

**Pacific Coast Producers
Delivery Appointment Scheduling Web Portal
Terms of Use**

Effective: January ____, 2015

These Terms of Use (the “**Agreement**”) govern your Company and your individual use of the Delivery Appointment Scheduling Web Portal located at [\[insert link\]](#), and any successor website thereto (the “**Portal**”), operated by Pacific Coast Producers (“**PCP**”). The Portal can be accessed and used both by PCP customers, and transporters of orders to PCP customers (and individual Users of customers and transporters) – as long as such Users are authorized and approved by PCP.

YOU MUST CAREFULLY READ AND ACCEPT THIS AGREEMENT BEFORE YOU CAN ACCESS OR USE THE PORTAL. IF YOU AGREE, CLICK THE “ACCEPT” BUTTON AT THE END OF THIS AGREEMENT, WHICH SHALL INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT. WHEN YOU CLICK ON THE PORTAL TO AGREE TO THIS AGREEMENT, IT IS THE LEGAL EQUIVALENT OF YOUR SIGNATURE ON A WRITTEN CONTRACT, AND IS EQUALLY BINDING. YOU ARE AGREEING TO THIS AGREEMENT ON BEHALF OF THE COMPANY FOR WHICH YOU WORK AND ON BEHALF OF YOURSELF. IF YOU DO NOT AGREE TO THIS AGREEMENT OR ARE NOT AUTHORIZED TO AGREE ON BEHALF OF YOUR COMPANY, DO NOT CLICK ACCEPT AND DO NOT ACCESS OR USE THE PORTAL.

You further agree to be bound by PCP’s Privacy Policy for the Portal located at [\[insert link\]](#) (the “**Privacy Policy**”), which is incorporated herein by reference.

We may change this Agreement at any time, in our sole discretion, however, we may post an announcement to the Portal if we make material changes to this Agreement. Your use of the Portal after we make any changes constitutes your acknowledgment and acceptance of the changes. Please review this entire Agreement regularly. If you do not agree to follow and be bound by the Agreement, you may not access or use the Portal in any way. Please direct any questions to PCP at [\[insert contact\]](#).

A. TERMS AND CONDITIONS OF USE

1. **Defined Terms.** As used herein, (a) the term “**Company**” shall refer to: (i) the PCP customer on whose behalf delivery/shipment is arranged, or (ii) for transporters, any entity on whose behalf or through an individual driver or transporter works – whether in an employment or independent contractor capacity; (b) the terms “**you**” and “**your**” refer to the person (including individual Users) accessing or using the Portal; and (c) the terms “**PCP**,” “**we**,” “**our**,” or “**us**” refer to PCP.
2. **Eligibility for Access.** The Portal may be accessed only by authorized principals, agents and employees of a Company who have obtained authorization from PCP to access the Portal, on behalf of themselves individually and/or on behalf of their Company and who have been issued individual user accounts or credentials by PCP (together “**Users**”).
3. **License.** Subject to strict compliance with this Agreement, PCP grants you (only in your capacity working for your Company) and to the extent applicable, your Company, a limited, non-exclusive, revocable, non-assignable and non-transferable license to access and use the Portal.

The license rights granted herein are subject to compliance with all other provisions in this Agreement, including, without limitation, the following restrictions: (a) You will not and will not allow or aid or abet any third party (whether or not for your benefit) to: (i) copy or adapt the source or object code of the Portal’s software, HTML, JavaScript or other programming code; (ii) reverse engineer, decompile, reverse assemble, modify or attempt to discover any source code with the Portal or any software or other products or processes accessible through the Portal; or (iii) insert

any code or product to manipulate the Content (defined below) in any way that affects any user's experience of the Portal. (b) You will not use any robot, spider, scraper or other automated means to access the Portal for any purpose without our express written permission. (c) You will not: (i) take any action that imposes, or may impose in our sole discretion an unreasonable or disproportionately large load on our infrastructure; (ii) interfere or attempt to interfere with the proper working of the Portal or any activities conducted on the Portal; or (iii) bypass any measures we may use to prevent or restrict access to the Portal.

