

## รายการอ้างอิง

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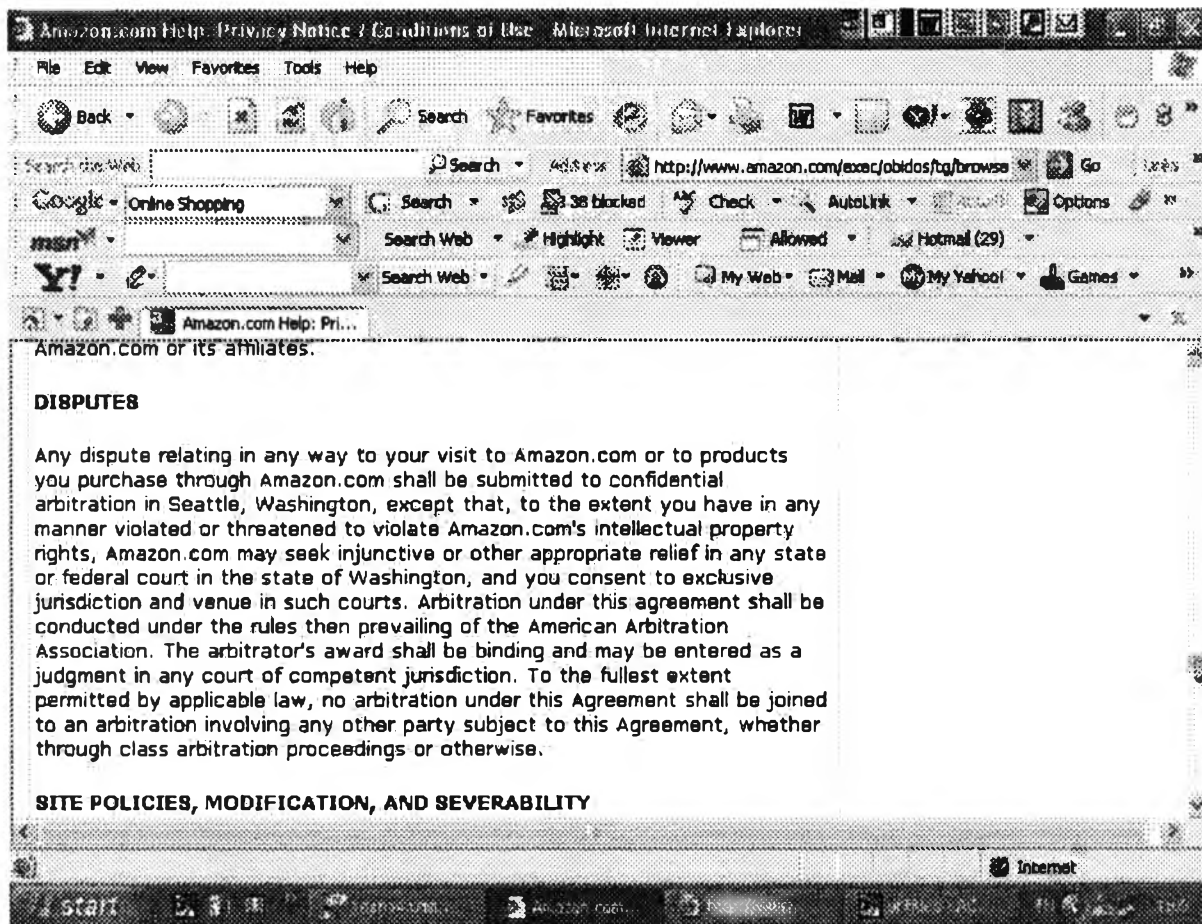
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ภาคผนวก



ภาคผนวก ก.

ตัวอย่างข้อตกลงอนุญาตตุลาการที่ทำในรูปอิเล็กทรอนิกส์



ภาคผนวก ข.

ใบสั่งซื้อสินค้าที่มีข้อกำหนดเรื่องอนุญาโตตุลาการ

## Partnership &gt; Purchase Order Terms

**WISTON GROUP, INC. STANDARD PURCHASE ORDER TERMS**

Wiston Group, Inc. (WGI) and the seller named in WGI's purchase order (SELLER) agree that the following terms and conditions (Terms) apply to and are included in all Purchase Orders (POs) issued by WGI to SELLER:

**1. GOVERNING TERMS:**

1.1 All POs are subject only to the Terms stated herein and any reference to any SELLER's proposal or sales order is only for the purpose of specifying price, id description of the goods or services stated on the face of the PO (Products) and the terms of payment and only as such terms are consistent with the Terms.

1.2 Any acknowledgment, sales order, or invoice issued by SELLER which contains terms and conditions which are in addition to or different from the PO will counter offer and will not be binding unless specifically agreed to in writing by WGI. Performance by SELLER in the absence of WGI's acceptance of the counter SELLER's acceptance of the Terms.

**2. WGI'S PROPERTY:** All property, including packaging, molds, tools, designs furnished or paid for by WGI, in whole or in part, will be the property of WGI SELLER which shall use, maintain, and insure the property for the sole benefit of WGI without charge, at SELLER's risk and expenses. WGI may remove the property without notice or liability. SELLER shall segregate WGI's property and properly mark the property to show WGI ownership. Any information and intellectual property materials provided to SELLER, including without limitation drawings, schematics, flow charts, tools, film work, designs, layouts, constructions, arrangements, methods, processes, ideas, concepts, devices, specifications, manuals (Confidential Property) are provided to SELLER in trust and confidence. SELLER shall not disclose Confidential Property to any third party or use them for the benefit of SELLER or any third party. Upon termination or completion of a PO, SELLER shall immediately return Confidential Property to WGI, WGI's warehouse.

**3. PAYMENT TERM:** Payment terms will begin from date of scheduled delivery, the receipt of Products or the date of invoice, whichever is latest, unless other PO.

**4. INSPECTION AND REJECTION:** All Products will be subject to final inspection and approval by WGI notwithstanding acceptance and prior payment. WGI may employ either 100% inspection or its sampling plan. Lots which fail to pass the sampling plan may be 100% inspected by WGI which may charge SELLER and return the Products to SELLER for sorting, correction, replacement, or full refund or credit, as WGI elects. Rejected Products are returned CIF WGI's warehouse. WGI authorizes WGI to destroy any rejected products not picked up by Seller within 30 days of rejection and waives California Commercial Code §2605(1).

