



Trading as Produce Merchants  
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## TERMS OF TRADE

01<sup>st</sup> May 2007

### USE OF THIS DOCUMENT

This Document comprises the Business' Terms of Trade for the purposes of the Horticulture Code of Conduct contained in the Trade Practices (Horticulture Code of Conduct) Regulations 2006 (Cth) (Code).

It sets out the general terms upon which the Business will trade with growers in respect of horticultural produce (as those terms are defined in the Code). Terms not defined in this document have the meaning ascribed to them in the HPA.

### HORTICULTURE PRODUCE AGREEMENT PREVAILS

Whilst this Document sets out the Business' general terms of trade, where the Code requires, transactions between growers and the Business must be conducted pursuant to a Horticulture Produce Agreement (HPA). In the event of inconsistency between this Document and the HPA, the HPA prevails to the extent of the inconsistency.

### BUSINESS IS A MERCHANT

The Business acts as a merchant for the purposes of the Code.

### REQUIREMENTS FOR DELIVERY AND QUALITY OF PRODUCE

Produce supplied to the Business must comply with the following requirements:

1. Prior to delivery, the Supplier must provide documentation that is suitable to the Business that accurately describes the quantity, variety, size, class, description and characteristics of the Produce, including containers;
2. the Produce must be fit for human consumption and comply with any statutory regulations including food safety, packaging and/or labelling;
3. the Supplier must have complied with the Trade Measurement Act 1990 (Old) with respect to the Produce;
4. the Produce must be fit for its purpose;
5. the produce must be packed and presented and comply with the following product specifications including quality and shelf life:
  - a. the Product Specification Requirements that the Business has with respect to Produce (set out below) or any requirements agreed to between the Business and the Supplier (if any); and/or
  - b. if there are none or where the requirements that may be published by the Australian Chamber of Fruit and Vegetable Industries from time to time are not inconsistent with the requirements in paragraph 5.a – the Australian Chamber of Fruit and Vegetable Industries requirements.

The Supplier must not dispatch Produce to the Business that:

- does not comply with the requirements in paragraph 5; or
- has not been solicited by the Business.

### CIRCUMSTANCES WHERE THE BUSINESS MAY REJECT PRODUCE

The Business is entitled to reject all or some of the Produce where:

- i) the Supplier does not have all right, title and interest in and to the Produce;
- ii) the Supplier cannot pass title to the Business clear of all encumbrances, claims and other adverse interests;
- iii) the Supplier is not the grower of the Produce;
- iv) the Produce does not comply with paragraphs 1 to 5 above;
- v) within two (2) Business Days following receipt of the Produce by the Business, the Business considers, in its sole discretion, that:
  - a. market conditions in respect of the relevant Produce or generally, are not conducive to procuring an appropriate sale price for the Produce; or
  - b. there is a relative oversupply of the Produce in the market.
- vi) A claim for credit is made following the sale of the Produce by the Business to a third party which is accepted by the Business (Return), due to the Produce not complying with paragraphs i) to iv) above.

### REQUIREMENTS WHERE PRODUCE IS REJECTED

The Business may only elect to reject Produce within two Business Days of:

- in the case of paragraphs i) to v) - receipt of the produce;
- in the case of paragraph vi) – the decision to accept the claim for credit.

The Business must immediately give notice to the Supplier of the decision to reject Produce and give notice of the reasons for such rejection within two Business Days after the day that the Business elects to reject the Produce.

Where Produce is rejected, the Business is deemed not to have purchased that Produce and the Supplier is not entitled to the Purchase Price.

### PURCHASE PRICE

The Purchase Price for Produce will be:

- where a Supplier has executed the Version 1 of the HPA in respect of Produce – an agreed price determined in accordance with that HPA not later than immediately upon delivery of the Produce;
- where a Supplier has executed the Version 2 of the HPA in respect of Produce – the agreed price set out in the Schedule to the HPA;

### PAYMENT OF PURCHASE PRICE

Payment will be made no later than 21 Business Days from the end of the Week during which the relevant Produce is received by the Supplier.

### INSURANCE

The Business holds the following insurances for Produce:

Insurer	Westfarmers Federation Insurance
Maximum amount of claims covered by insurance	1) \$70 000    2) \$10 000
Defined events covered by insurance	1) Property Damage    2) Burglary & Fire

### INDEPENDENT LEGAL ADVICE

The Business recommends that Suppliers seek independent legal advice in relation to the HPA prior to it being entered into between the Business and the Supplier.

### PRODUCT SPECIFICATION REQUIREMENTS OF THE BUSINESS

For the purposes of paragraph 5.a of the Terms of Trade, the requirements of the Business are as follows:

Product is to meet the Australian Chamber of Fruit and Vegetables :-  
"FRESH SPEC'S" and product is to be delivered farm to Store.

View specifications on website, or copy available on request.