



OFFTAKE AGREEMENT BETWEEN A **HORTICULTURE PRODUCER AND TRADER**

NOTE: The Namibian Agronomic Board (NAB) has prepared this offtake agreement template for voluntary use by horticulture Producers and traders in Namibia, in terms of section 10(1)(j) of the Agronomic Industry Act No. 20 of 1992. This agreement sets out the best practice approach and covers matters that are required to be included in a Horticulture Offtake Agreement, to promote local sourcing. This offtake Agreement does not cover all the matters that may be relevant to the parties' commercial relationship and further that is the responsibility of the parties to the offtake agreement to ensure that the terms and conditions contained therein are a true and accurate reflection of their intent. The NAB shall under no circumstances whatsoever be held liable for any action and or damages of any kind whatsoever arising from the use of the offtake agreement template.

Table 1: THE PARTIES

TRADER (BUYER)		PRODUCER (FARMER)	
BUSINESS NAME		BUSINESS NAME/ PRODUCER NAME	
NAB REGISTRATION NUMBER		NAB REGISTRATION NUMBER	
POSTAL ADDRESS		POSTAL ADDRESS	
PHYSICAL ADDRESS		PHYSICAL ADDRESS	
TELEPHONE NO		TELEPHONE NO	
CELLPHONE NO		CELLPHONE NO	
EMAIL ADDRESS		EMAIL ADDRESS	
CONTACT PERSON		CONTACT PERSON	

1. AGREEMENT

1.1 For the Term of this agreement, the Producer agrees to deliver, and the Trader agrees to buy, Horticulture Product “Product” as specified in Clause 8 of this Agreement.

2. TERM

2.1. This Agreement will commence on the Start Date and will continue for the Term of the Agreement unless it is terminated earlier per Clause 14.

Table 2: Start and End date of this Agreement.

Event	Date
Start Date	This Agreement will start on: _____
End Date	This Agreement will terminate/ end on: _____

3. PRODUCER’S RESPONSIBILITY

- 3.1 It is the Producer’s responsibility to deliver the required quantity and quality of the product to the Trader, at an agreed price and delivery date, as per Clause 8 of this Agreement.
- 3.2 The Product to be delivered must be packed and marked according to the specification of the Trader, and the Producer should maintain a high level of hygiene and safety of the Product.
- 3.3 The Producer shall invoice the Trader in Namibian Dollars not later than seven (7) Business Days once the Product has either been:
 - a. delivered and accepted by the Producer to the Trader at the physical address specified by the Trader in writing; or
 - b. on collection of the Product by the Trader at the business address of the Producer or any such physical address as the Parties may agree.
- 3.4 All invoices issued by the Producer to the Trader must contain the following information:
 - 3.4.1 Registered business name of the Producer and Trader;

- 3.4.2 Company registration number of the Producer and Trader;
 - 3.4.3 Value-added tax registration number of the Producer and Trader, if registered as a value-added tax vender in accordance with the applicable Law in Namibia;
 - 3.4.4 The registered business address of the Producer and Trader;
 - 3.4.5 Invoice date, description of the Product, and quantity delivered;
 - 3.4.6 Unit price and value of the Product;
 - 3.4.7 Gross invoiced quantity and value; and
 - 3.4.8 The NAB Producer Levy charged.
- 3.5 The invoice should reflect the Producer levy amount to be paid to the NAB, as deducted from the producer's price by Trader and paid over to the NAB.
- 3.6 The output Value Added Tax (VAT) number (015) should reflect on both the Producer and Trader invoice.
- 3.7 The Trader must provide NAB with the levy return which indicates the value of the Products purchased from a Producer, with copies of all the invoices attached.

4. TRADER'S RESPONSIBILITY

- 4.1 The Trader will buy the Products specified under Clause 8 of this agreement, subject to the terms and conditions of this agreement.
- 4.2 During the period the Producer's Products are under the Trader's control, the Trader will exercise all reasonable care and skill in handling and storage to ensure that the product remains of the highest quality possible.
- 4.3 The care and skill the Trader must exercise under Clause 4.2 must be exercised until the ownership of the Product passes to the Trader.
- 4.4 The Trader will supply services or materials to the Producer at a cost or for free, and details are as follows:

Table 3: List and cost of services and materials.