**5. CHANGES:** WGI may at any time, by written change order, make changes in drawings, designs, specifications, quantity ordered, and delivery dates without charge. However, SELLER may cancel the order, provided SELLER gives written notice to WGI within five (5) days of WGI's issuance of the change order if the change order increases cost to WGI. If market price for the Products decreases 90 days after delivery, WGI has the right to return, CIF WGI warehouse, any Products in inventory and refuse further delivery without any liability, unless SELLER agrees to reduce the price for the Products to the then mutually agreed upon prevailing market price provides more favorable price and/or terms to any other customers, SELLER must offer the same price and/or terms to WGI in writing immediately for all Product inventory and Products which have not been delivered.

**6. DELIVERY:** Delivery and acceptance shall not be deemed to have occurred until certified in writing by WGI's representative signing the PO. Time is of the essence of the Products. If SELLER fails to strictly adhere to WGI's delivery schedule, WGI has the right to reject shipment or require SELLER to make expedited shipments in addition to any other remedy which WGI may have under law. Products produced beyond WGI's releases are at SELLER's risk.

**7. EXCUSABLE DELAYS:** Neither party is liable for delays or defaults due to riots, acts of war, governmental regulations imposed after the fact, earthquakes, or other such delay exceeds one month.

**8. MERCHANTABILITY & FITNESS:** In addition to any implied warranties, SELLER expressly warrants that all Products will be free from defects in design, workmanship, will conform to specifications, drawing, samples or other descriptions provided to SELLER and will be fit for the purposes intended. Unless otherwise stated, the warranties shall remain in effect for 14 months or Seller's standard warranty period, whichever is longer. The warranty will commence upon acceptance of the Products by WGI, its successors, assigns, customers and users of the Product. If 5% or more of the Products are found by WGI's customers to be defective, WGI shall recall all Products at SELLER's expense and have the defects repaired or replaced at SELLER's expense, in addition to other remedies. If more than 10% of the Products are found to be defective not discovered during the warranty period ("Latent Defect") within three years from the date of first shipment, the Warranties as stated above will be deemed to be extended to cover the Latent Defect.

**9. INFRINGEMENT:** SELLER warrants that all work performed and Products supplied shall not violate any third parties' rights, including without limitation patent, copyright, mask work, or trade secret.

**10. INTELLECTUAL PROPERTY RIGHTS:** Any unpatented knowledge or information concerning SELLER's Product, methods or manufacturing process, authorship or mask work not registered with the United States Copyright Office which SELLER may develop, discover or disclose to WGI incident to the performance of the Products shall be deemed to have been disclosed as a part of the consideration for the PO and WGI shall have full rights to its use. Where services are ordered under a PO or performance of Products ordered, WGI shall own all rights and title to the work of authorship and any invention, know how, design, blue print, negative, formulae, diagram, and structures, processes prepared or invented by SELLER. SELLER agrees to disclose and assign and hereby does assign to WGI all such title and rights.

**11. COMPLIANCE WITH LAWS:** SELLER warrants that all Products shall comply with all applicable federal, state and local laws and no ozone depleting substances or other hazardous materials in the manufacturing process or contained in any Product. SELLER shall provide WGI with full documentation and certification required of all relevant government safety agencies prior to or after delivery of any Product.

**12. INDEMNITY:** SELLER shall indemnify and hold harmless WGI, its shareholders, directors, officers, employees, agents, representatives, and customers from all liabilities, fines, penalties, excise tax, costs and expenses, including reasonable attorneys' fees, arising out of or related to the subject matter of this Agreement, including any breach of any representation or warranty.

**13. DISPUTE RESOLUTION:** This PO and Terms were accepted and entered into in the State of California, and its validity, construction, interpretation, and enforcement shall be governed by U.S. laws and the laws applicable to contracts entered into and performed entirely within the State of California, excluding the UN Convention on Contracts for the International Sale of Goods. SELLER and WGI agree any action arising out of or related to this Agreement may be filed only in a court located in Los Angeles County, California, and the parties hereby consent and submit to the personal jurisdiction of such court for the purpose of litigating any such action and agrees to accept service by certified mail to the defendant.

Any dispute, controversy, or claim arising out of or related to this Agreement, or the breach, termination, or invalidity thereof, shall be settled by arbitration under the Arbitration Rules of the American Arbitration Association in effect on the date of sale. The arbitrator shall have ten years experience in the area of international trade law, require the testimony to be transcribed, and not engage in ex parte communications with any party. The arbitral award shall be (1) made in writing, (2) accompanied by findings of facts and a statement of reasons for the decision not exceeding 20 pages, and (3) made tentative for 14 days after the arbitration, (4) accompanied by findings of facts and a statement of reasons for the decision not exceeding 20 pages, and (5) made tentative for 14 days after the arbitration. The arbitrator does not have the power to award punitive damages. The entire proceeding shall be kept confidential, including all orders issued and any information provided. The arbitration shall be held in Los Angeles, CA, USA. The award shall be final and binding upon the parties. The award may be entered in any court having jurisdiction. The parties reserve their rights to obtain interim relief from any court located in Los Angeles, CA, USA.

**14. TERMINATION:** WGI may terminate performance under this Agreement, in whole or in part, at WGI's convenience. Further, in the event of: (a) an assignment of the benefit of creditors; (b) SELLER's insolvency; (c) SELLER's dissolution; (d) a trustee or receiver is appointed for SELLER or any substantial part of its assets; (e) SELLER's property is attached by any creditor, (e) any sale in bulk of SELLER's assets, or (f) any breach of this Agreement by SELLER, WGI has the right to

or suspend any or all performance of WGI without any liability upon notice to SELLER.

**15. GENERAL**

15.1 This Agreement represents both parties' entire understanding and agreement regarding the matters stated herein and supersedes any prior agreements, contracts, advertising, or representations. This Agreement may only be modified in a written amendment signed by an authorized officer of WGI.

15.2 This Agreement may not be assigned by SELLER without the prior written consent of WGI. WGI may assign this Agreement upon giving written notice. Assignment contrary to this section shall be void and unenforceable.

15.3 No party shall be deemed the drafter of this Agreement which shall be deemed to have been jointly prepared by the parties. If this Agreement is ever construed by a court or by an arbitrator, such court or arbitrator shall not construe this Agreement or any provision hereof against any party as drafter.

15.4 The headings of this Agreement are provided for convenience and will not control the interpretation of the Agreement.

15.5 If any provision of this Agreement is found unenforceable, it shall be deemed severed from, and shall not affect the validity of, the balance of this Agreement.

