

EXCLUSIVE SUPPLIER AGREEMENT

This Exclusive Supplier Agreement (“Agreement”), effective as of October 1, 2013 (“Effective Date”), is between Bagger, Inc., an Ohio corporation (“Supplier”), and Delishco Beverage Products Division of Delishco, Inc., a Massachusetts corporation (“Customer”) (collectively, “the parties”).

BACKGROUND

- A. Customer is in the business of producing beverage products for wholesale and retail purchasers. These beverage products frequently require juice from oranges.
- B. Supplier is in the business of producing and distributing bags and related products to manufacturing, retail, and other businesses in support of their end product production process.
- C. Customer desires to purchase from Supplier all bags it uses to harvest oranges for orange juice for its beverage products. Based on five year historical averages, Customer’s orange bag supply needs average between 7 and 10 million bags per year, and single month orders are sometimes up to 1.5 million bags.

Accordingly, the parties agree as follows:

1. **Sale and Purchase.** Customer and Supplier agree that Supplier shall sell to Customer orange harvesting bags that conform to the specifications listed in Schedule 1 (“Bags”) in quantities necessary to meet all of Customer’s orange harvesting bag needs.
2. **Purchase Price.** The price paid by Customer to Supplier shall be \$1.0 per Bag (“Discount Price”) which represents at least a ten (10) cent discount from its regular pricing of \$1.10 - \$1.15 for large company customers.
3. **Quantity and Delivery.** Supplier warrants that it has the capacity to supply up to 1.5 million bags in a month, but recognizes that Customer’s bag needs vary from month to month. Supplier will deliver quantities ordered by Customer within 30 days after order placement.
4. **Exclusivity.** The parties acknowledge and agree that the Discount Price described in Section 2 reflect the parties’ intent that Supplier shall be the sole and exclusive provider of Bags to Customer during the Term of this Agreement.
5. **Term.** This Agreement will begin on the Effective Date and continue for a period of 5 years. However, if the customer has not purchased 50 million bags by the end of 5 years, the term will be extended up to 3 more years (a total of 8 years).
6. **Prices Exclusive of Taxes.** All prices are exclusive of sales, use, excise, and other taxes, duties or charges. Unless Customer provides evidence of tax exempt status, Customer shall pay, or upon receipt of invoice from Supplier shall reimburse, Supplier for all such taxes or charges levied or imposed on Customer, or required to be collected by Supplier, resulting from this transaction or any part thereof.
7. **FOB and Insurance.** All prices are FOB unless instructed otherwise. Supplier may arrange for insurance and standard commercial shipping, the costs of which will be invoiced to Customer.

8. **Payment/Financing.** Unless otherwise agreed, invoice payment terms for all purchases made under this Agreement shall be net 10 calendar days on a per order basis and are subject to credit review by Supplier. All payments shall be made to Supplier not later than the agreed number of days from date of invoice. Late payments shall result in the assessment of a late charge equal to 1 1/2% per month on any outstanding balance, or the maximum amount of interest chargeable by law, whichever is less.

9. **Title and Risk of Loss.**

a. **Date of Delivery.** Delivery of any item of Bags shall be deemed complete when Customer acknowledges receipt of the Bags by signature at time of delivery. Title to, and risk of loss for, the Bags sold or licensed under this Agreement shall pass to Customer upon delivery as defined herein.

b. **Security Interest.** As security for the full and prompt payment and performance then due of all obligations of Customer to Supplier under this Agreement, Customer hereby grants to Supplier a security interest in all Bags supplied to Customer hereunder. Customer shall execute any notice or other documentation as may be reasonably requested by Supplier at any time in order to accomplish the intentions of this section. This obligation shall include an obligation to execute any and all necessary financing statements to perfect the security interest herein granted to Supplier as well as its ownership interest, if any, herein evidenced in order to perfect Supplier's interest in the Equipment and Software and its rights to payment and performance by Customer under this Agreement. Supplier shall pay all expenses of filing any necessary financial statements and documents with the appropriate public offices.

10. **Excusable Delay.** Supplier shall be excused from performance under the purchase order and not be liable to Customer for delay in performance attributable in whole or in part to any cause beyond its reasonable control, including but not limited to, action or inaction of any government, war, civil disturbance, insurrection, sabotage, act of public enemy, labor strike, difficulty or dispute, unpredictable failure or delay in delivery by Supplier's suppliers or subcontractors, transportation difficulties, shortage of energy, materials, accident, fire, flood, storm or other act of God, or Customer's fault or negligence. In the event of an excusable delay, Supplier shall make reasonable efforts to notify Customer of the nature and extent of such a delay and Supplier will be entitled to a reasonable schedule extension. In the event a delay results from Customer's fault or negligence, Supplier will also be entitled to an equitable adjustment calculated on a time and materials basis which shall be mutually agreed upon.

11. **Change, Cancellation, and Termination.**

a. **Cancellation of Purchase Order.** If Customer cancels a purchase order within 15 days prior to scheduled shipment date, Customer shall pay to Supplier a restocking fee of 20% of the canceled purchase order. Supplier shall not assess any cancellation charges if Supplier cancels an order.

b. **Breach of Agreement.** In the event that either Party breaches any provision of this Agreement, and fails to cure such breach within 30 days after written notice from the other Party, the breaching Party shall be in default. Supplier's failure to supply quantities of Bags ordered by the Customer or to meet specified quality and weight specifications shall constitute breach of this agreement.

13. **Assignment.** Neither party may assign this Agreement in whole or in part without the prior written consent of the other party. (It shall not be considered an "assignment" if either party applies the contract to wholly owned subsidiaries, or, to other ventures in which they remain the controlling entity.)