Services/ Materials	Cost (NAD)

- 4.5 The Trader will deduct the Producer's levy from the purchasing price and pay it over to the NAB.
- 4.6 The Trader will report in writing to the NAB the quantity and value of Products purchased from the Producer by completing and submitting the monthly return form.
- 4.7 The Trader must provide the NAB with the levy return in respect of the Product purchaser from the Producer by the Trader in terms of this Agreement.
- 4.8 The Trader shall provide the producer with specific product quality requirement check list as per Table 4.

5. DELIVERY, INSPECTION, AND ACCEPTANCE OF PRODUCT

5.1 DELIVERY

5.1.1 The Producer will be responsible for the delivery of the Product at the following address or location:

Address/ Location

or unless otherwise instructed in writing by the Trader from time to time.

5.1.2 The costs of transportation of the Products to the delivery point shall be paid by the Producer. The Trader shall bear all costs associated with the Products after delivery to the delivery point.

5.1.3 The Producer shall be responsible for loading the Products. The Trader shall be responsible for unloading the Products.

5.1.4 The Trader shall maintain the delivery point in a reasonable state of cleanliness and hygiene.

5.1.5 The Trader will provide secure and suitable off-loading facilities at the premises to facilitate the safe and timely off-loading of the Products.

5.1.6 The Products shall be prepared for collection by the Producer and packaged according to the requirements provided by the Trader.

5.1.7 Any containers provided by the Producer for packaging the Product shall be borne by the Producer, and the type and cost of such containers shall be specified under Clause 4 of this Agreement.

5.1.8 The Producer / Trader has the responsibility to ensure that any vehicle/ truck used in the transportation of the Products is fit to carry fresh Fruits and Vegetables for human consumption.

5.1.9 In cases where a Producer is delivering, the Trader shall have the discretion to determine the fitness of the delivery vehicle/ truck and shall have the right to reject any delivery made through an unfit truck or vehicle.

5.1.10 Any additional transport costs arising from the rejection of any vehicle/ truck carrying the Products shall be the liability of the Producer.

5.1.11 The Producer will issue with each delivery, an invoice/ statement and a delivery note as evidence of delivery, listing the quantity, value, and type of all horticulture products delivered to the Trader.

5.1.12 If the Producer fails to deliver the agreed quantities due to unforeseen circumstances, the Trader should be notified at least five (5) days in advance, and this should also apply when the Trader fails to buy the Products or part of the Products stipulated in Clause 8 of this Agreement.

5.1.13 If a Producer fails to deliver, the Producer must complete and submit the verification of non-supply to the Trader to enable the affected Trader to claim adhoc amnesty, as per the NAB MSP Rules and Procedures.

5.1.14 In the event of justified unforeseen circumstances, delivery of the Product can be postponed to a future date, once both Parties have agreed.

5.2 INSPECTION OF THE PRODUCT

5.2.1 The Trader shall weigh and inspect the Products at its own cost, no more than twelve (12) hours after delivery at the delivery point or collection point, to ensure compliance with the stipulated specifications of the Trader or the minimum requirements stipulated in the crop-specific marketing and commercial quality standard gazetted by the Namibian Standards Institution (NSI).

5.2.2 Where the Trader fails to inspect the Products within twelve (12) hours of delivery or collection, all risks and costs of spoilage of the Products occurring after delivery or collection shall be borne by the Trader.

5.2.3 Products with defects above the maximum allowable may be rejected by the Trader based on the agreed Product quality requirements and the associated costs shall be borne by the Producer.

5.2.4 The Producer may be present during the inspection of the Products. The Trader shall issue a written document stipulating the outcome of the inspection in line with the prior agreed specification.

5.2.5 Where the Producer objects to the outcome of the inspection of the Products as determined by the Trader, the Parties shall seek a resolution in accordance with Clause 13 below (Dispute Resolution).

