



Tomatoes – Suggested Clauses

ASSOCIATED PRODUCER AGREEMENT

This associated producer agreement shall be reviewed on an annual basis at a meeting called by the processor in advance of negotiations.

The intended minimum annual tonnage purchased by the processor from each of its associated producers must be made known at the time of signing. In the event a processor increases their company base, increases must be made proportionality amongst the producer base.

Where a disagreement arises between a producer and a processor concerning the application of any provision of the associated producer agreement, either party may request in writing a meeting between the producer, the processor and a Farm Products Marketing Commission member in an effort to resolve the dispute. The meeting shall occur within 10 days of the request. Failing a satisfactory resolution, the matter shall be referred to an arbitrator, which shall take place within 21 days. The arbitrator shall be appointed by the FPMC and agreed upon by both parties to negotiation. The arbitrator shall have total discretion in resolving the dispute. The decision shall be final and binding on all parties. All other remedies, including legal action, are hereby waived by the parties.

Relative to Direct Contracting Only

Where a disagreement arises between a producer and a processor regarding the prices to be paid in the associated producer agreement by March 15, the parties must advise the Farm Products Marketing Commission in writing requesting arbitration. The arbitrator shall be appointed by the FPMC and agreed upon by both parties to negotiation. The arbitrator shall have total discretion in resolving the dispute. The decision shall be final and binding on all parties.

Payment Provisions

The processor shall pay to a grower 90% of the full amount of the purchase price due and owing the grower for tomatoes delivered from and including the 1st to the 15th day of any month on the 25th day of that same month, and for tomatoes delivered from and including the 16th day to the last day of the month on the 10th day of the next following month.



General Provisions

All of the negotiated agreements shall contain the following provisions:

- a) Assignment. This Agreement will be binding on and enure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign this Agreement or any of its rights or obligations under it, or delegate the performance of it to a third party, without the prior written consent of the other Party, which consent may be arbitrarily withheld.
- b) Invalidity. Any provision in this Agreement which is held to be illegal or unenforceable shall be ineffective to the extent of such illegality or unenforceability only without invalidating the remaining provisions of this Agreement.
- c) Further Assurances. The Parties shall with reasonable diligence do all things and provide all reasonable cooperation as may be required to complete the sale of the vegetable and all associated work contemplated by this Agreement and each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.
- d) Waiver. No waiver of any provision of this Agreement, including waiver of a breach of this Agreement, shall constitute a waiver of any other provision or breach of this Agreement unless expressly provided otherwise. No waiver shall be binding unless executed in writing.
- e) Time of the Essence. Time shall be of the essence of this Agreement and of every part hereof, and no extension or variation to this Agreement shall operate as a waiver of this provision.
- f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and of Canada including, in particular, the provisions of the Farm Products Marketing Act. Subject to the Dispute Resolution provision of this Agreement, the courts of the Province of Ontario shall have the sole and exclusive jurisdiction to entertain any legal proceedings arising under this Agreement.
- g) Amendment. This Agreement may only be changed by a document in writing signed by both Parties.
- h) Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to its subject-matter and supersedes all other agreements, understandings, representations, warranties, proposals, negotiations and discussions, whether oral or written, of the Parties related thereto.
- i) Notices. All notices to be given under this Agreement shall be in writing and either hand delivered or sent by email to the address of the other Party set out below and shall be deemed to have been received on the date of delivery.

Processor Address:

Grower Address:

- j) Risk of Loss. All risk of loss or damage to the vegetables shall transfer, forthwith, from the Grower to the Processor upon delivery.



ADDITIONAL SUGGESTIONS FOR CLAUSES DURING NEGOTIATIONS

Acreage Measurement

As a condition of contract, the processor shall require that all tomato acreage, from which tomatoes are to be delivered, be measured by an agreed upon independent service provider.

As a condition of contract, the processor agrees to receive tomato tonnage solely from that acreage that was measured by the independent service provider.

