

PERFECTION FRESH AUSTRALIA PTY LIMITED

TERMS OF TRADE - AGENT

DEFINITIONS

In these terms of trade –

“**Authorised Delivery Address**” means an address within Australia at which the Business operates or an address of a Customer of the Business, as directed from time to time by the Business.

“**Bad Debt**” has the meaning ascribed in the Code of Conduct but subject to clause 24.

“**Business**” means the entity described above or related Persons deemed to be in association with the Business and adopts the meaning of “trader” in the Code of Conduct.

“**Business Day**” means a day (from Monday to Friday) when banks are open for trading in the capital city of the State in which the Business has its head office.

“**Buyer**” has the same meaning as Customer.

“**Code of Conduct**” means the Horticultural Code of Conduct (as amended).

“**Commencement Date**” means 14 May, 2007.

“**Commission**” means the amount determined by the Business in its sole discretion from time to time under these Terms to be charged by the Business as its Commission on the Sale Price, with such Commission not to be less than 15 per cent (ex GST) of the Sale Price.

“**Customer**” means a third party purchaser of Produce from the Business.

“**Default Event**” means where Produce is received by the Business from the Supplier and does not meet the Minimum Quality Specifications and is Rejected by the Business or Returned by a Customer of the Business.

“**Delivery**” is effected immediately upon the completion of an Inspection Certificate by the Business which does not declare the Produce unfit for human consumption, unsuitable for sale or not meeting the Minimum Quality Specifications; or immediately upon acceptance of the Produce by a Customer.

“**Expenses**” means those amounts and items referred to in clause 15.

“**GST**” means Goods and Services Tax.

“**Inspection Certificate**” means a report prepared by a qualified quality officer, by experience and/or education, of the Business or a Customer, able to declare the Produce unfit for human consumption, unsuitable for sale or not meeting the Minimum Quality Specifications.

“**Independent Inspection Certificate**” means a report prepared by an independent authority or third party assessor who is qualified by experience and/or education to declare the Produce unfit for human consumption, unsuitable for sale or not meeting the Minimum Quality Specifications.

“**Including**” or similar expressions are not words of limitation.

“**Minimum Quality Specifications**” means those quality specifications, as updated from time to time, of the Produce and set by the Business to satisfy customer requirements. In this respect the Business warrants that such Minimum Quality Specifications will not be any more stringent than industry standard specifications (where available) as defined at the website www.freshmarkets.com.au in the Fresh Specs Produce Specifications (“Freshspecs”). Unless otherwise supplied by the Business to the Supplier, the Minimum Quality Specifications for Produce will be Freshspecs.

“**Payment Date**” means no later than the number of Business Days specified as the Payment Date from the end of the week during which the Produce was delivered to an Authorised Delivery Address of the Business. If no date is specified the relevant payment period is to be no later than thirty-five (35) business days from the date of the Sale.

“**Person**” shall include an incorporated body or other entity. If a party consists of more than one Person then these terms of trading bind them jointly and each of them severally and includes the party’s executors, administrators, successors and permitted assigns.

“**Produce**” shall have the same meaning as “horticulture produce” as defined in the Code of Conduct and can be supplied in retail ready packaging or in bulk packaging as required by the Business from time to time.

“Produce Characteristics” means details of any issues or characteristics relating to the Produce which may impact upon the shelf life or sale price and includes a statement as to the quality (or designated “class”) of the Produce, whether the Produce has been stored prior to delivery, dipped or has been subjected to a level of rain or excessively dry conditions which may be reasonably likely to impact upon the quality or shelf life of the Produce.

“Produce Work” means those actions or services as described in clause 15.

“Returns” has the meaning ascribed in clause 26.

“Sale” means a sale of Produce by the Business to a Customer which is not subject to a Return of Produce.

“Saleable” means Produce that does not meet the Minimum Quality Specifications but is fit for human consumption and able to be sold on the market at a price representative of the quality of the Produce.

“Sale Price” means the invoice amount to a customer.