4. **Separate Agreements.** All deliveries and shipments scheduled or arranged via the Portal are made pursuant to separate shipment, purchase and/or sales agreements ("**Separate Agreements**") with a Company. Unless otherwise set forth therein, risk of loss and title for items for which shipment is arranged via the Portal pass to you and/or your Company upon delivery of the items to the carrier (e.g., delivery driver picking up an order for delivery as arranged through the Portal). Company is responsible for filing any claims with carriers for damaged and/or lost shipments.
5. **Accuracy of Information.** We attempt to ensure that information on the Portal is complete, accurate and current. Despite our efforts, the information on the Portal may occasionally be inaccurate, incomplete or out of date. We make no representation as to the completeness, accuracy or currency of any information on the Portal. We also may require verification of information prior to the pick-up, delivery or shipment of any order.
6. **Changes or Updates to Portal; Termination.** We may change or discontinue the Portal and/or your and your Company's access to any part of the Portal at any time, without notice to you or your Company, including the discontinuance of any functionality or feature of the Portal. We may also impose limits on certain features and services or restrict access to all or part of the Portal with or without notice or liability.

You agree that PCP may terminate your and/or your Company's access to and use of the Portal, and/or exercise any other remedy available to it, if PCP reasonably believes that you or your Company have violated or acted inconsistently with the letter or spirit of this Agreement, or violated the rights of PCP or any third party, or for any reason with or without notice to you or your Company. You agree that PCP will not be held liable to you, your Company or any third party as a result thereof.

7. **Passwords and Security.** Each User shall be assigned a unique User ID and password which shall be required to access secure pages of the Portal. All passwords used for the Portal are for Company business only and may be used only by the individual User to whom the password is assigned. Each User will be responsible for the security of the User's password. We may monitor passwords and, at our discretion, require a User to change it. Company is responsible for maintaining the confidentiality of all passwords assigned to Company and its Users and for requesting any changes to the Company passwords necessary to protect confidentiality or otherwise prevent unauthorized use. Company is responsible for any and all activities that occur, whether authorized or unauthorized, using any password assigned to any Company User. Company shall notify PCP immediately if any User is no longer employed by Company, and of any unauthorized disclosure or use of the Company passwords or any other breach of security.
8. **Company Responsibility for Users.** Company assumes responsibility for all acts and omissions of its Users who access the Portal. This in no way relieves any individual User from personal liability for his/her own acts, omissions or violations of this Agreement or other terms of use of the Portal.

9. Disclaimers.

THE PORTAL, AND ALL CONTENT, FEATURES AND SERVICES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. PCP SPECIFICALLY DISCLAIMS ALL WARRANTIES (EXPRESS OR IMPLIED) OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, FREEDOM FROM VIRUSES, AND OF NON-INFRINGEMENT OF THIRD-PARTY RIGHTS TO THE FULLEST EXTENT PERMITTED BY LAW. PCP, ITS CONTRACTORS, AGENTS AND AFFILIATES MAKE NO REPRESENTATIONS WHATSOEVER THAT ANY AUTOMATED SYSTEM WILL OPERATE WITHOUT INTERRUPTION OR THAT IT WILL BE ERROR FREE. PCP, ITS CONTRACTORS, AGENTS AND AFFILIATES FURTHER MAKE NO REPRESENTATIONS WHATSOEVER AS TO: (A) THE PORTAL; (B) THE MATERIALS ON OR PROVIDED THROUGH THE PORTAL; (C) THE CONTENT; (D) THE FUNCTIONS MADE ACCESSIBLE ON OR THROUGH THE PORTAL; (E) ANY PRODUCTS, SERVICES OR INSTRUCTIONS OFFERED OR REFERENCED AT THE PORTAL; AND (G) SECURITY ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TRANSMITTED TO OR FROM PCP OR VIA THE PORTAL.