An independent service provider will be engaged to act as the independent third party responsible for measuring all tomato acreage in accordance with procedures established through the Ontario Standing Tomato Grading Committee. In the event of a dispute over the measurement, the decision of the independent service provider shall be final.

The cost of third-party acreage measurement shall be approved by the parties to negotiation and be shared equally between the producer and processor on a per acre basis.

Quota

The minimum weekly quota (percentage of contract tonnage delivered) shall be determined by the processors overall company target yield (contract tonnage ÷ acres measured by the independent service provider) in accordance with the following schedule:

<u>TARGET YIELD</u>	<u>QUOTA/WEEK</u>
≤ 32.0 Tons/Acre	16.0%
32.1 to 34.0 Tons/Acre	15.5%
34.1 to 36.0 Tons/Acre	15.0%
36.1 to 37.0 Tons/Acre	14.5%
>37.0 Tons/Acre	14.0%

For the purpose of quota, a week shall start on Sunday and conclude on Saturday. During a period of less than one complete week the processor shall accept a proportionate percentage of the weekly commitment. During pre-peel and post-peel periods, quota will be prorated evenly to reflect plant capacity.

In the event that a processor does not provide quota in any given week, other than for legitimate documentable mechanical failures, the processor shall pay \$5.00 per ton on any undelivered quota to each producer during that specific week.

Grading

The provisions of the Farm Products Grades and Sales Act and the regulations thereunder respecting grades and grading of tomatoes shall apply to every contract for the purchase and sale of tomatoes.

All tomatoes for processing shall be graded by an agreed upon independent service provider in accordance with the grade option contracted by the processor.

All grading related activity shall be carried out in accordance with procedures developed by the Standing Tomato Grading Committee and set out in the Tomato Grading Manual.



The cost of grading shall be approved by the parties to negotiation and be shared equally between the producer and processor on a per ton basis.

In the event of a dispute between a processor and a producer as to the original grade determination, the matter shall be referred to a supervisor designated by the independent service provider. The supervisor shall deal with the matter in dispute following the procedures outlined in the Tomato Grading Manual.

Crop Insurance

The processor is responsible to remit crop insurance premiums on the producers' behalf to Agricorp by the established premium deadline of September 15th contingent on Agricorp providing the premium invoice for all contracts to the processor by September 1st.

Research

The Ontario Tomato Research Institute (OTRI) has approved the research funding for 2020 and will revisit future funding and possible contribution on an annual basis.

General

Any other charges, costs or expenses with respect to the production and marketing of tomatoes shall be approved by the parties to negotiation and be contained in the annual agreement.



Carrots - Suggested Clauses

ASSOCIATED PRODUCER AGREEMENT

This associated producer agreement shall be reviewed on an annual basis at a meeting called by the processor in advance of negotiations.

The minimum annual tonnage purchased by the processor from each of its associated producers must be increased by the same percentage.

Where a disagreement arises between a producer and a processor concerning the application of any provision of the associated producer agreement, either party may request in writing a meeting between the producer, the processor and a Farm Products Marketing Commission member in an effort to resolve the dispute. The meeting shall occur within 10 days of the request. Failing a satisfactory resolution, the matter shall be referred to an arbitrator, which shall take place within 21 days. The arbitrator shall be appointed by the FPMC and agreed upon by both parties to negotiation. The arbitrator shall have total discretion in resolving the dispute. The decision shall be final and binding on all parties. All other remedies, including legal action, are hereby waived by the parties.

Payment Provisions

The processor shall pay to the grower the full amount of the purchase price due and owing the grower for carrots delivered from and including the 1st to the 15th day of any month on the thirtieth day of that same month and for carrots delivered from and including the 16th day to the last day of the month on the fifteenth day of the next month following.

Relative to Direct Contracting Only

Where a disagreement arises between a producer and a processor regarding the prices to be paid in the associated producer agreement by March 21, the parties must advise the Farm Products Marketing Commission in writing requesting arbitration. The arbitrator shall be appointed by the FPMC and agreed upon by both parties to negotiation. The arbitrator shall have total discretion in resolving the dispute. The decision shall be final and binding on all parties.