“Sale Proceeds” means the net proceeds of a Sale payable to the Business by a Customer.

“Supplier” means a person who grows his or her own horticultural produce for sale.

“Week” means the period from Saturday to Friday inclusive.

Any requirement which must be done on a specified day which is not a Business Day then such act must be done on the next Business Day.

TERMS & CONDITIONS

General

1. These Terms of Trade as described are effective from the Commencement Date until these Terms are replaced by another document (the “Terms”) and shall apply to all Produce delivered or to be delivered to an Authorised Delivery Address by or on behalf of the Supplier during the Term.
2. The Supplier agrees to appoint the Business and the Business accepts the appointment as the Agent for the Supplier for the purposes of procuring a sale, disposition or other dealing with the Produce subject to these Terms.

Supply of Produce

3. Prior to dispatch the Supplier must notify the Business in writing of the type, quantity, Produce Characteristics and expected delivery date of the Produce to be delivered from time to time (the “Supply Notice”).
4. The Supplier agrees to provide documentation with Delivery that accurately describes the quantity, variety, size, class, description and characteristics of the Produce.
5. The costs of Delivery of Produce to the Business shall be borne by the Supplier unless otherwise agreed to in writing by the Business.
6. Despite delivery of the Produce, all right title and interest in the Produce and the risk in relation to the Produce shall remain with the Supplier as provided for in these Terms.

Rejection of Produce

7. If,
 - (a) the Supplier does not provide the Supply Notice prior to Delivery of Produce; or
 - (b) an Inspection Certificate declares that the Produce delivered does not accord with the type, quantity, Produce characteristics or other description of the Produce set out in the Supply Notice or the relevant Produce’s packaging or delivery documentation; or
 - (c) an Inspection Certificate declares that the Produce is not fit for human consumption, unsuitable for sale or not meeting the Minimum Quality Specifications; or
 - (d) an Independent Inspection Certificate declares that the Produce is unfit for human consumption, unsuitable for sale or not meeting the Minimum Quality Specifications; then, the Business is entitled to reject all or part of the Produce delivered by notice in writing to the Supplier within two (2) Business Days of the Delivery (the “Rejection Notice”). The Business agrees to notify the Supplier by phone or email of a rejection of produce immediately upon such rejection becoming known by the Business.
8. If the Business does not give the Rejection Notice, or issues a Rejection Notice over part only of the delivered Produce, then the Business shall be deemed to have accepted Delivery of the Produce or part of the Produce (as the case may be).
9. Where a Rejection Notice has been provided the Supplier may elect by written notice to the Business to:
 - (a) have all or part of the Produce destroyed at the Supplier’s cost; or
 - (b) have the Produce re-delivered to the Supplier at the Supplier’s cost; or
 - (c) provided that the Produce is Saleable at a price, direct the Business to sell the Produce; (the “Direction”).
10. Upon the issuing of a Rejection Notice, the Business shall be entitled to recover from the Supplier any Expenses or Produce Work costs incurred in respect to the Produce.

11. If the Supplier does not give the Direction within twenty-four (24) hours of provision of the Rejection Notice, then subject to clause 12, the Supplier shall be deemed to have elected to destroy the entire Produce at its sole cost.
12. The Supplier agrees that if an Independent Inspection Certificate declares the Produce unfit for human consumption, then the Business will not, in any circumstances, attempt to sell the Produce however if the Produce is Saleable, the Supplier agrees that in the event that the Direction is not given to the Business, the Business is authorised and directed to sell the Produce in accordance with clause 9(c) (the "Default Direction").