ภาคผนวก ก.

แบบฟอร์มสัญญาซื้อขายมาตรฐานที่มีข้อกำหนดเรื่องอนุญาตตุลาการ

# NOFOTA

## Netherlands Oils, Fats and Oilseeds Trade Association

Groundnuts Division  
Secretariat: "Plaza Building", Weena 666, 3012 CN, P.O. Box 190, 3000 AD Rotterdam

### CONTRACT

20

FOR THE TRADE IN EDIBLE GROUNDNUTS

**Spot conditions/free on truck/free delivered**

Date .....  
Seller ..... at .....  
Buyer ..... at .....  
Broker ..... at .....  
Quantity ..... metric tons  
Description ..... groundnut in shells/groundnut kernels \*)  
.....  
Quality \*) inspected and approved by buyer  
after checking of quality by buyer  
on approval by buyer  
about as per sample Nr. .... in the possession of .....  
sound and merchantable  
Packing good single bags, suitable for edible groundnuts  
Price ..... per metric ton  
gross weight at place of loading including packing, in transit/E.C. cleared \*)  
.....  
Transfer of title/  
Delivery \*) during ..... at seller's option/buyer's call \*)  
free on truck ex warehouse  
free delivered buyer's warehouse  
Payment without discount against invoice and storage warrant/delivery order/release \*)  
Special conditions  
.....  
.....

and on the following conditions, the hand-written text to supersede the printed text

Seller's signature

Buyer's signature

- |  |    |  |
|--|----|--|
| <b>Quantity, Margin and Settlement</b> | 1. | The seller shall be entitled to deliver 2% more or less, to be settled at the contract price.  |
| <b>Weighing</b>                        | 2. | The seller shall have the weight ascertained at the place of loading in the customary manner and at his expense, unless otherwise agreed. The seller to allow the buyer to supervise the weighing. If the buyer wants to avail himself of that right the superintendent is to be appointed in due time. If the buyer fails to supervise the weighing or to have it supervised the seller shall be entitled to ascertain the weight or to have it ascertained unilaterally. The weight ascertained in accordance with the foregoing shall be binding upon both parties. |

## Article 2

- |   |    |  |
|---|----|--|
| <b>Spot sales</b>                         | 1. | In case the goods have been sold free on truck ex warehouse, the costs of delivery including those of loading and stowing shall be for account of the seller. Title of goods to be delivered shall be transferred by means of documents or by release of the goods at seller's option.   |
| <b>Free on truck</b>                      |    |  |
| <b>Free delivered</b>                     | 2. | If the goods have been sold free delivered buyer's warehouse, the transfer of title shall be at the place of destination and the seller has to arrange transport to the place of destination for his account. The risks of transport shall be for seller's account subject to the provisions of the articles 6 and 7 concerning quality and/or condition.  |
| <b>Delivery within a specified period</b> |    |  |
| <b>Delivery in parts</b>                  | 3. | If delivery within a specified period has been agreed upon, the seller shall make the goods available to the buyer within that period on a date selected by the seller, unless the goods have been sold for delivery at buyer's call. If delivery for any one half of a month is stipulated and the month in question has an odd number of days, the middle day of that month shall be considered to belong to the relevant half of the month. |
| <b>Notice of delivery/call</b>            | 4. | If "immediate" delivery is agreed upon the seller shall deliver the goods to the buyer not later than the seventh day after date of sale; if the contract stipulates prompt delivery the seller shall deliver the goods to the buyer not later than the fourteenth day after date of sale.   |
|   | 5. | The seller shall be entitled to deliver in parts. Each part to stand as a separate contract except with regard to the provision of article 1, paragraph 1.   |
|   | 6. | If the goods have been sold at buyer's call, the buyer shall give notice of call at least ten days before the required day of delivery. If notice of call has not been given on the tenth day before the last day of the agreed period the notice of call shall be deemed to have been given on that day for delivery on the last day of that period.  |

## Article 3

- |                                       |    |  |
|---------------------------------------|----|--|
| <b>Payment</b>                        | 1. | Payment is to be made against the documents provided for in the particular contract within 72 hours of presentation (hours of non-working days not to be counted). In case of a release of goods payment shall be made within eight days of the date of provisional or final invoice at seller's option. Goods and/or documents shall remain the property of the seller until full payment of the purchase price.  |
|                                       | 2. | Payment shall not be deemed to have been effected before receipt of the amount due by the seller or his bank. If a party pays by bank transfer, payment has to be effected on the day stipulated in the contract, value has to be at the latest on the second working day after the day of payment, failing which interest is due.   |
| <b>Payment in advance as security</b> | 3. | In the case of a contract according to which payment after delivery has been stipulated the seller shall always be entitled to demand payment before delivery on the basis of the contract quantity concerned, provided that the buyer is allowed interest at the rate of 5% above the current bank rate of interest for the currency involved. This interest is to be calculated on the amount paid in advance over the period between the date of payment and the date on which payment should have been made according to the original stipulation. |
|                                       | 4. | The seller shall notify the buyer that he demands payment before delivery at least four working days before the date of delivery.  |
|                                       | 5. | Instead of making a payment before delivery the buyer shall be entitled to have an irrevocable bankguarantee issued in favour of the seller at seller's costs.   |
|                                       | 6. | After payment the guarantee shall be void.   |

## Article 4

- |                        |    |   |
|------------------------|----|---|
| <b>Taking delivery</b> | 1. | The buyer shall take delivery of stored goods during the customary working hours. Storage and insurance costs commencing the first day following the period of delivery shall be for buyer's account.   |
| <b>Storage</b>         | 2. | The buyer shall take delivery of the goods during the customary working hours immediately upon arrival at the place of destination.   |
|                        | 3. | If the buyer fails to take delivery in due time from seller's premises or at the place of arrival for reasons other than force majeure, the seller shall be entitled to store the goods, if required with third parties, at buyer's expense and risk. If the seller insures the goods whilst in storage, he shall be entitled to charge the premium to the buyer. |
|                        | 4. | If the goods have not been weighed within three months after they have been put at buyer's disposal, the invoiced weight shall be final.  |

## Article 5

- |                |    |  |
|----------------|----|--|
| <b>Default</b> | 1. | In case the presentation of documents or release or delivery of the goods has not been made within the contract period the seller shall be in default even without having been given notice of default.          |
|                | 2. | If the buyer fails to make payment in accordance with the contract conditions, he shall be in default without having been given notice of default.   |
|                | 3. | If the buyer fails to take delivery in due time he shall be in default without having been given notice of default, unless he makes payment immediately, subject to the provisions of article 4 under "storage". |



