

Scheme Agreement

including use of QS certification mark and sanction procedures

Dated: (Dated)

QS ID: (000000000000)

Stage: (Stage)

QS Fachgesellschaft Obst-Gemüse-Kartoffeln GmbH, Schwertberger Straße 14, 53177 Bonn, legally represented by the Managing Director Dr. Alexander Hinrichs,

- referred to in the following as scheme owner -

and **(name and address scheme participant)**,

- referred to in the following as scheme participant -

herewith enter into the following scheme agreement:

In participating in the *QS. Quality Scheme for Food.*, all sectors engaged in the production process acknowledge the necessity of quality assurance for food that incorporates all the stages involved.

QS is scheme owner and vehicle of the *QS. Quality Scheme for Food.*, referred to hereinafter in brief as "QS scheme" that covers all stages of the supply chain. The standards defined by the scheme owner set forth stringent, verifiable production and marketing criteria for all stages of the supply chain – from the grower to the produce marketing organisations/wholesaler through to the food retail. The QS scheme is distinctive for its cross stage monitoring of these criteria and the traceability of the agricultural and horticultural products and the food manufactured from them. In the food retail goods produced in accordance with the requirements of the QS scheme by QS certified companies bear the QS certification mark.

The scheme participant has informed itself extensively about the QS scheme. The scheme participant is prepared to abide by the production and marketing standards set by the scheme owner for its own particular sector and product scope and to comply with the regulations of the QS residue monitoring.

This having been established, the scheme owner and the scheme participant agree as follows:

§ 1 Subject of Agreement

The scheme owner embodies the vehicle of the QS scheme. The requirements of the QS scheme are set down in the respectively valid version of the QS scheme manual, which also includes the style guide for the QS certification mark.

The QS scheme manual may be viewed in the Internet in its respectively valid version under www.q-s.de.

The present Agreement governs participation of the scheme participant in the QS scheme, the sanctions imposed for violations against QS scheme requirements and the use of the QS certification mark by the scheme participant.

§ 2 Rights and Duties

The scheme owner and the scheme participant are bound under the present Agreement to the following rights and duties.

1. The scheme owner
 - a) provides the scheme participant, in the form of the QS scheme manual, with a standardized scheme for quality assurance and control in the production and marketing of agricultural products and the food that is manufactured from them.

The QS scheme manual defines the requirements set of the scheme participant in the various stages of the production and marketing process.

The scheme owner is entitled

- aa) to modify the QS scheme manual correspondingly if this is necessary for handling the QS scheme and if the scheme participant can be reasonably expected to accommodate said modification.
- bb) to alter the scale of fees, particularly to adjust them to general price trends.

The scheme owner will notify the scheme participant in written form of the amendment.

- b) operates a central database which will be available to the scheme participant for the internal data exchange that is necessary for the scheme participant's particular stage.
- c) provides the scheme participant with a selection of independent certification bodies or laboratories that are approved and authorized to engage in audit activities as required by the QS scheme.
- d) undertakes to follow up any violation against the present scheme agreement or the QS scheme manual and, where necessary, to impose sanctions subject to the present scheme agreement.
- e) supplies the scheme participant with an overview of the scheme participants participating in the QS scheme, giving due consideration to data protection.
- f) makes available documents and aids for implementing the QS requirements into its operations whilst providing the scheme participant with the QS scheme manual.
- g) supports the scheme participant by supplying information and training material that, where requested, may be made available for a share in the costs.
- h) is only liable itself and for vicarious agents for wilful intent and gross negligence.

2. The scheme participant

- a) undertakes to comply with the requirements specified in the QS scheme manual and to satisfy its duties defined therein of providing information to the scheme owner.

Said duty applies to all corporate locations registered by the scheme participant and admitted to the QS scheme. Under its own name, the scheme participant may only register legally dependent corporate locations for the QS scheme.

The scheme participant guarantees to the scheme owner that the corporate locations it has registered for the QS scheme and which have been admitted will fulfil the duties derived from the present scheme agreement.

- b) undertakes to only entrust the audit activities required in the QS scheme to those certification bodies and laboratories that have been approved by the scheme owner.
- c) accords
 - aa) the certification body and the scheme owner for the purpose of the audits specified in the QS scheme,
 - bb) the certification body, the scheme owner and/or a third party for the random sample audit called for by the scheme owner,
 - cc) the scheme owner and/or a third impartial party appointed by the scheme owner for cases in which doubt prevails or there is impending danger,

free access to corporate grounds during normal business hours, to operational premises, to employees and to all records and registers by way of which compliance with and application of the requirements of the QS scheme can be verified.

The scheme participant undertakes to provide scheme-specific information immediately.

d) declares its agreement with the certification bodies and laboratories passing on the outcome of their audit activities immediately to the scheme owner.

e) will immediately inform the scheme owner as well as the responsible authorities (insofar as there is a legal duty to do so) of any scheme-related critical events and public recalls.

