

# License Agreement for Fruit Varieties from the Breeding Series “Professional” of the Bayerisches Obstzentrum [Bavarian Centre of Pomology & Fruit Breeding] (Single Payment of License Fees)

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This Licensing Agreement is concluded between

Bayerisches Obstzentrum GmbH & Co. KG,  
Am Süßbach 1,  
D-85399 Hallbergmoos,

Germany,

hereinafter referred to as “BayOZ”,

and

First Name, Surname of authorised signatory

Telephone Number, landline

Name of Company

Mobile Telephone Number

Legal Form of the Business

E-mail Address

Street, House Number

Website Address

Postal Code, City

VAT-Number

Country

Business Title of the Authorised Signatory  
(e. g. owner, managing director)

hereinafter referred to as “User”.

## *Preamble*

Fruit varieties with high pomological value, high fruit quality and high innovative potential are bred at the Bayerisches Obstzentrum [Bavarian Centre of Pomology and Fruit Breeding] in Hallbergmoos. BayOZ is the lawful owner of the propagation and exploitation rights of fruit varieties bred, inter alia, at the Bayerisches Obstzentrum [Bavarian Centre of Pomology and Fruit Breeding] in Hallbergmoos. For the purpose of this Agreement, fruit varieties which are released under the breeding series “Professional” by BayOZ shall be considered to be LICENSE VARIETIES. A current list of said LICENSE VARIETIES is available from BayOZ.

The User is interested in the marketing of fruits of the LICENSE VARIETIES. For this purpose, the following is therefore agreed:

## *Article 1: Cultivation and Marketing*

1. Upon presentation of this Agreement, the User may purchase up to total of 5 000 trees of each LICENSE VARIETY. Trees of the LICENSE VARIETIES can be bought by BayOZ directly or by a nursery authorized by BayOZ. (It is possible to plant larger quantities of each variety but in that case written authorisation from BayOZ is essential. In that respect, the total number of trees of a respective LICENSE VARIETY planted on the user's farm is crucial.)
2. The User may cultivate and harvest plants acquired in accordance with No. 1 of this Article, in areas of its choice in the Member States of the European Union in which it has its principal place of operation. If requested by BayOZ, the User shall notify BayOZ of the local subdistrict in which the trees are planted within seven days. The User is allowed to sell the harvested fruits or any derived product in all Member States of the European Union at a price freely determined by himself. Selling fruits or derived products outside the European Union without written authorisation of BayOZ is forbidden.
3. The User shall receive, annually in a suitable form (for example, by e-mail or on the website [www.bayoz.de](http://www.bayoz.de)), marketing-relevant information concerning new information pertaining to the LICENSE VARIETIES he uses.

## *Article 2: Obligations of the User*

1. In order to advertise and promote the awareness of the LICENSE VARIETIES, upon the sale of fruits or products resulting from such fruits, the User is obliged to use the trademark assigned to the specific LICENSE VARIETY by BayOZ or by the breeder of said variety. The trademark must be used in a manner which renders it clearly visible to the customer purchasing the pertinent plants. For each case of breach of this obligation, a contractual penalty of € 5,000,-- becomes due.
2. The User undertakes not to use the trees of the LICENSE VARIETIES made available to him for the production of propagation material. Propagation material or whole trees of the LICENSE VARIETIES may also not be made available to third parties.
3. The User shall allow BayOZ, or a person authorised by it, to inspect the cultivation plots during normal business hours – without prior notification – and to monitor the number of cultivated trees per LICENSE VARIETY. Should it be determined that more trees were planted than actually reported to BayOZ, the User shall pay to BayOZ a lump-sum of € 50,-- per unreported tree and shall be obliged to remove and destroy the pertinent plants within five weeks, unless he can prove legal purchase of legally produced and licensed trees. In this case, the contractual penalty shall not be payable. For that purpose, the User is obliged to retain the invoice concerning the purchase of trees of the LICENSE VARIETIES until the felling of the trees, so that it may be presented to BayOZ upon request.
4. The User is obliged to immediately inform BayOZ of any mutations (Sports) detected during the propagation of contractually bound fruit tree varieties. BayOZ may itself, or through authorised third parties from the User's establishment, inspect and verify the mutation. At the request of BayOZ, the user shall provide suitable material for inspection of the mutation by BayOZ.
5. The User, as detector of the mutation – subject to an enforceable court decision to the contrary in this matter or a change in the legal position – is owner of the new variety emanating from the mutation. Nonetheless, commercialisation of the mutation by the User requires the prior written consent of BayOZ.
6. Should the User wish to dispose of or licence the mutation, BayOZ shall be entitled to a pre-emptive right in case of selling the mutation, or the right of option in case of licensing the mutation.

*Article 3: Remuneration*

The User shall pay to BayOZ a trademark utilisation fee as s single payment. The fee is included in the buying price of the tree. The user will not be charged for any other fees.

*Article 4: Final Provisions*

1. BayOZ does not overtake any guarantee for the exploitability as well as for the resistance of the trees of the LICENSE VARIETIES to known or unknown biotic or abiotic factors (e. g. pathogens). The respective risk lies exclusively with the User.
2. Both parties have the right to termination for cause, inter alia:
  - a. upon the imminent insolvency of the other contractual party;
  - b. upon breach of contract, if such breach continues subsequent to a request to cease the breach of contract within a period of 2 months from submission of said request.
3. The User shall not confer the rights and obligations inherent in this Agreement to a third party without the prior written consent of BayOZ. Exempted from this provision is the legal succession resulting from farm transfer on the part of the User. The User shall immediately notify BayOZ about a possible farm transfer. It is incumbent upon the User to cause the legal successor to confirm acceding to the rights and obligations arising from this Agreement.
4. All modifications of or changes to the subject Agreement must be made in writing.
5. Should a provision of the contract be wholly or partially invalid, the validity of the remaining provisions of the contract shall not be affected. The invalid provision shall be substituted by a provision which most closely approximates the purpose intended by the parties. The same applies in the case of a contractual omission.
6. For disputes arising from this Agreement, the Landgericht München I [District Court Munich I] shall have jurisdiction.

***For the User:***

\_\_\_\_\_, the \_\_\_\_\_  
(Signature of Person Empowered to Sign)

***For BayOZ:***

Hallbergmoos, the \_\_\_\_\_  
(Dr. Michael Neumüller, Managing Director)