5.3 ACCEPTANCE OF THE PRODUCTS AFTER INSPECTION

- 5.3.1 The Parties' agreement on the quantity and quality requirements of the received Products constitutes acceptance of the Products.
- 5.3.2 The Trader shall provide the Producer with a written receipt specifying the time, date, quantity, and quality of Products. The written receipt shall be duly signed by both the Producer and the Trader.
- 5.3.3 The Producer shall invoice the Trader for all the monies due, upon acceptance of the Products, as per Clause 5.3.2.

6. QUALITY OF THE PRODUCT

- 6.1 The Products delivered by the Producer must meet the specification of the Trader, as stipulated in Clause 8 of this Agreement, and the Trader's detailed quality or food safety specifications (private standard) must be communicated to the Producer in writing upon signing this Agreement.
- 6.2 In the absence of private product standards or specifications, the parties may agree to use the gazetted NSI voluntary standard relating to the marketing and commercial quality control of specific Products.
- 6.3 All Products supplied under this Agreement shall be of **Grade 1, 2, and 3** only and shall comply with the specifications as set by the Trader.
- 6.4 The Trader shall have the right to reject delivery if the Products do not comply with the stipulated requirements.

7. PRICE OF THE PRODUCT

- 7.1 The Trader agrees to pay the Producer a market-related price at the time of delivery of the Products or a fixed price, as set out in the Table below, whichever is the greater.

8. TYPE OF THE PRODUCT AND REQUIREMENTS

- 8.1 During the term of this Agreement and any extension thereof, the Producer will deliver the following types of Products to the Trader based on the quality, quantities, value, prices, and frequency of delivery stipulated below:

Table 4: Products specifications, quantity, value, fixed price, and frequency of delivery.

Product	Grade	Size	Quantity (kg)	Value (NAD) Quantity x Unit Price	Fixed Price (NAD/ kg)	Frequency of delivery (Daily, Weekly, Bi-weekly, or specify the dates)

9. PAYMENT

- 9.1 The Trader shall make the payment on or before the **thirtieth (30th) Day** after the date of the invoice (or if such Day is not a Business Day, the immediately following Business Day). Payment shall be made via bank transfer to the Producer's nominated account in Namibian Dollars.
- 9.2 Any amount properly due to the Producer according to this Agreement and remaining unpaid after the due date shall bear interest of _____% from the date when the payment was due, such interest to accrue daily and be compounded monthly at a rate equal to the Agreed Interest Rate plus _____ from the date when the payment was due until the amount due is received by the Producer.
- 9.3 The Producer shall provide the Trader with his/her bank confirmation letter stipulating the banking details to which the payment due to the Producer shall be made, in terms of the invoice issued under Clause 3.4.
- 9.4 In the event of overpayment, the Producer shall refund any monies properly due to the Trader into the bank account provided by the Trader.
- 9.5 If the Trader disagrees (in good faith) with the Producer's determination of any amount specified in any invoice, it shall be entitled to require the Producer to clarify the amounts specified in such invoice.
- 9.6 Where the Trader objects to the invoice amount due to the Producer or any invoice error, the Parties shall seek a resolution in accordance with Clause 13 below (Dispute Resolution).

10. REJECTION OF THE PRODUCT

- 10.1 The Trader will accept and be deemed to have accepted delivery of all Products delivered per this agreement unless the circumstances set out in this Clause apply.
- 10.2 The Trader may reject Products delivered by the Producer in the following circumstances:
- if the Products delivered do not satisfy the type, quality, or quantity requirements specified in Clauses 6 and 8 of this Agreement. However, if part of the delivered consignment of Products does not satisfy the requirements in Clauses 6 and 8, the Trade may reject part of the consignment that does not meet the requirements or reject the entire consignment depending on the tolerance levels stipulated in the NSI standards for specific crops or the requirements of the Trader.
 - if the Producer does not have the title in the Product delivered as per Clause 11 of this Agreement, the Trader may reject the Products.
- 10.3 The Trader may only reject Products under Clause 8 within twelve (12) hours of delivery or otherwise as agreed in writing by the parties, per this agreement.
- 10.4 Where the Trader rejects a Product under this Clause, the Trader will on the same day of rejecting the product, notify the Producer of the rejection and the reasons for the rejection by telephone, fax, email, or other electronic means. Where a Trader fails to comply with this obligation, the Trader will be deemed to have accepted delivery of the Products. Where the Product is rejected by the Trader, the Trader may return the Product to the Producer at the Producer's expense / hold the Product at the premises for collection by the Producer at an agreed time.

