

2002 ALMOND PURCHASE AGREEMENT

BETWEEN

ALMOND MANAGEMENT PTY LTD

TIMBERCORP LIMITED

TIMBERCORP SECURITIES LIMITED

THIS AGREEMENT is made the 23rd day of June, 2008

BETWEEN:

ALMOND MANAGEMENT PTY LTD ACN 094 429 419 of Level 8, 461 Bourke Street, Melbourne, Victoria (Supplier)

TIMBERCORP LIMITED ACN 055 185 067 of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (Buyer)

TIMBERCORP SECURITIES LIMITED ACN 092 311 469 of Level 8, 461 Bourke Street, Melbourne, Victoria 3000 (TSL)

RECITALS:

- A. TSL is the Responsible Entity of the Project.
- B. The Supplier is the manager of the Project and as is authorised by TSL to market and sell the Almonds on behalf of Growers;
- C. This document records the terms and conditions agreed by the Supplier to the Buyer in relation to the sale and purchase of the Specified Quantity of the Almonds.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

Agreement means the agreement constituted by this document including the schedule.

Agency Account has the meaning given in the Constitution.

Almonds means the Almonds grown in the Almond Orchard.

Almond Orchard means the almond orchard operated by TSL pursuant to the Project.

Business Day means a day that is not a Saturday or Sunday or public holiday in Victoria.

Constitution means the Constitution of the Project.

Effective Date means 23 June 2008.

Force Majeure includes fires, floods, earthquakes, storms and other disturbances caused by the elements, strikes, lockouts, riots, explosions, governmental action, acts of God, insurrection, war, inability through no fault of a party to obtain any licence or permit without which, any obligation under this Agreement, is unable to be satisfied, and any other cause whether of the kind specifically enumerated above or otherwise which is not within the reasonable control of a party except that the expression **Force Majeure** does not include the inability of a party, for whatever reason, to pay money it is obliged to pay.

Growers has the meaning given to that term in the Constitution of the Project.

GST refers to the goods and services tax under the GST Act (and includes all tax in the nature of a consumption tax, value added tax or other like tax).

GST Act means the *A New Tax System (Goods & Services Tax) Act 1999*, as amended.

Minimum Acceptable Standards means the minimum acceptable standards in respect of the Almonds and as set out in Item 4 of the Schedule.

On-sale means the sale to a third party of the Almonds purchased by the Buyer from the Supplier under this Agreement;

Overs means the amount (if any) by which the sale price received under an On-sale exceeds the Provisional Price, after deducting any marketing, handling or other charges properly and reasonably incurred in relation to the On-sale.

Party means a party to this Agreement, and **Parties** has a corresponding meaning.

Product means products that include or incorporate the Almonds.

Production Year means the year in which the Almonds were produced as specified in column 1 of Item 1 of the Schedule.

Project means the 2002 Timbercorp Almond Project ARSN 099 611 935.

Provisional Price means the total of the sums stated in Column 3 of Item 1 of the Schedule.

Purchase Price means the price stated in or calculated in accordance with Item 3 of the Schedule.

Specified Quantity means the quantity of Almonds specified in column 2 of Item 1 of the Schedule that is produced in the Production Year.

Unders means the amount (if any) by which the sale price received under an On-sale is less than the Provisional Price, after deducting any marketing, handling or other charges properly and reasonably incurred in relation to the On-sale.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) headings are for convenience only and do not affect its interpretation;
- (b) an obligation or liability assumed by, or a right conferred on, two or more Parties binds or benefits all of them jointly and each of them severally;

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- (c) the expression **person** includes an individual, the estate of an individual, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation;
 - (e) a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
 - (g) words importing the singular include the plural (and vice versa) and words indicating a gender include every other gender;
 - (h) reference to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Agreement and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
 - (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
 - (j) a reference to **\$** or **dollar** is to Australian currency.

2. PURCHASE AND SALE OF SPECIFIED QUANTITY

The Supplier shall sell to the Buyer, and the Buyer shall purchase from the Supplier, the Specified Quantity of Almonds for the Purchase Price, upon and subject to the terms and conditions contained in this Agreement.

3. PAYMENT OF PURCHASE PRICE

3.1 Provisional Price

On the Effective Date the Buyer shall pay the Provisional Price to or as directed by the Seller.

3.2 Overs and Unders

Upon receipt of the proceeds of sale under the On-sale of the Almonds:

- (a) the Buyer will pay the Overs, if any, to the Supplier in accordance with Clause 8.1(c) i, or;
- (b) the Supplier will pay the Unders to the Buyer in accordance with Clause 8.1(c) ii;

as the case may be.

4. DELIVERY OF SPECIFIED QUANTITY

4.1 Delivery

Subject to clause 4.2, delivery of the Specified Quantity of Almonds will be effected in accordance with the provisions of Item 2 of the Schedule and, except as provided in clauses 4.3 and 5.2, the Buyer shall be obliged to accept delivery of all of the Almonds.

4.2 Suspension of Delivery

The Seller is under no obligation to effect delivery of Almonds to the Buyer if the Buyer fails to make any payment which is due and payable under this Agreement.

