FRESH PRODUCE CLAUSES NO.2
(Temperature Fluctuation)

RISKS COVERED

Risks

1. Subject to the insured produce being in sound condition at the time of attachment of the risk, this insurance covers, except as provided in Clauses 4, 5, 6 and 7 below,

1.1 all risks of loss of or damage to the produce insured

1.2 loss of or damage to the produce insured clearly attributable to variation of temperature, breakdown, malfunction, defective condition or mismanagement of the refrigeration machinery

whichever, shall arise within the duration of this insurance.

General Average

2. This insurance covers general average and salvage charges, adjusted or determined according to the contract of carriage and/or the governing law and practice, incurred to avoid or in connection with the avoidance of loss from any cause except those excluded in Clause 4, 5, 6 and 7 below.

Both to Blame Collision Clause”

3. This insurance indemnifies the Assured, in respect of any risk insured herein, against liability incurred under any Both to Blame Collision Clause in the contract of carriage. In the event of any claim by carriers under the said Clause, the Assured agrees to notify the Insurers who shall have the right, at their own cost and expense, to defend the Assured against such claim

EXCLUSIONS

4. In no case shall this insurance cover

4.1 the produce insured if it is not current season crop

4.2 any shipment to Europe, USA or Canada that fails to meet the standards described in the Commonwealth Export Control (Fresh Fruit and Vegetable) Orders

4.3 loss damage or expense attributable to wilful misconduct of the Assured

4.4 ordinary loss in weight or volume of the produce insured

4.5 loss damage or expense caused by insufficiency or unsuitability of packing or preparation of the produce insured to withstand the ordinary incidents of the insured transit where such packing or preparation is carried out by the Assured or their employees or prior to the attachment of this insurance (for the purpose of these Clauses “packing” shall be deemed to include stowage in a container and ”employees” shall not include independent contractors

4.6 claims arising from loss of market (unless caused by downgrading of the produce attributable to a risk defined in Clause 1 above)

4.7 loss damage or expense caused by inherent vice or nature of the produce insured

4.8 loss damage or expense due to fumigation treatment of the produce insured

4.9 rejection, embargo, refusal of entry by any Government Department or agency of the importing country (but this exclusion 4.9 shall not apply to any rejection or refusal of entry caused by a risk detailed in Clause 1 above)

4.10 loss damage or expense caused by delay, even though the delay be caused by a risk insured against (except expenses payable under Clause 2 above)

4.11 misdescription of the produce insured. (but only where the misdescription in any way contributes to the loss or damage).

4.12 loss damage or expense caused by insolvency or financial default of the owners managers charterers or operators of the vessel where, at the time of loading of the produce insured on board the vessel the Assured are aware, or in the ordinary course of business should be aware, that such insolvency or financial default could prevent the normal prosecution of the voyage. This exclusion shall not apply where the contract of insurance has been assigned to the party claiming hereunder who has bought or agreed to buy the produce insured in good faith under a binding contract

4.13 Loss damage or expense arising from the use of any weapon of war employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter

4.14 loss damage or expense arising from any failure of the Insured and/or consignee or their servants to take all reasonable precautions to ensure the produce insured is kept in refrigerated or, where appropriate in properly insulated and cooled space at the optimum temperature

4.15 any loss or damage or expense otherwise recoverable hereunder unless prompt notice thereof is given to the Insurers claims survey representative nominated in the Insurance Certificate, and in any event, no later than 48 hours after the produce becoming available to the Insured’s Agent or Consignee.

4.16 loss damage or expense directly or indirectly caused by or arising from the use of any weapon or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter.

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5. 5.1 In no case shall this insurance cover loss damage or expense arising from

5.1.1 unseaworthiness of vessel or craft or unfitness of vessel or craft for the safe carriage of the produce insured, where the Assured are privy to such unseaworthiness or unfitness, at the time the produce insured is loaded therein

5.1.2 unfitness of container or conveyance for safe carriage of the produce insured where loading therein or thereon is carried out prior to attachment of this insurance or by the Assured or their employees and they are privy to such unfitness at the time of loading

5.2 Exclusion 5.1.1 above shall not apply where the contract of insurance has been assigned to the party claiming claiming hereunder who has bought or agreed to buy the produce insured in good faith under a binding contract.

5.3 The Insurers waive any breach of the implied warranties of seaworthiness of the ship and unfitness of the ship to carry the produce insured to destination.

6. In no case shall this insurance cover loss, damage or expense caused by

6.1 war civil war revolution rebellion insurrection, or civil strife arising therefrom, or any hostile act by or against a belligerent power

6.2 capture seizure arrest restraint or detainment (piracy excepted), and the consequences thereof or any attempt thereat

6.3 derelict mines, torpedoes bombs or other derelict weapons of war.