PCP DOES NOT REPRESENT OR WARRANT THAT ANY DEFECTS IN THE PORTAL WILL BE CORRECTED; OR THAT THE PORTAL OR THE SERVER THAT MAKES THE PORTAL AVAILABLE ARE FREE FROM ANY HARMFUL COMPONENTS, INCLUDING, WITHOUT LIMITATION, VIRUSES OR OTHER MALWARE. PCP DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE INFORMATION (INCLUDING ANY INSTRUCTIONS) ON THE PORTAL IS ACCURATE, COMPLETE, CORRECT, ADEQUATE, USEFUL, TIMELY, RELIABLE OR OTHERWISE. PCP DOES NOT WARRANT THAT YOUR OR YOUR COMPANY'S USE OF THE PORTAL IS LAWFUL IN ANY PARTICULAR JURISDICTION, AND PCP SPECIFICALLY DISCLAIMS SUCH WARRANTIES.

SOME JURISDICTIONS LIMIT OR DO NOT ALLOW THE DISCLAIMER OF IMPLIED OR OTHER WARRANTIES SO THE ABOVE DISCLAIMER MAY NOT APPLY TO THE EXTENT SUCH JURISDICTION'S LAW IS APPLICABLE TO THIS AGREEMENT. BY ACCESSING, USING OR DOWNLOADING THE PORTAL, YOU REPRESENT AND WARRANT THAT YOUR AND YOUR COMPANY'S ACTIVITIES ARE LAWFUL IN EVERY JURISDICTION WHERE YOU ACCESS OR USE THE PORTAL.

10. Limitation of Liability.

YOU UNDERSTAND THAT THE USE OF THE INTERNET, WIRELESS COMMUNICATION NETWORKS, AND OTHER AUTOMATED SYSTEMS TO ACCESS INFORMATION AND SERVICES THROUGH THE PORTAL INVOLVES RISKS. WE ARE NOT RESPONSIBLE FOR ERRORS OR NEGLIGENT USE OF THE PORTAL, INCLUDING ERRORS IN INFORMATION SUBMITTED THROUGH THE PORTAL, NEGLIGENT HANDLING OR SHARING OF PASSWORDS, SYSTEM OR COMMUNICATION FAILURES, OR LEAVING A COMPUTER UNATTENDED WHILE ACCESSING THE PORTAL.

IN NO EVENT IS PCP, OR ITS RESPECTIVE PARENT COMPANIES, AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, LIABLE TO YOU OR YOUR COMPANY FOR LOST PROFITS OR ANY REGULAR, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION, FOR ANY DIRECT, INDIRECT, ECONOMIC, EXEMPLARY, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES THAT ARE DIRECTLY OR INDIRECTLY RELATED TO: (A) THE PORTAL; (B) THE CONTENT; (C) YOUR AND YOUR COMPANY'S ACCESS TO, USE OF, INABILITY TO ACCESS OR USE, OR THE PERFORMANCE OF, THE PORTAL; (D) ANY ACTION TAKEN IN CONNECTION WITH AN INVESTIGATION BY PCP OR LAW ENFORCEMENT AUTHORITIES REGARDING YOUR OR YOUR COMPANY'S USE OF THE PORTAL; (E) ANY ACTION TAKEN IN CONNECTION WITH

THIRD-PARTY INTELLECTUAL PROPERTY OWNERS; (F) ANY ERRORS OR OMISSIONS IN THE PORTAL'S TECHNICAL OPERATION; OR (G) ANY DAMAGE TO ANY COMPUTER, HARDWARE, COMPUTER SOFTWARE, WIRELESS OR MOBILE DEVICES, MODEM OR OTHER EQUIPMENT OR TECHNOLOGY, INCLUDING WITHOUT LIMITATION DAMAGE FROM ANY SECURITY BREACH OR FROM ANY VIRUS, BUGS, TAMPERING, FRAUD, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, COMPUTER LINE OR NETWORK FAILURE OR ANY OTHER TECHNICAL OR OTHER MALFUNCTION, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, OR COMPUTER FAILURE OR MALFUNCTION, EVEN IF FORESEEABLE OR EVEN IF PCP HAD BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR TORT (INCLUDING, WITHOUT LIMITATION, WHETHER CAUSED, IN WHOLE OR IN PART, BY NEGLIGENCE, ACTS OF GOD, TELECOMMUNICATIONS FAILURE, OR THEFT OR DESTRUCTION OF THE PORTAL).