4.3 Failure to Deliver Specified Quantity

In the event the Supplier fails to deliver the whole of the Specified Quantity of Almonds in accordance with the agreed schedule for delivery or at all, the Buyer, without limiting any of its other rights and remedies hereunder, may in respect of the quantity not so delivered (**Delivery Shortfall**):

- (a) require the Supplier to supply and deliver the Delivery Shortfall at a later date to be specified, or at the Buyer's discretion;
- (b) reduce the Specified Quantity to be supplied and purchased under this Agreement by the amount of the Delivery Shortfall and require the Supplier to repay a corresponding pro rata proportion of the Provisional Price.

5. QUALITY OF PRODUCT

5.1 Almonds to be of Acceptable Quality

The Almonds must comply with the Minimum Acceptable Standards.

5.2 Non-Compliance with Minimum Acceptable Standards

Almonds that do not comply with the Minimum Acceptable Standards may be rejected by the Buyer.

6. PASSING OF RISK

Risk in the Almonds shall pass to the Buyer upon the Buyer (or its agent acting in that capacity) taking delivery of the Almonds.

7. PASSING OF TITLE

7.1 Retention of Title

Notwithstanding clause 6, title to and property in the Almonds shall pass to the Buyer:

- (a) upon receipt in full of the Purchase Price by the Supplier in cleared funds or,
- (b) in the event that the Almonds are On-sold by the Supplier as agent of the Buyer pursuant to Clause 9, immediately prior to the passing of title under the terms of the On-sale transaction.

7.2 Buyer's covenants

Prior to the passing of title in accordance with clause 7.1, if the Buyer takes possession of the Almonds under this Agreement:

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- (a) the Buyer holds the Almonds as bailee for the Supplier;
 - (b) title to and property in the Almonds remains with the Supplier despite any further processing of the Almonds or the mixing of the Almonds with other Almonds or the use or incorporation of the Almonds in any Products;
 - (c) the Buyer must ensure (where practicable) that:
 - (i) the Almonds are clearly identifiable at all times as belonging to the Supplier;
 - (ii) the Almonds and all Products are stored in a specifically designated and clearly identifiable storage area at the Buyer's premises; and
 - (iii) the Almonds and Products are stored separately by the Buyer at the Buyer's premises;
 - (d) the Buyer agrees that the Supplier may, at any time when there are moneys outstanding to the Supplier, on one Business Day's notice, enter on to the Buyer's premises for the purpose of inspecting the Almonds and Products stored at the Buyer's premises;
 - (e) upon default by the Buyer under this Agreement, the Supplier may, without the necessity for any notice, do either or both of the following:
 - (i) repossess the Almonds and, if necessary, enter on to the Buyer's premises for the purpose of repossession of the Almonds whether or not the Almonds are stored separately or in any Product; and
 - (ii) resell any of the Almonds,

provided that the right of the Supplier to repossess and resell any quantity of the Almonds applies despite any period of credit extended to the Buyer by the Supplier and termination or suspension of this Agreement; and
 - (f) any sale of the Almonds whether separately or in combination with any other Almonds or Products by the Buyer to a third party is effected as bailee for the Supplier and the proceeds of such sale and the rights against customers arising from such sales will be held on trust for the Supplier. The proceeds of such sales must be held in a separate account, or otherwise clearly identified in the books and records of the Buyer.

8. ON-SALE OF ALMONDS AND SALES AGENCY

8.1 Supplier May Act as Buyer's Sales Agent

- (a) The Supplier may (either directly or through the Supplier's contractors or agents) solicit offers from third parties to purchase any or all of the Almonds that has been purchased by the Buyer under this Agreement and, subject to Clauses 8.1(b) and 8.2, may sell all or any such Almonds to a third party as the sales agent of the Buyer.
- (b) In conducting any On-sale the Supplier must:
 - i. use its best endeavours to maximise returns;
 - ii. act in accordance with the reasonable directions of the Buyer;

- iii. as soon as reasonably practical, calculate and notify the Buyer whether Unders or Overs are required to be paid under this Agreement;
- iv. as soon as reasonably practical, account to the Buyer in respect of the proceeds from the On-sale.

(c) The parties acknowledge and agree that:

- i. any Overs resulting from an On-sale retained or paid into the Agency Account by the Supplier will be deemed to have been a payment by the Buyer to the Supplier under Clause 3.2 (a) and shall be credited as a payment of the balance of the Purchase Price;
- ii. without limiting any other rights or remedies of the Buyer the amount of any Unders resulting from an On-sale is payable to the Buyer from the proceeds of any subsequent sale of Almonds held or deposited in the Agency Account.

8.2 FIFO

Unless otherwise agreed by the parties, the On-sale of the Almonds will be conducted on the basis that Almonds from an earlier Production Year will be sold before Almonds from a later Production Year.

9. TERMINATION

9.1 Termination by Either Party

This Agreement may be terminated immediately by either party giving written notice to the other if the defaulting party:

- (i) commits a serious or persistent breach of any of the provisions of this Agreement; or
- (ii) fails to make any payment which is due and payable under this Agreement within 14 days of receiving notification from the non-defaulting party of default of payment.