- 4. The significance and the consequences of either party failing to observe any term other than those referred to in the first three paragraphs of this article shall, if necessary, be determined by arbitrators.
- 5. In case of non-fulfilment (including non timely fulfilment) of its principal obligations by either party, the non-fulfilling party shall be in default without notice of default being required and the other party shall be entitled at his option:
  - a. immediately to cancel the contract without any indemnification;
  - b. to buy or sell as the case may be against the defaulter through the intermediary of a sworn broker within three working days after giving notice thereof and to claim the adverse price difference from the defaulter;
  - c. to claim a possible adverse difference between the contract price and the market value on the first working day after the day of default from the defaulter.
- 6. If the defaulter will be dissatisfied with the price of the purchase or sale mentioned under b) or with the price difference sub c), the price difference shall be fixed by arbitration.
- 7. Any price difference shall be computed on the basis of the mean contract quantity, irrespective of which party being the defaulter. If a minimum and maximum quantity is provided, the mean thereof shall govern.
- 8. Any other or further damages may be claimed, if they can be attributed to the non-fulfilment of the defaulter, and, falling agreement, be fixed by arbitration.
- 9. In case of non-payment after the buyer has taken possession of the goods the seller may either sue for the price with interest and costs or cancel the contract and claim any damages incurred in consequence thereof.

Article 6

Sampling

- 1. Samples intended for examination by arbitrators shall be drawn by and at the expense of the buyer on delivery or, in the case of release within seven working days of the release in the way usual at the place of delivery, under supervision of the seller or the seller's superintendent; and such samples shall be drawn after bulking from 2% of the number of externally sound and undamaged bags. These samples shall be sealed jointly by (the representatives of) the seller and the buyer. The samples shall bear the names of the seller and the buyer, the quantity, the description and the location of the goods, the warrant number and the date of sampling. The samples are to be kept under climatized conditions.
- 2. The buyer shall give notice to the seller or his representative in time.
- 3. If the buyer fails to notify the seller or his representative in due time, he shall forfeit any right of complaint.
- 4. The buyer may proceed to seal samples without the seller or his superintendent being present only if the seller has failed to appoint a superintendent, or if he or his superintendent, although duly notified by the buyer of the place and time of sampling, is not present at the place and time indicated. In that case the seller shall accept the sealed samples drawn as prescribed in the first paragraph of this article, but without supervision and co-sealing by the seller's superintendent.

Article 7

Quality and condition

- 1. Quality of goods includes their state or condition.
- 2. If the sale has been made on the condition "inspected and approved by buyer", the seller is not responsible for the quality.
- 3. If the sale has been made on the condition after "checking of quality by buyer", the buyer shall be entitled to inspect the parcel indicated by the seller at the place of delivery within 72 hours after having been given the opportunity to do so and to reject it, if it is not in accordance with the description on which it was sold, provided that notice of such rejection has been given to the seller within the aforementioned period. In case of differences of opinion arbitrators shall decide. When the rejection is accepted by the seller or found correct by arbitrators, the contract is cancelled without any obligation to compensate for damages.
- 4. If the sale has been made on the condition "on approval by buyer", the buyer shall be entitled to inspect the parcel indicated by the seller at the place of delivery within 72 hours after having been given the opportunity to do so and to reject it without assigning any reason, provided that notice of such rejection has been given to the seller within the aforementioned period. In default thereof the parcel will be deemed approved. After approval, the seller is not responsible for the quality. In case of rejection in due time the contract is cancelled without any obligation to compensate for damages.
- 5. Should the buyer, in case of a sale "about as per sample" or of a sale of "sound and merchantable", be of the opinion that the quality is not in accordance with the required standard, the buyer shall not on that account have the right to demand cancellation of the contract, but the buyer may claim an allowance on that account, within seven days of delivery, such allowance to be mutually agreed. If buyer's claim on that account is dismissed by the seller, the buyer shall claim arbitration within three weeks of that dismissal, on pain of loss of right.
- 6. If, in case of a sale "about as per sample" or of a sale of "sound and merchantable", the inferior quality is of an exceptional nature or attributable to bad faith on the seller's part, the buyer shall be entitled to demand that the contract be cancelled in respect of the consignment in question and to claim refund of the invoiced amount paid, together with or without damages as referred to in article 5.
- 7. The arbitrators shall, if necessary, determine who shall bear the costs, damages and interest incurred in the course of the negotiations and/or arbitration.

Article 8

Insolvency

- 1. If before fulfilment of the contract, either party suspends payments, or applies for an official moratorium, or is adjudicated bankrupt, the contract shall stand void and settlement shall be made at the market value on the first business day after the day on which the aforementioned event can be deemed to have been common knowledge.
- 2. Should the parties fail to agree in this respect, the aforementioned day and/or the market value shall be determined by arbitration.

## Article 9

- Force Majeure**
1. Force majeure is understood to mean any unforeseen exceptional circumstances beyond seller's control and not for his account or at his risk, which has arisen after conclusion of the contract as a result of which he is not able to deliver the goods sold.
  2. The seller shall notify the buyer immediately after force majeure occurs, in urgent cases by fax or telex and in any event in writing.
  3. Upon termination of force majeure the seller shall be obliged to deliver the goods as soon as possible. The buyer shall be allowed a reasonable period to take delivery of the goods.
  4. If the seller is unable to deliver the goods at the latest on the sixtieth day after the last day, on which he should have delivered the goods, the contract shall be cancelled.
  5. If, as a result of force majeure, the goods which the seller destined for the buyer are wholly or partly lost, the contract or that part thereof shall be cancelled; the seller shall be responsible for furnishing evidence that those goods were intended for delivery against the contract in question.
  6. If an event constituting force majeure occurs affecting either the seller or the buyer, which does not come within the scope of the foregoing, then, failing agreement between the parties, a dispute shall be deemed to exist and the consequences to the parties of such force majeure shall be decided by arbitration according to equity.

## Article 10

- Export and Import documents**
- In case of contracts for export the seller shall provide all export documents; all expenses connected herewith to be for his account. On concluding the contract buyer has to furnish to seller all necessary details thus enabling seller to provide for the export-licenses etc. in due time. The buyer shall be responsible for all import documents which might be required in the country of destination. All expenses connected herewith are for buyer's account.