7. In no case shall this insurance cover loss damage or expense

7.1 caused by strikes, locked-out workmen, or persons taking part in labour disturbances, riots or civil commotions

7.2 resulting from strikes, lock-outs, labour disturbances, riots or civil commotions

7.3 caused by an act of terrorism being an act of any person acting on behalf of, or in connection with, any organisation which carries out activities directed towards overthrowing or influencing, by force or violence of any government whether or not legally constituted

7.4 caused by any person acting from political, ideological motive.

CONDITIONS OF LIMITATIONS TO COVER

8. It is a condition of this insurance cover

8.1 each shipping container (or vessel hold, if applicable)) shall contain an approved operational digital temperature recording logger located in accordance with customary market practices.

8.2 Where the Assured their agent or consignee fails to surrender the logger and/or graph in support of a claim cover will be limited to current Institute Cargo Clauses (C) 1/1/09.

DURATION

<u>Transit Clause</u>

9. 9.1 Subject to Clause 17 below, this insurance attaches from the time the produce is first moved in the cool-store or at the place of storage (at the place named in the contract of insurance) for the purpose of the immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit,

continues during the ordinary course of transit

and terminates either

9.1.1 on completion of unloading from the carrying vehicle or other conveyance in or at the final cool-store or place of storage at the destination named in the contract of insurance

9.1.2 on completion of unloading from the carrying vehicle or other conveyance in or at any other cool-store or place of storage, whether prior to or at the destination named in the contract of insurance, which the Assured or their employees elect to use either for storage other than in the ordinary course of transit or for allocation or distribution, or

9.1.3 when the Assured or their employees elect to use any carrying vehicle or other conveyance or any container for storage other than in the ordinary course of transit or

9.1.4 on the expiry of five (5) working days after completion of discharge overside of the produce insured from the overseas vessel at the port of discharge.

9.2 If, after discharge overside from the overseas vessel at the final port of discharge, but prior to termination of this insurance, the produce insured is to be forwarded to a destination other than that to which it is insured this insurance, whilst remaining subject to termination as provided in Clauses 9.1.1 to 9.1.4 above shall not extend beyond the time the produce insured is first moved for the purpose of commencement of transit to such other destination.

9.3 This insurance shall remain in force (subject to the termination as provided for in Clauses 9.1.1 to 9.1.4 above and to the provisions of Clause 10 below) during delay beyond the control of the Assured and the consignee, any deviation, forced discharge, reshipment or transhipment and during any variation of the adventure arising from the exercise of a liberty granted to carriers under the contract of carriage.

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Termination of Contract of Carriage

10. If owing to circumstances beyond the control of the Assured either the contract of carriage is terminated at a port or place other than the destination named therein or the transit is otherwise terminated before unloading of the produce insured as provided for in Clause 9 above, then this insurance shall also terminate unless prompt notice is given to Insurers and continuation of cover is requested when this insurance shall remain in force, subject to an additional premium if required by the Insurers, either

10.1 until the produce insured is sold and delivered at such port or place, or unless otherwise specially agreed until the expiry of 5 working days after completion of discharge from the overseas vessel, whichever shall first occur?

or

10.2 if the produce insured is forwarded within the said period of 5 days working days (or any agreed extension thereof) to the destination named in the contract of insurance or to any other destination, until terminated in accordance with the provisions of clause 9 above.

Change of Voyage

11. 11.1 Where, after attachment of this insurance, the destination is changed by the Assured, this must be notified promptly to Insurers for rates and terms to be agreed. Should a loss occur prior to such agreement being obtained cover may be provided but only if cover would have been available at a reasonable commercial market rate on reasonable market terms.

11.2 Where the produce insured commences the transit contemplated by this insurance (in accordance with Clause 9.1), but, without the knowledge of the Assured or their employees the ship sails for another destination, this insurance will nevertheless be deemed to have attached at the commencement of such transit.

BASIS OF VALUATION

12. Claims payable under this insurance shall be settled by using the appropriate basis of valuation as described hereunder.

12.1 C.I.F Sales – the amount recoverable is the result of applying the rate of depreciation to the cost, insurance and freight value plus any applicable agreed loading of each container, or as otherwise agreed by Assurers.

12.2 Consignment Sales – the amount recoverable is the result of applying the rate of depreciation to the

12.2.1	Average Market Value	)
Or		) of the grade of fruit, based on the price obtained for
12.2.2	Sound Market Value	) equivalent grades at the intended destination, 5 working
Or		) days after completion of discharge from the overseas vessel
12.2.3	The Sum Insured	)

whichever is the lesser, less commissions and any other amounts that normally deducted when produce arrives in a sound condition?

12.3 In the event of non-arrival of whole or part of the produce insured at the destination shown in the contract of Insurance, claims will be settled in accordance with the sum insured or the average market value operating at the time, whichever is the lesser, when the produce insured had been scheduled to arrive at such destination.

REPACKING

13. 13.1 Where the loss and/or damage exceeds the deductible in 14.1 below then reasonable cost of repacking, up to a limit of AUD2.00 per carton/bag, are recoverable under this policy, provided such costs are approved by Insurers claim survey representative.