9.2 Termination without Prejudice

Termination of this Agreement for any reason whatsoever shall not affect any rights or liabilities of either Party arising before the date of termination.

10. FORCE MAJEURE

10.1 Notice of Force Majeure

If by a Force Majeure any party is rendered unable wholly or in part to carry out its obligations under this Agreement or is delayed in doing so, that party shall within 3 days after the occurrence of the event of a Force Majeure, give notice in writing of it to the other party stating the date of occurrence of the event of Force Majeure and its nature.

10.2 Notice of Termination

A party affected by an event of a Force Majeure shall give notice in writing to the other party of the termination of the circumstances constituting a Force Majeure.

10.3 Removal of Force Majeure

The party claiming a Force Majeure shall use all reasonable efforts to remove the cause of it, except that no party is obliged to settle any strike, lockout or other industrial dispute on terms not acceptable to it.

10.4 Suspension of Obligations

If a Force Majeure substantially prohibits the performance by a party of its obligations under this Agreement within any period specified or implied for those obligations to be performed and notice in writing of the Force Majeure was given as required by subclause 10.1, the period during which those obligations are to be performed is extended for a period equal to the period during which their performance is substantially prohibited as a result of the Force Majeure.

11. GOODS AND SERVICES TAX

- (a) The terms used in this clause 11 have the meanings ascribed to those words in the GST Act.
- (b) If, and to the extent any supply of Almonds under this Agreement is a taxable supply within the meaning of the GST Act, it is agreed by the parties that the price for the supply of Almonds and all other amounts agreed to be paid by the Buyer to the Supplier in respect of the supply, are exclusive of GST.
- (c) In respect of any liability of the Supplier for GST under this Agreement for any consideration for any taxable supplies, the Buyer covenants to pay to the Supplier at the same time as any payment is made involving the Supplier in GST liability, the additional amount of GST together with the payment to which it relates and a failure to pay the same shall represent a breach of the terms of this Agreement.
- (d) The Buyer's liability under subclause (c) is to reimburse the full amount of GST, disregarding and excluding the Supplier's entitlement to input tax credits or other credits or reimbursements for GST.
- (e) In respect of each payment made by the Buyer under subclause (c), the Supplier agrees to deliver to the Buyer, as required under the GST Act, tax invoices in a form which complies with the GST Act, and the regulations made under the GST Act to enable the Buyer to claim input tax credits in respect of the taxable supply. A tax invoice so issued by the Supplier of the amount of the GST will be conclusive as between the Supplier and the Buyer except in the case of manifest error.
- (f) The Buyer:
 - (i) warrants to the Supplier that it is registered for Australian Business Number purposes; and
 - (ii) agrees to indemnify and keep indemnified the Supplier against any loss resulting from the Buyer not being registered for Australian Business Number purposes.

12. FURTHER ASSURANCE

Each Party shall sign, execute and do all deeds, acts, documents and things as may reasonably be required by the other Party to effectively carry out and give effect to the terms and intentions of this Agreement.

13. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the law from time to time in the State of Victoria and the Parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria and the courts which hear appeals therefrom.

14. **COSTS**

14.1 **Stamp Duty**

All stamp duty assessed on or in respect of this Agreement shall be paid by the Parties in equal shares.

15. **MISCELLANEOUS**

15.1 **Severance**

If any provision of this Agreement is invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provision shall be and continue to be valid and forceful in accordance with their terms.

15.2 **Entire Agreement**

This Agreement shall constitute the sole understanding of the Parties with respect to the subject matter and replaces all other agreements with respect thereto.

15.3 **Counterparts**

This Agreement may be executed in any number of counterparts (including by way of facsimile) each of which shall be deemed for all purposes to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

SCHEDULE 1

1. ALMONDS

PRODUCTION YEAR	SPECIFIED QUANTITY	PROVISIONAL PRICE
2008 [pool 1: early]	77,883 kgs	\$421,397.48 (\$5.41/kg)
2008 [pool 2:std]	127,657 kgs	\$690,747.41 (\$5.41/kg)
Total	205,540kgs	\$1,112,144.89

2. DELIVERY

The Almonds are to be made available for collection by the Buyer or its agents at the Supplier's premises or upon such terms as may otherwise be agreed by the Parties.

3. PURCHASE PRICE


The Provisional Price, plus or minus Unders and Overs.


4. MINIMUM ACCEPTABLE STANDARDS

Merchantable quality.


EXECUTED by the Parties as an Agreement.


EXECUTED by **ALMOND MANAGEMENT**)
PTY LTD in accordance with s127 of the)
Corporations Act:)
)

Director 

~~Director~~/Secretary 

EXECUTED by **TIMBERCORP LTD**)
in accordance with s127 of the Corporations)
Act:)
)

Director 

~~Director~~/Secretary 

EXECUTED by **TIMBERCORP SECURITIES**)
LTD in accordance with s127 of the)
Corporations Act:)
)

Director 

~~Director~~/Secretary 