## Article 11

- Duties, Levies and Taxes**
1. If sold/bought for export, the duties, levies and taxes bearing upon the goods in the exporting country shall be for account of the seller and the duties, levies and taxes in the importing country shall be for account of the buyer.
  2. If not sold/bought for export, any duties, levies and taxes bearing upon the goods shall be for the account of the seller.
  3. Unless explicitly agreed otherwise, in this latter case duties, levies and taxes, in as far as these have become effective or have been increased between the date of the sale and the date of delivery shall be for account of the buyer; any repeals and/or reductions thereof between the dates referred to above, shall be for the benefit of the buyer.

## Article 12

- Days, Non-working days and Business hours**
1. In any month containing an odd number of days, the middle day shall be reckoned as belonging to both halves of the month.
  2. Saturdays, Sundays, public holidays and any days or parts of days which the Association shall declare to be non-working days at the place where, in execution of this contract, acts have to be performed shall not be considered as working days.
  3. Should the time limit for doing any act or giving any notice expire on a Saturday, Sunday, public holiday or on any day declared to be a non-working day the time so limited shall be extended until the first working day thereafter.  
The contractual period of delivery is not to be affected by this clause.  
All working days shall be deemed to end at 17:00 hours local time.

## Article 13

- Dutch Law**
- This contract and any further agreements arising therefrom shall be subject to the provisions of Dutch Law.

## Article 14

- International Convention(s)**
- The Uniform Law(s) on the International Sale of Goods (ULIS), the Uniform Law on the Formation of Contracts (ULFIS) for the International Sale of Goods and the Convention of the International Sale of Goods (CISG), either in the international versions of the respective treaties or in whatever national version, shall not apply to this contract.

## Article 15

- Arbitration**
1. Any dispute arising out of this contract, as well as any dispute arising out of further agreements resulting from this contract, shall be exclusively referred to arbitration in accordance with the Rules for Arbitration of NOFOTA, Netherlands Oils, Fats and Oilseeds Trade Association, Groundnuts Division, Rotterdam, in force on the date of this contract.
  2. Persons through whose intermediary this contract was concluded and who signed the sale and purchase confirmations shall submit to the aforementioned arbitration of NOFOTA any dispute which may arise either out of this contract or out of their intermediary.  
They may be called upon as third parties in a dispute between the buyer and the seller.
  3. A dispute shall also then be deemed to exist, if one of the parties fails to pay a claim of the other party without contesting the correctness thereof.
  4. Without prejudice to the provisions of article 7, paragraph 5, application for arbitration shall, on pain and loss of rights, be made in accordance with the Rules for Arbitration of NOFOTA, Groundnuts Division, within three months after the day on which the dispute has arisen, exceptional cases, at the discretion of arbitrators, excepted. The party applying for arbitration shall notify the other party of the application at the same time. In a string and in a circle applications for arbitration shall also be admitted after expiry of the aforementioned period, provided that the first application was made in good time and the subsequent applications/notices were made/passed on immediately upon receipt of the notice of the preceding application.

ภาคผนวก ง.

สัญญาผู้เรือมาตรฐานที่มีข้อกำหนดเรื่องอนุญาโตตุลาการ

LOF 1980

LLOYD'S



## NOTES

1. Insert name of person signing on behalf of Owners of property to be salvaged. The Master should sign wherever possible.
2. The Contractor's name should always be inserted in line 3 and whenever the Agreement is signed by the Master of the Salvage vessel or other person on behalf of the Contractor the name of the Master or other person must also be inserted in line 7 before the words "for and on behalf of". The words "for and on behalf of" should be deleted where a Contractor signs personally.

STANDARD FORM OF

## SALVAGE AGREEMENT

(APPROVED AND PUBLISHED BY THE COMMITTEE OF LLOYD'S)

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 NO CURE — NO PAY
 

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On board the

Dated

19

\* See Note 1  
aboveIT IS HEREBY AGREED between Captain†  
behalf of the Owners of the "

" her cargo freight bunkers and

\* See Note 2  
above

stores and

for and on behalf of

(hereinafter called "the Contractor"\*) :-

1. (a) The Contractor agrees to use his best endeavours to save the and/or her cargo bunkers and stores and take them to or other place to be hereafter agreed or if no place is named or agreed to a place of safety. The Contractor further agrees to use his best endeavours to prevent the escape of oil from the vessel while performing the services of salvaging the subject vessel and/or her cargo bunkers and stores. The services shall be rendered and accepted as salvage services upon the principle of "no cure—no pay" except that where the property being salvaged is a tanker laden or partly laden with a cargo of oil and without negligence on the part of the Contractor and/or his Servants and/or Agents (1) the services are not successful or (2) are only partially successful or (3) the Contractor is prevented from completing the services the Contractor shall nevertheless be awarded solely against the Owners of such tanker his reasonably incurred expenses and an increment not exceeding 15 per cent of such expenses but only if and to the extent that such expenses together with the increment are greater than any amount otherwise recoverable under this Agreement. Within the meaning of the said exception to the principle of "no cure—no pay" expenses shall in addition to actual out of pocket expenses include a fair rate for all tug craft personnel and other equipment used by the Contractor in the services and oil shall mean crude oil fuel oil heavy diesel oil and lubricating oil.
- (b) The Contractor's remuneration shall be fixed by arbitration in London in the manner herein prescribed and any other difference arising out of this Agreement or the operations thereunder shall be referred to arbitration in the same way. In the event of the services referred to in this Agreement or any part of such services having been already rendered at the date of this Agreement by the Contractor to the said vessel and/or her cargo bunkers and stores the provisions of this Agreement shall apply to such services.
- (c) It is hereby further agreed that the security to be provided to the Committee of Lloyd's the Salved Values the Award and/or Interim Award and/or Award on Appeal of the Arbitrator and/or Arbitrator(s) on Appeal shall be in currency. If this Clause is not completed then the security to be provided and the Salved Values the Award and/or Interim Award and/or Award on Appeal of the Arbitrator and/or Arbitrator(s) on Appeal shall be in Pounds Sterling.
- (d) This Agreement shall be governed by and arbitration thereunder shall be in accordance with English law.

2. The Owners their Servants and Agents shall co-operate fully with the Contractor in and about the salvage including obtaining entry to the place named in Clause 1 of this Agreement or such other place as may be agreed or if applicable the place of safety to which the salvaged property is taken. The Owners shall promptly accept redelivery of the salvaged property at such place. The Contractor may make reasonable use of the vessel's machinery gear equipment anchors chains stores and other appurtenances during and for the purpose of the operations free of expense but shall not unnecessarily damage abandon or sacrifice the same or any property the subject of this Agreement.