IN NO EVENT WILL PCP, OR ITS PARENT COMPANIES, AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS HAVE TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION THAT EXCEED ONE HUNDRED UNITED STATES DOLLARS (\$100 USD).

YOUR AND YOUR COMPANY'S ACCESS TO AND USE OF THE PORTAL IS AT YOUR AND YOUR COMPANY'S RISK. IF YOU OR YOUR COMPANY ARE DISSATISFIED WITH THE PORTAL OR ANY OF THE CONTENT OR SERVICES, YOUR AND YOUR COMPANY'S SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE ACCESSING AND USING THE PORTAL AND THE CONTENT.

BY ACCESSING THE PORTAL, YOU UNDERSTAND THAT YOU AND YOUR COMPANY MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND (FOR YOU AND YOUR COMPANY), AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

11. **Indemnification.** You and your Company agree to indemnify, defend and hold PCP and its respective affiliates, agents, successors and assigns, from any and all costs, expenses, damages, liabilities, losses, judgments and claims, including attorneys' fees and expenses (collectively, "**Losses**") arising from or related to your and your Company's access to and use of the Portal, your and your Company's breach of this Agreement or violation of any other terms and conditions of use posted on the Portal, whether by you or your Company's officers, directors, employees, agents, successors and assigns, including, but not limited to, acts or omissions related to the shipment or delivery of any goods arranged via the Portal.
12. **Intellectual Property Rights.** All of the content featured or displayed on the Portal, including without limitation text, data, graphics, photographs, images, moving images, sound, and illustrations ("**Content**"), is owned by PCP, its licensors, vendors, agents and/or its Content providers. All elements of the Portal, including without limitation the general design and the Content, are protected by trade dress, copyright, moral rights, trademark and other laws relating to intellectual property rights. The Portal and any services may only be used for the intended purpose for which such Portal and services are being made available. All rights are reserved. None of the content of the Portal may be used, copied, modified or transmitted for commercial or public use or distribution, nor modified or reposted to other websites or mobile applications, without our express

prior written consent. You and your Company agree to obtain our prior written consent before linking the Portal to any other website. You and your Company acknowledge and agree that any breach of the provisions of this Section will cause us or the property owner immediate and irreparable harm for which there are no adequate remedies at law and will entitle us or the property owner to immediate injunctive relief, in addition to any other remedies which may be available. The Portal, its Content and all related rights shall remain the exclusive property of PCP or its licensors unless otherwise expressly agreed. You will not remove any copyright, trademark or other proprietary notices from material found on the Portal.

All trademarks, service marks and trade names of PCP used herein (including but not limited to: the PCP name, the PCP corporate logo, the Portal name, the Portal design, and any logos) (collectively "**Marks**") are trademarks or registered trademarks of PCP or its affiliates, partners, vendors or licensors. You and your Company may not use, copy, reproduce, republish, upload, post, transmit, distribute, or modify PCP trademarks in any way without our prior written consent. The use of PCP's trademarks on any other web site or network computer environment is not allowed. We prohibit the use of PCP's trademarks as a "hot" link on or to any other web site unless establishment of such a link is approved in advance.

13. **Privacy.** All data and information collected, used and/or disclosed by PCP, its affiliates or agents in connection with your and your Company's use of the Portal, which shall include, without limitation, all technical information about your device, system, application software, peripherals and the use thereof, shall be governed and subject to the following provisions and also PCP's Privacy Policy for the Portal.

Any and all information that we obtain from you or your Company, or from delivery appointments or transactions processed through the Portal, including names, addresses, telephone numbers, e-mail addresses and any other information concerning use, transactions, and traffic through the Portal may be collected and used by us as provided in our Privacy Policy. We make no and disclaim all representations or warranties with regard to the sufficiency of the security measures used for data handling and storage. We will not be responsible for any actual, consequential special or incidental damages that result from a lapse in compliance with our Privacy Policy because of a security breach or technical malfunction.