Critical events are scheme-related incidents that represent a danger to humans, the environment, assets or the QS scheme as a whole or could become a danger to them. In particular, these include

aa) all scheme-related deviations determined in goods purchasing, production or marketing, if these deviations are capable of endangering the food safety.

bb) all preliminary criminal or supervisory proceedings, if these proceedings are directly or indirectly geared toward ensuring food safety.

cc) media research, critical media reports and public protests directly or indirectly regarding food safety.

f) declares its agreement with the scheme owner publishing the name, address, location number, QS identification number, the particular stage in the production and marketing process of the scheme participant, for growers also the certified cultures as well as the names, addresses, location numbers and QS-IDs of all corporate locations admitted to the QS scheme on the homepage and/or on the database of the scheme owner.

At all times the scheme owner is entitled to remove from its homepage any scheme participant or corporate locations that have temporarily or permanently been precluded from marketing.

g) declares its agreement with the scheme owner electronically saving and processing all of the scheme participant's data necessary for running the QS scheme.

h) undertakes to only use preliminary products that have been supplied by scheme participants or parties eligible to deliver into the QS scheme for all the products that are manufactured and marketed subject to the QS scheme in line with the QS scheme manual.

Scheme participants may only sell their goods to resellers as goods from QS certified companies or describe their goods as such in the accompanying papers, if the reseller is a QS scheme participant or if it can be expected that the reseller will no longer actively advertise said products as goods produced in accordance with the requirements of the QS scheme by QS certified companies in its own business transactions and customer contacts.

i) will give immediate notification of all amendments that affect the contractual status with the scheme owner, its own availability or the assessment of the fees for scheme participation by entering them in the central database of the scheme owner or, where there is no provision for such log-in, will duly inform the scheme owner in writing.

j) undertakes, for purposes of company identification, to use an ILN number (international location number) or – at the discretion of the scheme owner – a comparable identification number and will notify the scheme owner of said number.

§ 3 Use of the QS certification mark

1. The scheme participant is entitled to make product-specific use of the QS certification mark for those products, which it has produced and/or marketed within the reach of the QS certification.

In particular the scheme participant may

a) make appropriate use of the QS certification mark for its own advertising purposes and for the products it produced and/or marketed, although the QS certification mark may only be related to those products with which the scheme participant engages in the QS scheme.

The right to use the QS certification mark is revocable, non-transferable and is not exclusively accorded.

- b) also use the QS certification mark for labelling its operating site, although – if participation in the scheme does not apply to the plant as a whole, if the plant is also party to other quality assurance schemes and/or because of this fact, the QS certification mark may not feature on all products – said use must be absolutely unmistakable and clearly to the exclusion of any confusion as to what exactly the QS certification mark relates.

2. The scheme participant undertakes only to use the QS certification mark subject to the style guide for the QS certification mark given in the QS scheme manual. In using the QS certification mark, the scheme participant will avert any possibility of mistaken identity.

The scheme owner is entitled to alter the style guide for the QS certification mark as it sees fit. The scheme owner will give immediate notification to the scheme participant of any alteration, preferably prior to the amendment being carried out.

3. The scheme owner is entitled to call for evidence of the nature and manner in which the QS certification mark is actually used.

Should the scheme participant violate the present scheme agreement and the rules thereof governing the use of the QS certification mark, in particular, should it make unauthorized use of the QS certification mark, tarnish it in any way, violate the style guide for the QS certification mark or use the QS certification mark in a manner that is anticompetitive, the scheme owner will be able to prohibit the scheme participant from using the QS certification mark as with immediate effect, retaining the right to take further measures.

§ 4 Sanctions

1. In the event of culpable infringement of the present scheme agreement and the QS scheme manual, a sanction board set up with the scheme owner will decide on the

sanctions to be imposed on the scheme participant in accordance with a code of procedure for sanctions that is part of the QS scheme manual.

2. The sanction board will be convened by the scheme owner in the event the present scheme Agreement or the QS scheme manual is violated or if this is to be feared. The scheme participant will be accorded a period of time in this case to present its own position.

The decisions of the sanction board will be substantiated in written form and will be notified to the scheme participant by written channels.

3. In cases of infringement, the sanction board is entitled
- to issue warnings,
 - to organize post-audits or increase the frequency of audits,
 - to impose contractual penalties up to an amount of 50,000 EUR, and
 - to suspend the participant for a limited or unlimited period of time or to recommend banning the participant from the scheme.
4. The scheme participant in question undertakes to abide by the decisions of the sanction board, in particular to pay any penalties set. Implementation and assertion of the decisions taken will be the responsibility of the scheme owner.

§ 5 Fees/List of Services

1. The scheme owner will charge the scheme participant a fee as set down in the attached scale of fees in return for the services defined in § 2 (1). The scheme participant undertakes to pay the scheme owner the current fees on time as specified in the scale of fees.
2. The scheme participant undertakes to abide by the truth in supplying the scheme owner with information for purposes of fee assessment, where the fees relate to turnover or other

operational aspects. The scheme owner is entitled to see suitable documents or to have them inspected by a person selected by the scheme owner who is bound to professional secrecy, for the purpose of verifying the information provided. Should such inspection result in a difference in excess of 10 percent to the figures notified, the scheme participant will bear the costs of said inspection; otherwise these costs will be borne by the scheme owner.