3. The Master or other person signing this Agreement on behalf of the property to be salvaged is not authorised to make or give and the Contractor shall not demand or take any payment draft or order as inducement to or remuneration for entering into this Agreement.

#### PROVISIONS AS TO SECURITY

4. The Contractor shall immediately after the termination of the services or sooner in appropriate cases notify the Committee of Lloyd's and where practicable the Owners of the amount for which he requires security (inclusive of costs expenses and interest). Unless otherwise agreed by the parties such security shall be given to the Committee of Lloyd's and security so given shall be in a form approved by the Committee and shall be given by persons firms or corporations resident in the United Kingdom either satisfactory to the Committee of Lloyd's or agreed by the Contractor. The Committee of Lloyd's shall not be responsible for the sufficiency (whether in amount or otherwise) of any security which shall be given nor for the default or insolvency of any person firm or corporation giving the same.

5. Pending the completion of the security as aforesaid the Contractor shall have a maritime lien on the property salvaged for his remuneration. Where the aforementioned exception to the principle of "no cure—no pay" becomes likely to be applicable the Owners of the vessel shall on demand of the Contractor provide security for the Contractor's remuneration under the aforementioned exception in accordance with Clause 4 hereof. The salvaged property shall not without the consent in writing of the Contractor be removed from the place (within the terms of Clause 1) to which the property is taken by the Contractor on the completion of the salvage services until security has been given as aforesaid. The Owners of the vessel their Servants and Agents shall use their best endeavours to ensure that the Cargo Owners provide security in accordance with the provisions of Clause 4 of this Agreement before the cargo is released. The Contractor agrees not to arrest or detain the property salvaged unless (a) the security be not given within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the termination of the services (the Committee of Lloyd's not being responsible for the failure of the parties concerned to provide the required security within the said 14 days) or (b) the Contractor has reason to believe that the removal of the property is contemplated contrary to the above agreement. In the event of security not being provided or in the event of (1) any attempt being made to remove the property salvaged contrary to this agreement or (2) the Contractor having reasonable grounds to suppose that such an attempt will be made the Contractor may take steps to enforce his aforesaid lien. The Arbitrator appointed under Clause 6 or the person(s) appointed under Clause 13 hereof shall have power in their absolute discretion to include in the amount awarded to the Contractor the whole or such part of the expense incurred by the Contractor in enforcing or protecting by insurance or otherwise or in taking reasonable steps to enforce or protect his lien as they shall think fit.

#### PROVISIONS AS TO ARBITRATION

6. (a) Where security within the provisions of this Agreement is given to the Committee of Lloyd's in whole or in part the said Committee shall appoint an Arbitrator in respect of the interests covered by such security.
- (b) Whether security has been given or not the Committee of Lloyd's shall appoint an Arbitrator upon receipt of a written or telex or telegraphic notice of a claim for arbitration from any of the parties entitled or authorised to make such a claim.

7. Where an Arbitrator has been appointed by the Committee of Lloyd's and the parties do not wish to proceed to arbitration the parties shall jointly notify the said Committee in writing or by telex or by telegram and the said Committee may thereupon terminate the appointment of such Arbitrator as they may have appointed in accordance with Clause 6 of this Agreement.

8. Any of the following parties may make a claim for arbitration viz:—(1) The Owners of the ship. (2) The Owners of the cargo or any part thereof. (3) The Owners of any freight separately at risk or any part thereof. (4) The Contractor. (5) The Owners of the bunkers and/or stores. (6) Any other person who is a party to this Agreement.

9. If the parties to any such Arbitration or any of them desire to be heard or to adduce evidence at the Arbitration they shall give notice to that effect to the Committee of Lloyd's and shall respectively nominate a person in the United Kingdom to represent them for all the purposes of the Arbitration and failing such notice and nomination being given the Arbitrator or Arbitrator(s) on Appeal may proceed as if the parties failing to give the same had renounced their right to be heard or adduce evidence.

10. The remuneration for the services within the meaning of this Agreement shall be fixed by an Arbitrator to be appointed by the Committee of Lloyd's and he shall have power to make an Interim Award ordering such payment on account as may seem fair and just and on such terms as may be fair and just.

#### CONDUCT OF THE ARBITRATION

11. The Arbitrator shall have power to obtain call for receive and act upon any such oral or documentary evidence or information (whether the same be strictly admissible as evidence or not) as he may think fit and to conduct the Arbitration in such manner in all respects as he may think fit and shall if in his opinion the amount of the security demanded is excessive have power in his absolute discretion to condemn the Contractor in the whole or part of the expense of providing such security and to deduct the amount in which the Contractor is so condemned from the salvage remuneration. Unless the Arbitrator shall otherwise direct the parties shall be at liberty to adduce expert evidence at the Arbitration. Any Award of the Arbitrator shall (subject to appeal as provided in this Agreement) be final and binding on all the parties concerned. The Arbitrator and the Committee of Lloyd's may charge reasonable fees and expenses for their services in connection with the Arbitration whether it proceeds to a hearing or not and all such fees and expenses shall be treated as part of the costs of the Arbitration. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.

12. Interest at a rate per annum to be fixed by the Arbitrator from the expiration of 21 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of publication of the Award and/or Interim Award by the Committee of Lloyd's until the date payment is received by the Committee of Lloyd's both dates inclusive shall (subject to appeal as provided in this Agreement) be payable upon any sum awarded after deduction of any sums paid on account.

#### PROVISIONS AS TO APPEAL

13. Any of the persons named under Clause 8 may appeal from the Award but not without leave of the Arbitrator(s) on Appeal from an Interim Award made pursuant to the provisions of Clause 10 hereof by giving written or telegraphic or telex Notice of Appeal to the Committee of Lloyd's within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the publication by the Committee of Lloyd's of the Award and may (without prejudice to their right of appeal under the first part of this Clause) within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after receipt by them from the Committee of Lloyd's of notice of such appeal (such notice if sent by post to be deemed to be received on the day following that on which the said notice was posted) give written or telegraphic or telex Notice of Cross-Appeal to the Committee of Lloyd's. As soon as practicable after receipt of such notice or notices the Committee of Lloyd's shall refer the Appeal to the hearing and determination of a person or persons selected by it. In the event of an Appellant or Cross-Appellant withdrawing his Notice of Appeal or Cross-Appeal the hearing shall nevertheless proceed in respect of such Notice of Appeal or Cross-Appeal as may remain. Any Award on Appeal shall be final and binding on all the parties concerned whether such parties were represented or not at either the Arbitration or at the Arbitration on Appeal.