14. **Location and Territorial Restrictions.** The Portal and any information provided on the Portal are intended for use in the United States. PCP controls and operates the Portal from offices located in the United States and makes no representations or warranties that the information or services contained on the Portal are appropriate for use or access in other locations. Anyone using or accessing the Portal from other locations does so on his or her own initiative and is responsible for compliance with United States and local laws regarding online conduct and acceptable content, if and to the extent such local laws are applicable. We reserve the right to limit the availability of the Portal, and/or the provision of any content, program, service or other feature described or available thereon to any person, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any such content, program, service or other feature that we provide.
15. **Compliance with Law.** While accessing the Portal, you and your Company shall obey all applicable laws, ordinances, rules and regulations of any federal, state or local governmental agency of competent jurisdiction. You and your Company agree that all of the information you provide is correct, current and complete.
16. **Third Party Links.** From time to time, the Portal may contain links to web sites that are not owned, operated or controlled by us or our affiliates. All such links are provided solely as a convenience to you. If you use these links, you will leave the Portal. Neither we nor any of our respective affiliates are responsible for any content, materials or other information located on or accessible from any other web site. Neither we nor any of our respective affiliates endorse, guarantee, or make any representations or warranties regarding any other web sites, or any content, materials or other

information located or accessible from any other web sites, or the results that you may obtain from using any other web sites. If you decide to access any other web sites linked to or from the Portal, you do so entirely at your and your Company's own risk.

- 17. Agreement and Modification.** This is the entire agreement between the parties relating to access and use of the Portal. If any of the terms and conditions are held void or unenforceable, that part will be deemed severable and the remaining provisions shall remain in effect. Nothing in this Agreement or on the Portal shall be deemed to modify the terms of any other agreements between you and PCP. This Agreement may not be modified or deleted except in a writing executed by both parties, except that PCP may modify this Agreement at any time, in its sole discretion, by posting a revised Agreement on the Portal. During each visit to the Portal, you will be deemed to be apprised of and bound by the terms and conditions then in effect and posted on the Portal. IF AT ANY TIME YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, YOU MUST STOP USING THE PORTAL. You agree that this Agreement and all incorporated agreements may be automatically assigned by PCP in our sole discretion. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section. Our failure to act with respect to a breach by you or others does not waive our right to act with respect to subsequent or similar breaches.
- 18. Release.** In the event that Company or any User has a dispute with one or more other users of the Portal, including, without limitation, any individual or entity engaged in the shipment of any goods, you release PCP (and our officers, directors, agents, subsidiaries, joint ventures and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.
- 19. Governing Law.** This Agreement and your access to and use of the Portal, and all terms and conditions therein, are governed by the laws of the State of California and applicable federal law. You consent to the exclusive jurisdiction of the state and federal courts located in the County of San Joaquin, California. A printed version of this Agreement will be admissible in judicial and administrative proceedings based upon or relating to this Agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.
- 20. Force Majeure.** Neither PCP nor you shall be responsible for damages or for delays or failures in performance resulting from acts or occurrences related to the Portal beyond PCP's or your reasonable control, including, without limitation: fire, lightning, explosion, power surge or failure, water, acts of God, war, revolution, civil commotion or acts of civil or military authorities or public enemies: any law, order, regulation, ordinance, or requirement of any government or legal body or any representative of any such government or legal body; or labor unrest, including without limitation, strikes, slowdowns, picketing, or boycotts; inability to secure raw materials, transportation facilities, fuel or energy shortages, or acts or omissions of other common carriers.
- 21. Survival.** The following sections shall survive termination of this Agreement, together with all other terms and conditions that by their nature or context are intended to survive termination: 8 (Company Responsibility for Users); 9 (Disclaimers); 10 (Limitation of Liability); 11 (Indemnification); 12 (Intellectual Property Rights); 13 (Privacy); 18 (Release); and 19 (Governing Law).
- 22. Additional Assistance.** If you do not understand any of the foregoing Agreement or if you have any questions or comments, we invite you to contact our Customer Service Department by email at _____ or by phone at _____.
- 23. Copyright Notice.** All Portal design, graphics, text selections, arrangements, and all software are Copyright © 2015, Pacific Coast Producers. ALL RIGHTS RESERVED.