13.2 Any repacking must be agreed by Assurers claim survey representative nominated in the contract of Insurance,

Subject to the policy deductible, we will pay:

13.2.1 for produce repacked to its original grade, cost of repacking only

13.2.2 for produce repacked to a lesser grade, the cost of repacking plus the depreciation agreed with Assurers claim survey representative.

DEDUCTIBLE

14. 14.1 Claims for loss and/or damage shall be subject to the deductible shown in the contract of insurance and shall be applied against the sum insured for each container.

14.2 When the loss and/or damage does not exceed the policy deductible in 14.1 above the costs of repacking are to be borne by the Insured.

14.3 notwithstanding the provisions of 14.1 claims recoverable under Institute Cargo Clauses (C) 1/1/09 are payable in full without deduction.

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WAR & STRIKES

15. This insurance is extended to cover War Risks in the terms of the Institute War Clauses (Cargo) 1/1/09 with Exclusions Clause 3 deleted, and replaced by Exclusions Clause 4 of this Fresh Produce Clause No.2.

16. This insurance is extended to cover Strikes Risks in the terms of the Institute Strikes Clauses (Cargo) 1/1/09 with

16.1 Exclusions Clause 3 deleted, and replaced by Exclusions Clause 4 of this Fresh Produce Clause No.2, and

16.2 the Duration Clause 5 deleted, and replaced by Duration clause 8, 9, and 10 of this Fresh Produce Clause No.2

16.3 Wherever the words "thirty (30) days" appears in Clause 5, the Termination of Contract of Carriage Clause, they are deleted and replaced by the words "fifteen (15) days".

CLAIMS

Insurable Interest

17. 17.1 In order to recover under this insurance the Assured must have an insurable interest in the produce insured at the time of the loss.

17.2 Subject to Clause 17.1 above, the Assured shall be entitled to recover for insured loss occurring during the period covered by this insurance, notwithstanding that the loss occurred before the contract of insurance was concluded, unless the Assured were aware of the loss and the Insurers were not.

Claim Procedures

18. It is a condition of this insurance the claim and loss demonstration procedures annexed herein must be advised to all claimants by the Assured, and at all times complied with.

Forwarding Charges

19. Where, as a result of the operation of a risk covered by this insurance, the insured transit is terminated at a port or place other than that to which the produce insured is covered under this insurance, the Insurers will reimburse the Assured for any extra charges properly and reasonably incurred in unloading storing and forwarding the produce Insured to the destination to which it is insured.

This Clause 19, which does not apply to general average or salvage charges, shall be subject to the exclusions Contained in Clause 4, 5, 6, and 7 above and shall not include charges arising from the fault negligence insolvency or financial default of the Assured or their employees.

Constructive Total Loss

20. No claim for Constructive Total Loss shall be recoverable hereunder unless the produce insured is reasonably abandoned either on account of its actual total loss appearing to be unavoidable or because the cost of recovering, reconditioning and forwarding the produce to the destination to which it is insured would exceed its value on arrival.

Increased Value

21. 21.1 If any Increased Value insurance is affected by the Assured on the produce insured under this insurance the agreed value of the produce insured shall be deemed to be increased to the total amount insured under this insurance and all Increased Value insurance covering the loss, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of a claim, the Assured shall provide the Insurer with evidence of the amounts insured under all other insurances.

21.2 Where this insurance is on Increased Value the following clause shall apply:
The agreed value of the produce insured shall be deemed to be equal to the total amount insured under the primary insurance and all Increased Value insurances covering the loss and effected on the produce insured by the Assured, and liability under this insurance shall be in such proportion as the sum insured under this insurance bears to such total amount insured.

In the event of a claim, the Assured shall provide the Insurers with evidence of the amounts insured under all other insurances.

BENEFIT OF INSURANCE

22. This insurance

22.1 covers the Assured which includes the person claiming indemnity either as the person by or on those Behalf the contract of Insurance was effected or as assignee,

22.2 shall not extend to or otherwise benefit the carrier or other bailee

(Continued)

MINIMISING LOSSES

Duty of Assured

23. It is the duty of theAssured, consignee and their servants and agents in respect of a loss recoverable hereunder

23.1 to take such measures as may be reasonable for the purpose of averting or minimising such loss, and

23.2 to ensure that all rights against carriers, bailees or other third parties are properly preserved and exercised and the Insurer will, in addition to any loss recoverable hereunder reimburse the Insured for any charges properly and reasonably incurred in pursuance of these duties.

Waiver

24. Measures taken the Assured or the Insurers with the object of saving, protecting or recovering the produce insured shall not be considered as a waiver or acceptance of abandonment or otherwise prejudice the rights of either party.

AVOIDANCE OF DELAY

25. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

LAW AND PRACTICE

26. This insurance is subject to Australian law and practice.

Note: - Where a continuation of cover is requested under Clause 10, or a change in destination is notified under Clause 11, there is an obligation to give prompt notice to the Insurers and the right to such cover is dependent upon compliance with this obligation