey report is distributed to the Buyer and Delecta within 48 hours of the survey being conducted. Would the outcome of the survey be in contradiction to the Buyer's claim (whether whole or only in part), the cost of the survey will be for the account of the Buyer.
- 5.5. The findings of the survey will be binding on both Parties and all claims will be settled within 14 (fourteen) days of receipt of the independent inspection authority's survey being presented to the Buyer (or within a reasonable period, thereafter, as mutually agreed between the Delecta sales team and the Buyer, not exceeding 30 (thirty) days). The Parties are expected to agree on a course of action to be taken that will minimize the commercial loss of affected Fruit.

6. TEMPERATURE LOGGERS

- 6.1. Delecta uses a variety of Log tags and temp recorders. If the Buyer requires any equipment or program downloads to report information back to Delecta, please communicate it to the Delecta Logistic Coordinators and Key Account Managers

7. REPACKING OF FRUIT

- 7.1. Should the quality of the affected Fruit be such that the Parties agree to repack the affected Fruit, such repacking shall commence within 24 (twenty-four) hours or as soon as practically possible as mutually agreed between the Parties of the agreement to repack in accordance with the repacking procedure as agreed between parties.
- 7.2. The cost of repacking must be negotiated and agreed to in writing between Delecta and the Buyer before repacking commences. The affected Fruit, once repacked, will be subject to the original purchase price and payment terms agreed to between the Parties before such Fruit was deemed affected Fruit (i.e., the Fruit will then be treated as Fruit that arrived according to the agreed quantity, quality, and specifications).
- 7.3. A final repacking report must be supplied by the Buyer to Delecta within 48 (forty-eight) hours of repacking. Delecta agrees to reimburse the Buyer for the repacking cost, as per the cost agreed to. If cost is higher than those agreed to, Delecta has the right to request copies of the service provider's invoices to prove justification of the higher billing.

8. Force Majeure

- 8.1. "Force Majeure" means war, emergency, accident, fire, earthquake, flood, storm, industrial strike or other impediment which the affected Party proves was beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of this Agreement or to have avoided or overcome it or its consequences.
- 8.2. A Party affected by Force Majeure shall not be deemed to be in breach of this Agreement, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under this Agreement to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Party hereof.

Document Number	2.1	Department	Quality and Product Safety Management System
Document Name	Quality Claim Procedure	Date of Compilation	01.06.2004
Page 6 of 7		Issue Number	17
Approved by	Mari Falck	Revision Date	31.10.2022

- 8.3. If any Force Majeure occurs in relation to either Party which affects or is likely to affect the performance of any of its obligations under this Agreement, it shall notify the other Party of the force majeure event within seven (7) days of the duty affected, and of the expected duration of the event.
- 8.4. If the performance by either Party of any of its obligations under this Agreement is prevented or delayed by Force Majeure for a continuous period more than thirty (30) days, the other Party shall be entitled to terminate this Agreement by giving written notice to the Party affected by the Force Majeure. Such termination shall be without prejudice to the rights of the Parties in respect of any breach of this Agreement occurring prior to such termination.

9. Indemnification and Product Liability

- 9.1. The Buyer shall be liable for, indemnify and hold harmless the Seller, its officers, its employees, and its customers in respect of, any and all claims, demands, damages, injuries, losses, liabilities and/or expenses arising out of or in connection with any fault, negligence, failure and/or omission of the obligations hereunder by the Seller as well as any defect in the Products.
- 9.2. The Buyer shall at its own expense obtain from a reputable insurance company, maintain a product liability insurance to cover reasonably any and all losses, costs, expenses, damages, injuries, claims and/or destructions caused by any defect of the fruit that will lead to human sickness or death.

By acknowledging that you, as Buyer, have been informed and fully understand this document (as described in clause D of the Introduction and Legal Terminology above), we as Delecta hereby assume that if the requirements are not adhered to, that we will not be held liable for quality claims that do not fall within this given protocol and therefore indemnify ourselves from further financial obligation.

Document Number	2.1	Department	Quality and Product Safety Management System
Document Name	Quality Claim Procedure	Date of Compilation	01.06.2004
Page 7 of 7		Issue Number	17
Approved by	Mari Falck	Revision Date	31.10.2022