General Provisions

All of the negotiated agreements shall contain the following provisions:

- a) Assignment. This Agreement will be binding on and enure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign this Agreement or any of its rights or obligations under it, or delegate the performance of it to a third party, without the prior written consent of the other Party, which consent may be arbitrarily withheld.
- b) Invalidity. Any provision in this Agreement which is held to be illegal or unenforceable shall be ineffective to the extent of such illegality or unenforceability only without invalidating the remaining provisions of this Agreement.
- c) Further Assurances. The Parties shall with reasonable diligence do all things and provide all reasonable cooperation as may be required to complete the sale of the vegetable and all associated work contemplated by this Agreement and each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.
- d) Waiver. No waiver of any provision of this Agreement, including waiver of a breach of this Agreement, shall constitute a waiver of any other provision or breach of this Agreement unless expressly provided otherwise. No waiver shall be binding unless executed in writing.
- e) Time of the Essence. Time shall be of the essence of this Agreement and of every part hereof, and no extension or variation to this Agreement shall operate as a waiver of this provision.
- f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and of Canada including, in particular, the provisions of the Farm Products Marketing Act. Subject to the Dispute Resolution provision of this Agreement, the courts of the Province of Ontario shall have the sole and exclusive jurisdiction to entertain any legal proceedings arising under this Agreement.
- g) Amendment. This Agreement may only be changed by a document in writing signed by both Parties.
- h) Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to its subject-matter and supersedes all other agreements, understandings, representations, warranties, proposals, negotiations and discussions, whether oral or written, of the Parties related thereto.
- i) Notices. All notices to be given under this Agreement shall be in writing and either hand delivered or sent by email to the address of the other Party set out below and shall be deemed to have been received on the date of delivery.

Processor Address:

Grower Address:

- j) Risk of Loss. All risk of loss or damage to the vegetables shall transfer, forthwith, from the Grower to the Processor upon delivery.



ADDITIONAL SUGGESTIONS FOR CLAUSES DURING NEGOTIATIONS

Grading

All carrots for processing may be graded by the processor by taking a random 100 lb. sample in accordance with the following sampling procedures.

Bulk Delivery

Yuba City Sampler: Minimum of two probes is to be taken from each load. Location of each probe to be selected using bulk load sample chart supplied by Upgrade Consulting Ltd. Damage caused by the probe procedure shall not be included as tare.

Manual Sampling: A minimum of four random samples using bulk load sample chart supplied by Upgrade Consulting Ltd.

In the event of a dispute between a processor and a producer as to the original grade determination, an appeal may be made by either party to an agreed upon independent third party who shall review the matter in dispute and make a decision respecting such grade, which shall be final.

The cost of conducting the appeal shall be paid 50% by the producer and 50% by the processor.

Reasons for Non-Fulfillment

Where the processor is unable to receive and accept carrots for processing, the processor shall notify the producer in writing and shall make payment at the rate of \$_____/ton for each dicer ton so affected and \$_____/ton for each slicer ton so affected.

Carrot Licensing

Every processor of carrots shall complete and file with the Board a Contract Schedule for Carrots in Form C-1 together with a true copy of each Contract for the marketing of carrots between the processor and each producer on or before the 15th day of May in each year.

No producer of carrots shall produce or market in excess of 120% of the carrots specified in Form C-1 unless and until the producer has filed a Form C-2 signed by both the producer and processor and the Board has accepted and deemed that producer to be the holder of a licence on such terms and conditions as the Board may determine.

A producer who was not named on a Form C-1 filed with the Board under paragraph 15.1 may, upon application in Form C-3 signed by the producer and the processor specifying the quantity of carrots to be marketed, upon acceptance by the Board deemed to be the holder of a licence to do so on such terms and conditions as the Board determines.

General

Any other charges, costs or expenses with respect to the production and marketing of carrots shall be approved by the parties to negotiation and be contained in the annual agreement.