§ 6 Coordinators

In addition, the following applies to coordinators:

1. Companies and branches may be incorporated into the QS scheme subject to the QS scheme manual by means of a coordinator. Coordinators become scheme participants. They undertake to assert the duties set down in the present scheme agreement in respect of their associated companies or branches.

Where companies engaged in agriculture/horticulture are incorporated into the QS scheme through coordinators, they will sign a declaration of participation and proxy in accordance with the QS scheme manual.

2. Coordinators will ensure that the scheme owner is able to access the data of the companies and branches incorporated in the QS scheme at any time in its central database.

The coordinator will enter said data over an interface or the appropriate internet access on the database of the scheme owner.

The scheme owner is authorised to publish the fact of participation, of temporarily or permanent exclusion from the QS scheme on the homepage and/or in the database of the scheme owner. The coordinator is obliged to obtain approval to that effect. Regardless of that the person and company specific data are only allowed to pass to a third party outside the QS scheme after previous authorisation of the company or branch respectively.

Solely the coordinator will be liable for any costs and damages incurred with the companies or branches of the coordinator or with the scheme owner from a delay or error in providing this data.

The data of the incorporated companies may not be used by the coordinator for purposes other than quality assurance within the QS scheme and may not be passed on to third parties, unless the incorporated company has expressly agreed to the usage thereof for other purposes and distribution thereof to third parties.

3. Coordinators may use the QS certification mark for advertising purposes. They will permit the companies and branches incorporated by them into the QS scheme to use the QS certification mark subject to the present scheme agreement and the style guide for the QS certification mark listed in the QS scheme manual for the products that are produced and/or marketed within the reach of the QS certification.
4. Coordinators of the stages agriculture and feed sector will undertake in their declarations of participation and proxy to hold the companies they have incorporated into the QS scheme to the immediate rectification of any nonconformities detected, to compliance with any sanctions imposed by the scheme owner, and to the payment of penalties directly to the scheme owner. The coordinator now herewith assigns all claims to satisfaction in this respect to the scheme owner. The present ruling applies to the coordinators of the food retail stage by analogy.

§ 7 Term and Termination of Agreement

1. The agreement will take effect immediately upon being signed. It has a fixed term of one year.
2. The agreement will renew automatically by one year, unless one of the Parties serves three months' notice to the end of its respective term to terminate it. Notice will be served by registered mail.
3. Should duties set down in the agreement be significantly amended by the scheme owner

subject to § 2 (1) a), the scheme participant will be entitled to file objection to the amendment within a period of two weeks of receiving the notification of change.

Should the scheme participant lodge its objection, the scheme owner will be entitled to terminate the scheme agreement without notice for good cause.

4. The right to serve exceptional notice of termination for good cause will otherwise be unaffected hereby. A good cause specifically prevails if
 - a) one of the Parties violates a provision of the present agreement and despite a cease-and-desist letter fails to cease said violation.
 - b) a judgement in the first instance has been pronounced on the scheme participant or its legal representative for the violation, under penalty of the law, of regulations governing food products or other regulations that are of significance for implementing the present Agreement or for the reputation of the QS scheme.
 - c) the scheme participant suffers financial losses, in particular insolvency proceedings are opened on its assets or not opened for lack of assets.
 - d) if a legal successor takes over one of the two Parties, whether by inheritance or takeover of assets or for other reasons.

§ 8 Choice of Law, Place of Performance and Jurisdiction

1. The present agreement is subject to German law.

2. Place of performance and jurisdiction for all disputes derived from the present agreement is the registered seat of the scheme owner, where this is permitted by statute.

§ 9 Ancillary Provisions

1. The scheme participant confirms it has received one copy of the present Agreement together with the Annexes to said Agreement. The scheme participant recognises said Annexes as effective, integral parts of the Agreement.
2. No verbal agreements relating to the present Agreement have been reached. Amendments and additions will require the written form to be operative, unless otherwise stipulated by the Agreement. The Parties may only waive the requirement of the written form likewise by written agreement.
3. Should any provisions of the present Agreement prove to be ineffective, the validity of the other provisions of the Agreement will not be affected hereby. In such a case, the Agreement will be so revised as to achieve the business purpose originally intended by the invalid provision. The same applies if, in implementing the present Agreement, an omission transpires which requires remedy.
4. The present scheme agreement replaces any previous scheme-, sanction- and label use agreement. In spite of that, the contract date of the first scheme agreement/system agreement remains applicable for the assessments of term and termination as well as the fees for scheme participation.

Bonn, _____
Place, Date

Place, Date

QS Fachgesellschaft
Obst-Gemüse-Kartoffeln GmbH

scheme participant
(signature, stamp)

Annexes to Scheme Agreement

- Extract from QS scale of fees for scheme participants
- Form for company master data
- Style guide for the QS certification mark

SAMPLE