#### CONDUCT OF THE APPEAL

14. No evidence other than the documents put in on the Arbitration and the Arbitrator's notes of the proceedings and oral evidence if any at the Arbitration and the Arbitrator's Reasons for his Award and Interim Award if any and the transcript if any of any evidence given at the Arbitration shall be used on the Appeal unless the Arbitrator(s) on the Appeal shall in his or their discretion call for or allow other evidence. The Arbitrator(s) on Appeal may conduct the Arbitration on Appeal in such manner in all respects as he or they may think fit and may act upon any such evidence or information (whether the same be strictly admissible as evidence or not) as he or they may think fit and may maintain increase or reduce the sum awarded by the Arbitrator with the like power as is conferred by Clause 11 on the Arbitrator to condemn the Contractor in the whole or part of the expense of providing security and to deduct the amount disallowed from the salvage remuneration. And he or they shall also make such order as he or they shall think fit as to the payment of interest on the sum awarded to the Contractor.

The Arbitrator(s) on the Appeal may direct in what manner the costs of the Arbitration and of the Arbitration on Appeal shall be borne and paid and he or they and the Committee of Lloyd's may charge reasonable fees and expenses for their services in connection with the Arbitration on Appeal whether it proceeds to a hearing or not and all such fees and expenses shall be treated as part of the costs of the Arbitration on Appeal. Save as aforesaid the statutory provisions as to Arbitration for the time being in force in England shall apply.

#### PROVISIONS AS TO PAYMENT

15. (a) In case of Arbitration if no Notice of Appeal be received by the Committee of Lloyd's within 14 days (exclusive of Saturdays and Sundays or other days observed as general holidays at Lloyd's) after the date of the publication by the Committee of the Award and/or Interim Award the Committee shall call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest as hereinbefore provided but the Contractor shall reimburse the parties concerned to such extent as the final Award is less than the Interim Award.
- (b) If Notice of Appeal be received by the Committee of Lloyd's in accordance with the provisions of Clause 13 hereof it shall as soon as but not until the Award on Appeal has been published by it call upon the party or parties concerned to pay the amount awarded and in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount awarded to him together with interest if any in such manner as shall comply with the provisions of the Award on Appeal.
- (c) If the Award and/or Interim Award and/or Award on Appeal provides or provide that the costs of the Arbitration and/or of the Arbitration on Appeal or any part of such costs shall be borne by the Contractor such costs may be deducted from the amount awarded before payment is made to the Contractor by the Committee of Lloyd's unless satisfactory security is provided by the Contractor for the payment of such costs.
- (d) If any sum shall become payable to the Contractor as remuneration for his services and/or interest and/or costs as the result of an agreement made between the Contractor and the parties interested in the property salvaged or any of them the Committee of Lloyd's in the event of non-payment shall realize or enforce the security and pay therefrom to the Contractor (whose receipt shall be a good discharge to it) the amount agreed upon between the parties.
- (e) Without prejudice to the provisions of Clause 4 hereof the liability of the Committee of Lloyd's shall be limited in any event to the amount of security held by it.

#### GENERAL PROVISIONS

16. Notwithstanding anything hereinbefore contained should the operations be only partially successful without any negligence or want of ordinary skill and care on the part of the Contractor his Servants or Agents and any portion of the vessel her appurtenances bunkers stores and cargo be salvaged by the Contractor he shall be entitled to reasonable remuneration and such reasonable remuneration shall be fixed in case of difference by Arbitration in manner hereinbefore prescribed.

17. The Master or other person signing this Agreement on behalf of the property to be salvaged enters into this Agreement as Agent for the vessel her cargo freight bunkers and stores and the respective owners thereof and binds each (but not the one for the other or himself personally) to the due performance thereof.

18. In considering what sums of money have been expended by the Contractor in rendering the services and/or in fixing the amount of the Award and/or Interim Award and/or Award on Appeal the Arbitrator or Arbitrator(s) on Appeal shall to such an extent and in so far as it may be fair and just in all the circumstances give effect to the consequences of any change or changes in the value of money or rates of exchange which may have occurred between the completion of the services and the date on which the Award and/or Interim Award and/or Award on Appeal is made.

19. Any Award notice authority order or other document signed by the Chairman of Lloyd's or any person authorised by the Committee of Lloyd's for the purpose shall be deemed to have been duly made or given by the Committee of Lloyd's and shall have the same force and effect in all respects as if it had been signed by every member of the Committee of Lloyd's.

20. The Contractor may claim salvage and enforce any Award or agreement made between the Contractor and the parties interested in the property salvaged against security provided under this Agreement if any in the name and on behalf of any Sub-Contractors Servants or Agents including Masters and members of the Crews of vessels employed by him in the services rendered hereunder provided that he first indemnifies and holds harmless the Owners of the property salvaged against all claims by or liabilities incurred to the said persons. Any such indemnity shall be provided in a form satisfactory to such Owners.

21. The Contractor shall be entitled to limit any liability to the Owners of the subject vessel and/or her cargo bunkers and stores which he and/or his Servants and/or Agents may incur in and about the services in the manner and to the extent provided by English law and as if the provisions of the Convention on Limitation of Liability for Maritime Claims 1976 were part of the law of England.

For and on behalf of the Contractor

For and on behalf of the Owners of property  
to be salvaged.

.....  
(To be signed either by the Contractor personally or by the Master of the salvaging vessel or other person whose name is inserted in line 3 of this Agreement.)

.....  
(To be signed by the Master or other person whose name is inserted in line 1 of this Agreement.)



ภาคผนวก จ.

แบบฟอร์มบันทึกของนายหน้าที่มีข้อกำหนดเรื่องอนุญาตตุลาการ

**STANDARD CONFIDENTIALITY/DISCLOSURE STATEMENT  
NONREPRESENTATION BROKER**

\_\_\_\_\_, herein known as PROSPECT, acknowledges and agrees that PROSPECT approached Jones & Associates Business Brokers, who is a NONREPRESENTATION BROKER (BROKER), and that BROKER was the first to advise PROSPECT of the availability of and details concerning the following business opportunities and real properties:

Listing #	Description of Business	Listing #	Description of Business
1. _____		4. _____	
2. _____		5. _____	
3. _____		6. _____	

NOTE: Seller may require Personal Financial Statement before more information provided.