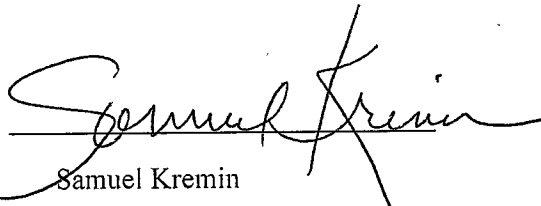
14. **Cooperation.** The parties acknowledge and agree that successful completion of this Agreement shall require the full and mutual good faith cooperation of each of the Parties.

15. **Dispute Resolution.** The parties agree that all disputes arising under or relating to this Agreement will be resolved by arbitration through the American Arbitration Association (AAA) and conducted in accordance with the AAA Commercial Arbitration Rules.

16. **Governing Law, Jurisdiction and Venue.** This Agreement shall be governed in all respects by the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions.

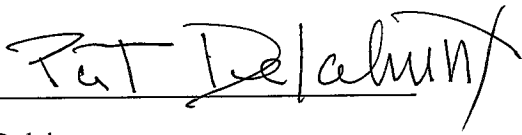
Intending to be legally bound, the parties have entered this Agreement as of the Effective Date.

BAGGER, INC.

By: 
Samuel Kremin

Vice President, Bagger, Inc.

DELISCHO BEVERAGE PRODUCTS
DIVISION OF DELISHCO, INC.

By: 
Pat Delahunt

Delishco Vice President of Beverage Products
Division

Date: September 21, 2013

Date: September 20, 2013

Excerpts from Delishco's RFP and Bagger's Proposal in Response

Delishco's RFP was their standard form and much longer than this paragraph. It contained the following specific language with respect to the order and this dispute:

Five year exclusive Supply of orange harvesting bags to designated Delishco facility, meeting weight, size and other design specification set forth in the attached schedule, up to 1.5 million bags per month, to be delivered within 30 days of order.

Bid proposals to include FOB price and payment terms.

Bagger's bid proposal in response to the RFP was also quite a bit longer than this paragraph. It contained the following specific language relevant to the order and this dispute:

For five year exclusive supply contract for orange harvesting bags to designated Delishco facility, meeting specifications set forth in the attached schedule, up to 1.5 million bags for month (delivered within 30 days of order), 10 million bag annual minimum, F.O.B price - \$1.00 per bag. Payment within ten days of delivery.

Supply needs - Message (HTML)

File Message McAfee E-mail Scan Adobe PDF

Ignore X Reply Reply Forward Meeting
Junk Delete Reply Reply Forward More
Delete Respond Quick Steps Move Tags Editing Zoom

From: fdalvera@delishco.com Sent: August 8, 2013 3:23 PM
To: skremin@bagger.com
Cc: pdelahunt@delishco.com
Subject: Supply needs

As requested, here are the figures on Delishco's orange harvesting bag purchase totals for the last five years:

2008	10 million
2009	7 million
2010	7.2 million
2011	8.5 million
2012	9.3 million

For the year 2013, we are on track to come in at about 10 million.

These numbers reflect the robust comeback of Delishco's beverage products division sales after the worst of the recession.

BAGGER
Exhibit 2

mtg w/
Delishco

10M - 20 ¢ real

10M = Best year

7m x 5 = 35m only \$1.10

Pat: OK Excl → 8 years

Guaranteed

min-50 m \$1.00

Check SANDWICH ORDER

BAGGER
EXHIBIT 3

MTG w/ BAGGER - KREMIN + BORMAN

UP?

B - DISAPPOINTED ACTUAL ~~XX'S~~

EXCLUSIVITY = KEY + \$1.00 per

TIME HORIZON —

SMALL BUS - BUT CAN HANDLE VOLUME
BAG FACIL NEAR TRANSIT

OH = CENTRAL FOR TRUCKS

B WANTS 30m GTESD MIN

OFFER - 8 YRS @ 1m = 5.6m OK
mts
MIN

(up to 1.5m a month = OK)

~~\$1.00
OK FOR 1.00~~

BAGGER

Exhibit __4__

Quantities under exclusive supply contract - Message (HTML)

File Message McAfee E-mail Scan Adobe PDF

Ignore X Reply Reply Forward Meeting
Junk Delete Reply All Forward More
Delete Respond Quick Steps Move Move Tags Editing Zoom

From: BBorman@bagger.com Sent: September, 26, 2013 8:30 AM
To: fdalvera@delishco.com
Subject: Quantities under exclusive supply contract

Dear Fran, I am assuming you remember me from our meeting. I'm the Bagger representative working most directly on your account.

I just want to make sure we're on the same page because that young lawyer of yours left it murky in the contract. Before Bagger puts money into equipment, aren't we agreed that Delishco plans to purchase a minimum of 50 million bags at this price, sometime in the next 8 years?

TO: BBorman@bagger.com
Fr: fdalvera@delishco.com
Reply: Quantities under exclusive supply contract
Date Sept 26, 2013 8:37 am

On my way out, so short reply. I remember you. No worries - I think we'll be at the 10 million level this year alone.

Dazzling for Delishco

Strategic Brainstorming
for
Delishco Consideration and Decision
March 17, 2013

Just a start for brainstorming

- Rebranding for millenials
- Cold Turkey: carbonation without sweet
- Vertical Trim (away from the harvest)
- Cross product marketing
- Market and brand couplings
- In-house design only
- Beyond prune juice for the senior market
- Getting green street cred with tree huggers
- Vending on public transit; auto dispensers
- Direct contract home & community delivery
- Harvesting profits wider & deeper in every line