11. PRODUCT TITLE AND RISK

- 11.1 Title to, and risk of loss for, the Products shall pass from the Producer to the Trader in the following manner:
- where the Product is collected by the Trader from the premises of the Producer; or;
 - if the Product is delivered by the Producer to an address specified by the Trader in writing.

12. FORCE MAJEURE

- 12.1 In case where unforeseen situations such as hail, pests, diseases, frost, heat wave, drought, excessive rain, war, fire, civil unrest, and any other reasonable cause, which is beyond the parties' control (the so called "force majeure" cause) arise affecting the correct execution of this agreement, neither party shall be considered liable of non-performance, losses, and damages occurred.
- 12.2 The Party seeking to invoke force majeure shall dispatch written notice to the other Party within five (5) business days upon the occurrence of the force majeure act.

13. DISPUTE RESOLUTION

- 13.1 If any dispute arises relating to this Agreement or any Claims or otherwise are made as the result of the breach of any obligation hereunder, the Parties shall, within _____ Days of notice of such Dispute or Claim having been given by one Party to the other Party, meet and use their reasonable effects to resolve such dispute through good faith negotiation.
- 13.2 Should the Parties fail to resolve such Dispute in accordance with Clause 13.1 above within _____ Days of their meeting or such longer period as the Parties may agree, the matter shall be elevated to the NAB for mediation.
- 13.3 Should the Parties fail to resolve such Dispute in accordance with Clause 13.2 above within _____ Days of their meeting or such longer period as the Parties may agree, the matter shall be elevated to an independent arbitrator agreed upon by both Parties for mediation. Each Party shall bear its own costs and the costs of the arbitration shall be borne equally by the Parties, unless the arbitrator decides otherwise.
- 13.4 Where the dispute has not been resolved in accordance with Clauses 13.1, 13.2, and 13.3, any Party may submit the dispute to any court of competent jurisdiction in the Republic of Namibia for resolution.

14. TERMINATION, RENEWAL, AND PERIODIC REVIEW

- 14.1 This Agreement may be terminated:
- following a breach of the Agreement in accordance with Clause 3.1, 4.1, 6.1, and 9.1;
 - by mutual agreement of the Parties;
 - by either Party by giving _____ written notice to the other Party.
- 14.2 If this agreement is terminated in terms of Clause 14.1, any trade that has occurred between the parties in accordance with this Agreement before the issuance of the termination remains valid until the last day of the termination notice.
- 14.3 Subject to Clause 14.4, a party to this agreement who receives payment for, and directly related to, trade that would have occurred after the termination of the agreement, must refund the payment to the party who made the payment within _____ days after the day on which the agreement is terminated.
- 14.4 A party required to return a payment under Clause 14.3 may deduct, from the amount to be returned, reasonable expenses incurred under the agreement for the purposes of, and directly related to, trade that would have occurred after the termination of the agreement.
- 14.5 The Parties agree to meet at least thirty _____ before the expiration of the Term and to enter into good faith negotiations to discuss whether they can mutually agree to extend the Term by such period as may be agreed between the Parties on terms acceptable to both Parties.
- 14.6 If the Parties do not mutually agree on the terms and conditions of the extension before the expiration of the Term, then this Agreement shall expire on the Termination Date.
- 14.7 The Parties shall meet every quarter, depending on the nature of the Product and length of the contract to review the implementation of this Agreement. Where a Party's ability to fulfil its obligations under this Agreement has fundamentally altered due to a significant change of circumstances, that Party may request a renegotiation of one or more of the terms of this Agreement, and the other Party shall consider that request in good faith.

