

PRUNE RESERVE/SURPLUS TONNAGE SALES AGREEMENT FOR ANIMAL FEED
COVERING SALES OF RESERVE DRIED PRUNES UNDER
FEDERAL MARKETING ORDER NO. 993

No. _____

_____, hereinafter called the Buyer, has bought, and Prune Marketing Committee, hereinafter called the Seller, has sold _____ tons, more or less, Reserve Prunes subject to the terms and conditions hereinafter set forth, including paragraph 9 through 20 on pages 2 and 3 attached hereto and made a part hereof.

1. DESCRIPTION

2. UNIT OR CONTAINER

3. QUANTITY

4. PRICE PER TON

5. DELIVERY F.O.B./END USER

6. TIME OF DELIVERY

7. FOR

8. The Buyer agrees that the prunes purchased herein shall be used for animal feed and for that purpose only and that they will be so used on or before _____.

Dated _____

(Buyer)

Prune Marketing Committee
(Seller)

Signature _____

Signature _____

IMPORTANT NOTICE

The issuance of a false certificate knowing it to be false is a violation of Title 18, Section 1001 of the United States Code, which provides a penalty of a fine of not more than \$10,000 or imprisonment of not more than 5 years or both.

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0178. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

9. The buyer agrees that he will not resell the prunes purchased hereunder except in the form of animal feed as described in Paragraph 7 hereof.
10. The Buyer agrees to hold these prunes, or cause them to be held, separate and apart from any other prunes prior to their conversion to animal feed in the manner prescribed in Paragraph 7. The Buyer further agrees that these prunes may not be held and stored at any place other than that specified for delivery in Paragraph 7 without the written permission of the Seller.
11. The Buyer shall furnish to the Seller an affidavit within 10 days after the first of each month of the quantity of prunes converted during the preceding month to the animal feed prescribed in Paragraph 7 hereof.
12. Payment by the Buyer shall be made in cash upon tender of delivery by the Seller, as invoiced by the Seller.
13. Any inspection of the goods by the Buyer shall be made at the time and point of delivery and upon acceptance of delivery by the Buyer, the Seller shall be deemed to have performed his obligations under this agreement with respect to the goods delivered or tendered.
14. The goods are at the risk of the Buyer from the time the Seller delivers them at F.O.B. point to the Buyer or his order.
15. This contract shall be deemed separable as to all goods sold hereunder, and the Buyer may not refuse to receive any lot or portion of the goods tendered hereunder for failure of any other lot or portion previously tendered to comply with the terms of this agreement.
16. (a) If the operations of the Seller shall be prevented or materially interfered with by exercise of Government authority or by embargo, civil uprising, fire, strikes, or any other condition beyond the control of the Seller, the Seller shall be excused from performance hereunder to such extent as such conditions prevent or interfere with performance hereunder.

(b) Should the Seller be obstructed or delayed in the performance of any part of his contract by any of the causes mentioned in the preceding subparagraph, then if the Seller, prior to the expiration of the time fixed herein for delivery, notifies the Buyer of the Seller's willingness to proceed with performance upon the cessation of such cause, the time of performance shall be extended with the consent of the Buyer for a period equivalent to that during which performance was obstructed or delayed, and delivery during such extended period shall be deemed to be in conformity with the requirements of the agreement, and the terms specified in Paragraph 8 hereof for use by the Buyer shall be extended by the same period of time.

(c) If the Buyer fails to take delivery of prunes pursuant to this agreement, he shall be liable for damages, including any expenses incurred by the Seller because of such failure, unless the Buyer 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 Buyer.
17. (a) The Buyer agrees that the Seller and the Secretary, or any person designated by said Secretary shall have access to his plant and buildings, or to any plant or building where the dried prunes purchased hereunder are stored or used (whether still owned by Buyer or not) for the purpose of verifying the manner of their storage or use.

(b) The Buyer agrees to permit access, during the usual hours of business, to all his books and records, to the Seller and the Secretary of Agriculture or any person designated by said Secretary for the purpose of ascertaining whether the dried prunes purchased hereunder are being properly stored and used in accordance with this agreement and will keep such books and records available for examination for a period of two years from the date of use designated in Paragraph 8 hereof.
18. It is understood and agreed that if the dried prunes are used other than as prescribed in this contract, serious and substantial damage will be sustained by the Seller, the Prune Industry, and the prune marketing program. Since it will be difficult, if not impossible, to prove the full amount of such damages, the Buyer shall pay to the Seller, by way of compensation and not as a penalty, liquidated damages as follows:

(a) At the rate of Three Hundred Dollars (\$300.00) per ton for any dried prunes which are used other than as specified in Paragraph 8 of this contract, or are sold or otherwise permitted to enter channels of trade for human consumption; or for any dried prunes which are not used as specified within the time prescribed in Paragraph 8 of this contract, unless such time is extended in writing by the Seller.
19. It is further agreed that the provision for liquidated damages shall not preclude Seller from using any and all legal remedies available to him to enforce the terms and conditions of this contract.
20. This contract shall not be assignable without the written consent of the Seller, subject to such amendment to this contract as may be necessary.