



PINK LADY® Brand
NON-EXCLUSIVE U.S. EXPORT LICENSE 2020
CANADA & MEXICO



THIS NON-EXCLUSIVE U.S. EXPORT LICENSE (License) for exports to Canada and Mexico is made effective this ____ day of _____, 2020 (the “Effective Date”), by and between Pink Lady America LLC, a Washington State LLC., located at 1330 N. 16th Ave., Ste A, Yakima, WA, 98902 USA (“PLA”), and _____, located at _____, USA (“Licensee”).

1. PLA holds all common law and statutory rights in the trademarks PINK LADY® and the PINK LADY® “Flowing Heart” logo design, federally registered trademarks in the United States (the “Trademarks”), for use with fresh whole apples in the United States.

2. Subject to the terms and conditions of this License, PLA grants to Licensee a non-exclusive right to use the Trademarks in connection with the export of fresh whole apples of the varieties Cripps Pink (U.S. Plant Patent No. 7,880 - expired), Rosy Glow, Ruby Pink (USPP 16,725), Pinabelle (USPP 21,555), Lady in Red (USPP 18,787), PLBAR B1 (“Barnsby”) (USPP 21,606) and PLMAS98 (“Maslin”) (USPP 21,412), which varieties will be collectively referred to as the “Licensed Varieties,” grown in the United States and exported from the United States by Licensee only to Canada and Mexico and not to any other jurisdiction nor for any other commercial activity. Fresh whole apples meeting all of those requirements will be referred to hereafter as the “Licensed Apples Licensee further agrees that if Licensee exports any Barnsby cv., Maslin cv., or Ruby Pink cv. apples grown in the United States that meet the grading and packing standards (“Standards”) established by PLA for the Trademark, then Licensee may only export those Barnsby cv., Maslin cv. or Ruby Pink cv. apples using the Trademarks.

3. Licensee’s non-exclusive right and license to use the Trademarks is subject to the following conditions:

a. Licensee is authorized to use the Trademarks only in connection with Licensed Apples that are harvested from duly and properly licensed or certified trees of the Licensed Varieties that are growing in the United States. Licensee is not authorized to export any apples in connection with the Trademark if those apples are harvested from trees that infringe any U.S. Plant Patent, Plant Breeder’s Rights, or Plant Variety Rights for any of the Licensed Varieties, or trees that have not been certified and licensed by PLA to be capable of producing apples that can be sold in connection with the Trademarks.

b. Licensee is authorized to apply the Trademarks only on boxes, PLU stickers, point of sale advertising materials, and other advertising and promotional materials of a design and type which are expressly approved of by PLA in writing prior to Licensee’s use of the Trademarks. All Licensed Apples exported by Licensee must also comply with Standards established by PLA. PLA will provide the approved manner of use of the Trademarks and the Standards in a document titled “**Approved Use Statement**” on its website, www.pinkladyamerica.org. PLA reserves the right to change the manner of approved usage of the Trademarks, or the Standards, at any time in its sole discretion, and will update the Approved Use Statement on its website and/or provide Licensee with a new Approved Use Statement describing any such changes. If PLA issues a new Approved Use Statement, Licensee may use any materials in existence at that time that bear the Trademarks in accordance with the prior Approved Use Statement.

c. Licensee must pay to PLA a **royalty of US \$28.00 per metric ton** of Licensed Apples exported from the United States to Canada or Mexico. These royalties are subject to annual review and adjustment at PLA’s sole discretion. Licensee must pay the required royalties for **each calendar quarter within thirty (30) days after the end of each quarter**. PLA may also invoice the Licensee on a quarterly basis. Licensee must keep documents showing the number of boxes and weight of the Licensed Apples received, exported or sold by Licensee, as well as copies of the Commercial Invoice, Manifest or Ocean Bill of Lading, Phytosanitary Certificate, Export Certificate, and the Customs Declaration for each shipment of Licensed Apples that Licensee exports from the United States (all collectively referred to as “Licensee’s Export Documents”). With each quarterly royalty payment, Licensee **must provide to PLA a written report** detailing the number of boxes and weight exported for that quarter, along with a copy of the Licensee’s Export Documents for that quarter.

