

# Olive Oil Milling Services Agreement

## 13. Headings

- a. The headings appearing at the beginning of the several paragraphs contained herein have been inserted for identification and reference purposes and shall not themselves determine construction or interpretation of this Agreement.

## 14. Counterparts

- a. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

## 15. Mediation

- a. The Parties hereto agree to mediate any dispute between them arising out of this Agreement prior to any court action or arbitration. Mediation is a non-binding process in which the Parties to the dispute meet with a mediator (selected by the Parties) who will try to work out a mutually acceptable resolution. The mediator does not impose a settlement upon the Parties. If the Parties cannot agree on a mediator, the Superior Court of San Luis Obispo County shall appoint a mediator. The mediator may conduct more than one session and the mediation fee shall be paid equally by the participating Parties. If one of the parties refuses to or resists mediation, such Party shall not be entitled to recover prevailing attorney fees.

## 16. Arbitration

- a. Any dispute arising out of this Transaction shall be decided by neutral binding arbitration in accordance with Chapter 3, Title 9 of the California Code of Civil Procedure (CCP section 1283.05) including, but not limited to, the right of discovery, and not by court action except as provided by California Law for Judicial Review of Arbitration Proceedings. The arbitrator shall be a retired Superior Court Judge or a licensed California attorney with at least five years experience. The arbitration shall be conducted before JAMS/ENDIPUTE (hereinafter "JAMS") 1.800.352.5267 or Jamsadr.com, or such other arbitrator as the Parties may mutually agree upon. If the Parties cannot agree upon an arbitrator, the Superior Court of San Luis Obispo County shall appoint an arbitrator from the JAMS panel of retired judges. The filing of an action in a court of competent jurisdiction to enable the recording of a notice of pending action, for an order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediation or arbitration under this Agreement regardless of whether said complaint includes causes of action not necessary for the recording of the notice of pending action. The Parties agree that in the event of such court filing, it would be appropriate for the court to issue an order stating the court proceedings pending the completion of the mediation or arbitration under this Agreement. The filing of such judicial action shall not constitute a waiver of mediation or the arbitration rights or the prevailing Party's rights to attorney fees and costs under the Agreement. The prevailing Party in the arbitration shall recover attorney fees and the losing Party shall also pay the arbitrator's fees.

# Olive Oil Milling Services Agreement

This Olive Oil Milling Services Agreement (the "Agreement") is made and entered into as of \_\_\_\_\_ (mm/dd/yyyy), by and between Mill on Wheels, Partnership ("Mill on Wheels") and \_\_\_\_\_ ("Customer").

## The Parties agree as follows:

### 1. Services

- a. Subject to the terms of this Agreement, Mill on Wheels labor will inspect the Customer's Olives (the "Olives") to ensure quality (see Right to Refuse)
- b. Mill on Wheels shall use its labor and equipment to mill Customer's Olives and extract the Oil therefrom (the "Services"). The Services shall be performed after the Customer has delivered the Olives to Mill on Wheels' Mobile Mill (the "Mill") on site.
- c. Customer agrees to pay Mill on Wheels for Services as agreed to and initialed by authorized representatives of Mill on Wheels and then initialed by the Customer, and a copy of this executed payment plan shall be attached to this agreement.
- d. Payment is due in full prior to Customer taking possession of Oil.

### 2. Right to Refuse and Olive Fly

- a. Mill on Wheels has the right to refuse for any reason
- b. Notwithstanding any other provision of this Agreement to the contrary, Mill on Wheels shall have the right to refuse to crush any Olives whose condition it deems, in its sole discretion, to be unsatisfactory. In the event that Mill on Wheels makes this determination, it shall promptly notify Customer that the Olives will not be processed. In particular, Customer is encouraged to be particularly vigilant about the Olive Fly. It is the responsibility of the Customer to pay for the time the Mill on Wheels has spent to determine condition of the Olives for milling.
- c. Acceptance of Olives for milling is in no manner a quality evaluation or guarantee by Mill on Wheels.

### 3. Storage

- a. Customer is responsible for all storage of Olives and Olive Oil products

### 4. Risk of Loss

- a. Mill on Wheels and Customer agree that at all times the Customer shall bear the risk of loss to the Olives or to any Oil that is extracted, which is not the result of any negligence on the part of the Mill on Wheels. This clause applies to the unexpected mechanical or electrical failures of the Mill.

### 5. Performance and Services

- a. Mill on Wheels hereby represents and warrants to the Customer that it shall perform the Services in a workmanlike manner, in compliance with normal industry standards for such Services.

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## 6. Force Majeure

- a. No party will be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligation (other than that outlined in Appendix A) results from an event arising beyond the reasonable control of such party or its contractors, subcontractors or agents that delays or prevents the performance of any obligation under this Agreement such as without limitation, acts of God, labor disputes, strikes, vandalism, fires, floods, earthquakes, or acts of terrorism.

## 7. Governing Law, Consent to Jurisdiction, Venue

- a. This Agreement is made and entered into in California and shall be governed by and construed in accordance with California Law. Each party hereby expressly consents to the jurisdiction and venue of the Superior Court for the County of San Luis Obispo for the purposes of any legal or equitable action or proceeding arising out of this Agreement.

## 8. Modifications

- a. Any modification of this Agreement will be effective only if it is in writing and signed by both Mill on Wheels and Customer.

## 9. Use of Name

- a. Use of the Mill on Wheels name requires the express, written consent of Clotilde and Yves Julien, Denise and Charles Schryver and Millie and Jack Bogdanovich or their designated representative.

## 10. Effect of Waiver

- a. The failure of either party to insist on strict compliance with any of the terms or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right for any other times.

## 11. Partial Invalidity

- a. If any part or provision in this Agreement is held by a court to be invalid, void or unenforceable, it does not cancel the remaining provisions, and will continue in full force without invalidating the entire Agreement.

## 12. Limitation of Liability

- a. The Customer and Mill on Wheels agree that Mill on Wheels liability to Customer arising out of negligent acts, errors, or omissions of Mill on Wheels, is limited to fees received by Mill on Wheels pursuant to this Agreement and to the fair market value of the Oil that was extracted or could have been extracted based on a reasonable yield assumption.

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**17. Attorney's Fees**

- a. If any legal action or arbitration, including any action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney fees, which may be set by the court and/or Arbitrator in the same action or in a separate action brought for that purpose in addition to any other relief to which the said Party may be entitled. The Parties further agree that any arbitration or court action shall be conducted in San Luis Obispo County, State of California, or such other place as the Parties may agree in writing.

**18. Entire Agreement**

- a. This Agreement and attached Appendix A (whether or not physically attached hereto) now or hereafter executed by Mill on Wheels and the Customer shall form this entire Agreement. This Agreement sets for the the entire agreement and understanding between the Mill on Wheels and Customer regarding all matters covered herein. All prior oral or written agreements, discussions, understanding, commitments and/or practices of any and every nature between Mill on Wheels and Customer about the subject matter of this Agreement are superseded by this Agreement.

Accordingly, the Parties have executed this Agreement as of the date first set forth above.

**Customer**

**Mill on Wheels**

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Mill on Wheels, Partnership  
Company**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Printed Name**

\_\_\_\_\_  
**Title**

\_\_\_\_\_  
**Date**