PROSPECT understands and agrees that all dealings concerning said business opportunity will be handled through BROKER and that BROKER HAS ENTERED INTO AN AGREEMENT FOR PAYMENT OF A COMMISSION WITH THE SELLER. PROSPECT further agrees that information received with respect to the above-mentioned opportunity will be kept in strict confidence, will not be used to compete with the SELLER and that PROSPECT shall not disclose this information to any person, excluding those parties specifically involved in the transaction itself and the PROSPECT'S sole purpose in seeking information about the business is to purchase a business. In the event that PROSPECT violates this confidentiality covenant or any other covenant herein and/or with respect to SELLER, then BROKER, Listing BROKER and SELLER shall be entitled to all remedies provided by law, including but not limited to injunctive relief and damages. The same remedies shall be afforded and available to the BROKER in the event that the PROSPECT and/or the SELLER circumvent the BROKER. BROKER shall be deemed to include all and any other BROKERS with whom BROKER is co-operating.

All data on business opportunities are provided for information purposes only. No representation is made by BROKER as to the accuracy of the data provided. BROKER encourages PROSPECT to thoroughly review and independently verify to PROSPECT'S own satisfaction that the data provided are substantially representative of the business activity of the SELLER and can be relied upon when considering the purchase of said business opportunity of SELLER. PROSPECT acknowledges that PROSPECT has been advised to seek the independent counsel of an attorney and/or an accountant to verify the information supplied to BROKER by SELLER and to examine any and all applicable documentation relevant to the transaction.

In the event that PROSPECT discloses the availability of said designated business opportunity of SELLER to any third party and this third party purchases the business without the BROKER, then PROSPECT, in addition to the remedies specified herein above, will also be responsible for the payment of BROKER'S compensation which would have been payable on the listed selling price or minimum compensation, whichever is greater.

PROSPECT agrees that he will not within two years from this date deal directly or indirectly with the SELLER without the BROKER'S written consent and should the PROSPECT do so directly or indirectly and a sale, management agreement, lease or other financial arrangement, including leasing the SELLER'S premises from the SELLER or Landlord is consummated, the PROSPECT shall be liable for all and any damages which the BROKER may suffer, including but not limited to the compensation which would have been payable on the listed selling price or minimum compensation, whichever is greater and PROSPECT further agrees in terms of Section 475.42(1)(j) of the Florida Statutes, the BROKER at BUYER'S expense shall have the right to place any appropriate lien and encumbrance on the business and real estate or both, necessary to collect any compensation and this shall be the necessary authorization and consent as is required by the Statute. BUYER further grants BROKER a security interest under the FLORIDA UNIFORM COMMERCIAL CODE in and to all furniture, fixtures, inventory, accounts receivable and general tangibles of the BUSINESS as security for such commissions due in the future arising out of any options which a BUYER may subsequently exercise and authorizes BROKER to file this Agreement as a financing statement to perfect such security interest. For the purpose hereof the prospect shall include any corporation which the BUYER may use to purchase the said business.

This Contract shall be governed by the laws of the State of Florida. The parties agree that prior to the institution of Arbitration as hereinafter set out, they will have the option of attempting to settle any dispute or claim between them arising out of this document, the breach, or interpretation thereof, to non-binding Mediation in terms of the Florida Mediation Act 44 Florida Statutes. All cost of Mediation shall be equally borne by the parties. The parties and the Broker specifically agree, subject to the provision of Mediation referred to above, to submit any controversy or claim arising out of or relating to the Contract, or the breach thereof, either to a Court of Competent Jurisdiction to file a suit at law and/or in equity, with venue in Alachua County, Florida; or to resolution by Arbitration in accordance with the commercial arbitration rules of the American Arbitration Association (AAA). The prevailing party in any litigation over this contract shall be entitled to an award of reasonable attorney's fees, paralegal fees, expert witness fees, costs and expenses (whether or not taxable as court costs). A judgment upon any award rendered by the arbitrators shall be entered by a court having subject matter jurisdiction therein. The parties hereto agree that jurisdiction and venue for the entry of judgment upon said arbitration award shall be in Alachua County, Florida. The arbitrators are directed to award the expenses of the arbitration, including required travel and other expenses of the arbitrators and any representatives of the arbitrators costs, the costs and charges of the American Arbitration Association, all reasonable attorney's fees and costs, to the prevailing party in the arbitration. No action shall be entertained if filed more than two years subsequent to the date the cause (s) of action actually occurred regardless of whether damages were otherwise as of said time calculable. The Broker shall be entitled to all information and copies of all documents relating to the arbitration from both the Arbitrator and the parties. In the event the parties take the controversy or claim to a Court of Competent Jurisdiction, the Broker shall be entitled to a copy of all filings, pleadings and rulings within 5 days after such papers are issued.

The SELLER is the intended beneficiary of all covenants of Prospect, which benefit the SELLER, including without limitation, the covenants concerning the use of information disclosed to Prospect, and may bring an appropriate action to enforce such covenants. The Prospect acknowledges receiving a copy of this document. A facsimile copy of this document and any signatures shall be considered for all purposes as originals.

X \_\_\_\_\_ Date \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tel: \_\_\_\_\_ Fax: \_\_\_\_\_ email: \_\_\_\_\_

**Jones & Assoc. Business Brokers**  
**2815 NW 13<sup>th</sup> Street, Suite 302**  
**Gainesville, FL 32609**  
**Phone: 352-376-6600**  
**Fax: 866-866-2642**

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FBBA Broker

**Instructions: Please clearly and legibly print your name at the top line, sign and date at the bottom. Print your address, telephone, and fax numbers. Then, FAX IT BACK IN FINE MODE TO 866-866-2642... Thanks.**

### ประวัติผู้เขียนวิทยานิพนธ์

นางสาวสุพจี รุ่งโรจน์ เกิดวันที่ 28 เมษายน 2522 สำเร็จการศึกษานิติศาสตร์บัณฑิต (เกียรตินิยมอันดับสอง) จากคณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย หลังจากนั้นสอบไล่ได้เป็นเนติบัณฑิตแห่งเนติบัณฑิตยสภา สมัยที่ 53 และเข้าศึกษาในหลักสูตรนิติศาสตรมหาบัณฑิต คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย เมื่อปี พ.ศ. 2545