d. Licensee expressly authorizes PLA, and its representatives, to inspect, audit and review the Licensed Exporter’s administrative offices, books and records (electronic or otherwise) in relation to Trademarks, Product, Licensed Product and volumes of apples of the Licensed Varieties, upon given reasonable notice to the Licensed Exporter during normal business hours. Licensee also grants access to all Licensee’s warehouses, packing, and shipping facilities, and access to all ships, trucks, and containers in which Licensed Apples or any of Licensee’s apples of the Licensed Varieties are present, for the purpose of inspecting those premises or containers, and for the purpose of reviewing and copying Licensee’s Export Documents, all for the

purpose of verifying compliance with this License, the Standards, or the Approved Use Statement. Licensee also grants to PLA unrestricted access to all customs, commercial, and phytosanitary documents or information related to apples exported or imported by Licensee that are in the possession of any government agencies for any country in the world for the purpose of verifying Licensee's compliance with this License, the Standards, or the Approved Use Statement. Licensee agrees that any failure to adhere to the Standards or the Approved Use Statement will cause irreparable damage to the value of the Trademarks.

e. All Packers that supply apples to the Licensee must have a signed Trademark License from PLA for packing Pink Lady® brand apples.

f. Licensee must not obliterate, deface, destroy, cancel, or otherwise alter the commercial impression of the Trademarks in any way in connection with Licensee's use. Licensee must always use the registered trademark symbol ® in connection with the Trademarks, as set forth in the Approved Use Statement.

g. Licensee acknowledges and agrees that the rights granted by PLA above to use the Trademarks convey to Licensee no greater rights than those expressly stated herein and that, in particular, Licensee shall at no time acquire any legal or equitable rights, title, or interest of any sort in the Trademarks or in the use thereof.

h. Licensee must not directly or contributorily infringe the Trademarks, or any plant patent, plant breeder's rights certificate, or plant variety rights certificate that protects any of the Licensed Varieties in any country or induce any other person or business to do the same.

i. Licensee will be exporting Licensed Apples from the United States for the following apple packers who have signed an updated Packing License for use of the Pink Lady® brands with PLA:

* _____, * _____, * _____,
* _____, * _____, * _____,

4. The Term of this License is one year from the Effective Date. This License will automatically renew for additional one year periods of time unless either party gives the other party a written notice of an intent not to renew more than thirty days before the end of the current Term. This License may also be terminated for cause. If this License is terminated for cause, because of a breach by Licensee, then Licensee must immediately stop all use of the Trademarks.

5. This License constitutes the entire agreement of the parties relating to the Trademarks used with apples grown and exported from the United States to Canada and Mexico, and supersedes and replaces all prior agreements, discussions and representations on this subject, all of which are merged into, and superseded by this License. This License may not be modified or interpreted orally, but only by a writing signed by an authorized officer of PLA. Nothing in this License shall constitute or create between Licensee and PLA a partnership, joint venture, agency, or employer/employee relationship. No act or omission by PLA shall constitute a waiver or any breach of this License by Licensee, unless such waiver is specific and in writing. Licensee must not grant sublicenses, or divide, assign, transfer or encumber this License without PLA's prior written consent. This License is governed by the laws of the United States and State of Washington, and Licensee specifically consents to the personal jurisdiction, and venue, of the U.S. District Court for the Eastern District of Washington, or the Yakima County Superior Court, located in Yakima, Washington, for resolution of any disputes related to this Agreement. In any litigation related to this License, the substantially prevailing party is entitled to reimbursement of their reasonable attorneys' fees, costs, litigation expenses and disbursements.

6. This License shall be deemed accepted by Licensee either upon Licensee's execution and delivery of a signed counterpart, or by Licensee's conduct in using the Trademarks in connection with the approved varieties for export from the United States to Mexico and Canada.

Pink Lady America, LLC, (PLA) a Washington State Limited Liability Company,

[Company Name]

By: _____

By: _____

Lynnell Brandt, Managing Member

Title: _____