15. CONFIDENTIALITY

- 15.1 The Parties agree that the terms of this Agreement and all confidential and proprietary information of the Parties communicated to them in connection with this Agreement, including, but not limited to, details concerning personal information, pricing, credit, banking details, intellectual property, trade plans, will be received in strict confidence and not be divulged to any person, and be used only for this Agreement.
- 15.2 Each Party will use the same means as it uses to protect its own confidential information, but in no event less than reasonable means, to prevent the disclosure and to protect the confidentiality of such information. No information referred to in Clause 15.1 will be disclosed by the recipient Party, its agents, representatives, or employees without the prior written consent of the other Party (and subject to such persons undertaking to maintain the confidentiality of such information on no less strict terms as set out herein).

16. GENERAL

- 16.1 Save as expressly otherwise provided in this Agreement, each Party shall bear and pay its costs in relation to the negotiation, drafting, finalisation, signing, and implementation of this Agreement.
- 16.2 This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. No Party shall be bound by any express, tacit, or implied term, representation, warranty, promise, or the like not recorded herein. This Agreement supersedes and replaces all prior commitments, undertakings, or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 16.3 No addition to, variation, novation, or agreed cancellation of, any provision of this Agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of each Party.
- 16.4 No indulgence or extension of time, which a Party may grant to another, shall constitute a waiver of, or, whether by estoppel or otherwise, limit any of, the existing or future rights of the grantor unless the grantor has signed a written document expressly waiving or limiting such right.
- 16.5 Unless otherwise expressly stipulated in this Agreement, each Party to this Agreement contracts as a principal and not as an agent for any other Person, disclosed or undisclosed.
- 16.6 Without prejudice to any other provision of this Agreement, any successor in title, including any executor, heir, liquidator, business rescue practitioner, curator, or trustee, of a Party shall be bound by this Agreement.
- 16.7 The signature by a Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as the other Parties.
- 16.8 Each Party warrants to the other that it has the legal powers, capacity, and authority required to conclude and implement this Agreement and that such conclusion and implementation do not conflict with any obligation or restriction applicable to such Party.

17. APPLICABLE LAW

- 17.1 This Agreement shall be governed, construed, and interpreted in accordance with Namibian laws.

AGREEMENT SIGNING PAGE

The parties agree that by signing this agreement, they enter into an Agreement comprising:

- a) The terms and conditions set out in Clauses 1 to 16 above, inclusive of all the Tables.
- b) Annexure 1 – Definitions and Interpretation

On behalf of **PRODUCER (FARMER)** by the signatory who warrants that he/she is duly authorised:

Full Names: _____

Signed: _____ Title: _____

Witness: _____ Title: _____

This _____ day of _____ 20 _____ At (Place): _____

On behalf of **TRADER (BUYER)** by the signatory who warrants that he/she is duly authorised:

Full Names: _____

Signed: _____ Title: _____

Witness: _____ Title: _____

This _____ day of _____ 20 _____ At (Place): _____

ANNEXURE 1 – DEFINITIONS AND INTERPRETATION

1. In this Agreement –

1.1 Clause headings are for convenience and are not to be used in its interpretation unless the context indicates a contrary intention an expression which denotes –

- 1.1.1 any gender includes the other genders;
- 1.1.2 a natural person includes a juristic person and vice versa; and
- 1.1.3 the singular includes the plural and vice versa.

1.2 the following words and expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:

- 1.2.1 **“Adhoc Amnesty”** means the monetary value of the Products that the Producer could not deliver to the Trader due to unforeseen circumstances such as frost, heavy rainfall, extreme temperatures, pest, diseases, etc.
- 1.2.2 **“Agreement”** means this horticulture offtake agreement, together with the annexures attached hereto, if any, as amended from time to time and any annexures attached thereto;
- 1.2.3 **“Business Day”** means any day which is not a Saturday, Sunday, or official public holiday as recognized in terms of the Public Holidays Act No. 26 of 1990;
- 1.2.4 **“Claim”** means a formal request or demand made by one party against another, seeking compensation or remedy for an alleged loss, damage, or non-compliance with the terms of the agreement.
- 1.2.5 **“Conditions Precedent”** means specific conditions that must be fulfilled by either or both parties for the agreement to become effective, including but not limited to regulatory approvals, payment of initial fees, or any other prerequisites agreed upon.
- 1.2.6 **“Consignment”** means a batch of Products belonging to the Producer destined for or delivered to the Trader.
- 1.2.7 **“Day”** means a calendar day;
- 1.2.8 **“Dispute”** means any dispute or disagreement of any kind whatsoever between the Parties arising under, in connection with, or relating to, this Agreement or the transaction contemplated herein;
- 1.2.9 **“Effective Date”** means the date on which all of the Conditions Precedent have been satisfied or waived by both Parties;
- 1.2.10 **“End Date”** means the date the agreement ends;
- 1.2.11 **“Fixed Price”** means the Price as specified in Table 4 of this agreement inclusive of value-added tax and other Taxes including the NAB Producer Levy if applicable, per the applicable legislation;
- 1.2.12 **“Force Majeure Events”** has the meaning given to it in Clause 12 of this Agreement;
- 1.2.13 **“Good Faith Negotiation”** means a sincere and honest attempt by both parties to resolve disputes or disagreements through discussion and compromise, without resorting to legal action.
- 1.2.14 **“Invoicing”** means the process of generating and sending a detailed statement of goods or services provided, along with the amount due for payment, in accordance with the terms of the agreement.
- 1.2.15 **“Levy Return”** means a formal document submitted by the Trader to the relevant authorities, detailing the levies collected and paid, usually accompanied by supporting invoices and other required documentation.
- 1.2.16 **“Market-Related Price”** means the Price of the specific Products at the time of sale, inclusive of value-added tax and other Taxes including the NAB Producer Levy if applicable, per the applicable legislation;
- 1.2.17 **“MSP”** means the Horticulture Market Share Promotion Scheme;
- 1.2.18 **“NAB”** means the Namibia Agronomic Board, a statutory body established per the applicable provisions of the Agronomic Industry Act No. 20 of 1992;
- 1.2.19 **“NAB Producer Levy”** means the levy imposed on the Producer in terms of the applicable legislation;
- 1.2.20 **“NAD” or “Namibian Dollars”** means the lawful currency of Namibia;
- 1.2.21 **“NSI”** Means Namibian Standards Institution
- 1.2.22 **“Notice of Termination”** means a notice issued per the provisions of this Agreement, by one Party to the other Party, terminating this Agreement with effect from the date specified in such notice;
- 1.2.23 **“Signature Date”** means the date when this Agreement is signed by all the Parties (whether or not in

- counterpart), the latest of the dates on which this Agreement (or a counterpart) was signed by a Party.
- 1.2.24 **“Start Date”** means the effective date of the agreement specified in the agreement;
 - 1.2.25 **“Term”** means the duration or period of the agreement;
 - 1.2.26 **“Producer”** means the farmer who has been contracted to supply Products to the Trader in terms of this Agreement whose details appear in Table 1;
 - 1.2.27 **“Product” or “Horticultural Products”** means all the fresh fruits and vegetables which the Farmer has contracted to supply to the Trader, as identified in Table 4, under Clause 8 of this Agreement;
 - 1.2.28 **“Tolerance Levels”** means the acceptable range or limit within which the quality or quantity of delivered products may vary from the specifications without resulting in rejection or penalties.
 - 1.2.29 **“Trader”** means the buyer who has been contracted to purchase Products from the Trader in terms of this Agreement whose details appear in Table 1;
 - 1.2.30 **“Transport Costs”** means the expenses incurred for the transportation of goods from the Producer to the Trader, including but not limited to fuel, labour, and vehicle maintenance costs.
 - 1.2.31 **“Unforeseen Circumstances”** means events or conditions that were not anticipated or expected and are beyond the control of either party, such as natural disasters, strikes, or governmental actions, which may affect the performance of obligations under the agreement.
 - 1.2.32 **Verification of non-supply** means a formal document issued by the Producer to the Trader, confirming the inability to supply the agreed-upon products, along with details such as the reason for non-supply, the value, and quantity affected.