

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

\_\_\_\_\_ (Buyer), has bought, and the Prune Marketing Committee (Committee or Seller) has sold \_\_\_\_\_ tons, more or less, of 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 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 \_\_\_\_\_, 20\_\_.

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 or imprisonment, or both.

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9. 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. Buyer agrees to hold these prunes, or cause them to be held, separate and apart from any others' prunes prior to their conversion to animal feed in the manner prescribed in Paragraph 7. 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 Seller.
11. Buyer shall furnish to 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 Buyer shall be made in cash upon tender of delivery by Seller, as invoiced by Seller.
13. Any inspection of the goods by Buyer shall be made at the time and point of delivery and upon acceptance of delivery by Buyer, 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 Buyer from the time Seller delivers them at F.O.B. point to Buyer or his order.
15. This contract shall be deemed separable as to all goods sold hereunder, and 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 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 Seller, then Seller shall be excused from performance hereunder to such extent as such conditions prevent or interfere with performance hereunder.  
  
(b) Should 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 Seller, prior to the expiration of the time fixed herein for delivery, notifies Buyer of Seller's willingness to proceed with performance upon the cessation of such cause, the time of performance shall be extended with the consent of 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 Buyer shall be extended by the same period of time.  
  
(c) If Buyer fails to take delivery of prunes pursuant to this agreement, he shall be liable for damages, including any expenses incurred by Seller because of such failure, unless 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 Buyer.
17. (a) Buyer agrees that Seller and the Secretary of Agriculture (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) Buyer agrees to permit access, during the usual hours of business, to all his books and records, to Seller and the Secretary 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 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, Buyer shall pay to 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 Agreement, unless such time is extended in writing by 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 Seller, subject to such amendment to this contract as may be necessary.