Business to Procure Sale

13. Upon Delivery of the Produce, the Business shall use reasonable endeavours to procure a sale of the Produce.
14. In discharging its obligations pursuant to clause 13, the Business is expressly authorized by the Supplier to:
 - (a) set the Sale Price of the Produce with Customers;
 - (b) make representations to Customers regarding the description, Produce Characteristics and qualities of the Produce, provided always that such representations are:
 - (i) in accordance with the Supply Notice; or
 - (ii) if no Supply Notice has been given or the Produce does not reasonably accord with the Product Characteristics described in the Supply Notice, then a reasonable description in the circumstances;
 - (c) enter into a contract for the Sale of the Produce with a Customer;
 - (d) recover, receive and hold the Sale Proceeds;
 - (e) incur costs in respect of the Produce to be borne or discharged by the Supplier including without limitation those charges described in clause 7 & 15;
 - (f) to accept Returns in accordance with clause 26;
 - (g) deduct the charges under clause 18 from the Sale Proceeds;
 - (h) remit the Sale Proceeds to the Supplier less the deductions in accordance with clause 18;
 - (i) offer out (in the sole discretion of the Business acting reasonably) discounts and or rebates to Customers not exceeding industry standards.
15. For the avoidance of doubt, the Business shall be entitled to repack, rework, treat, dip, ripen, store, transport or otherwise deal with the Produce (Produce Work) if the Business considers in its sole discretion acting at all times reasonably that such Produce Work will:
 - (a) enhance the probability of sale of the Produce; or
 - (b) increase the potential Sale Proceeds of the Produce.

Produce Not Sold

16. In the event that the Business is unable to procure a Sale of some or all of the Produce then the Business is deemed to have provided a valid Rejection Notice in respect of that Produce and clauses 9 & 10 shall apply.

Business Obligations – Price and Payment

17. Within five (5) business days after a Sale, the Business will advise the Supplier of the Sale Proceeds, the description and quantity of Produce sold in writing.
18. The Business shall pay the Sale Proceeds to the Supplier (subject to clause 28 regardless of whether the Sale Proceeds have been collected by the Business or not) on or by the Payment Date after deducting the following amounts:
 - (a) the Commission;
 - (b) any third party delivery costs (including incoming and outgoing delivery);
 - (c) freight costs of delivery to the Customer (where applicable);
 - (d) unloading fees (if applicable);
 - (e) charges or costs actually incurred by the Business (including reasonable internal costs) with respect to the Produce or as a consequence of any sorting, repacking and delivery of the Produce by the Business or any other third party including without limitation Produce Work;
 - (f) any other amount which the Supplier is liable to pay pursuant to these Terms;
 - (g) any other authorized deductions including levies and fees for services payable under State or Commonwealth legislation or any voluntary arrangement;
 - (h) GST in respect of any item for which a Tax Invoice has been issued.
 - (i) any pre-agreed promotional levies as determined by the Business and acknowledged in writing by the Supplier from time to time.
19. All payments to the Supplier shall, at the discretion of the Business, be by cheque or direct bank deposit to the credit of the Supplier as specified in writing by the Supplier.
20. For the avoidance of doubt, the Supplier and the Business acknowledge that the Business shall be entitled to utilize an average Sale Price referable to the Supplier's Produce in determining and making payments under clause 18.
21. The Business reserves the right to withdraw from making payments on behalf of the Supplier or to charge a fee for service in respect of such payments.
22. At the same time as the Business makes the payment in accordance with clause 18, the Business will provide the following details to the Supplier:
 - (a) the date of receipt of the Produce;
 - (b) description of the Produce received;
 - (c) details of the quantity received;
 - (d) details of any quantity rejected by the Business including reasons for such rejection;

- (e) a copy of any relevant Inspection Certificate or Independent Inspection Certificate in respect of the Produce;
- (f) details of all charges deducted from the Supplier under clause 18 of these Terms;
- (g) details of any quantity rejected by a Customer.
- (h) the total amount paid for the Produce to the Supplier.
- (i) a tax invoice in respect to the taxable supply under these Terms.

Title and Risk

23. The parties acknowledge that (subject to clause 24) at all times, despite the Delivery of the Produce under these Terms title and risk in respect of the Produce shall remain with the Supplier.
24. Unless otherwise agreed in writing by the parties:
- (a) The Supplier agrees that on a Sale and immediately prior to a Customer gaining title to the Produce, the Supplier transfers ownership and title of the Produce to the Business;
 - (b) The Supplier covenants that title to the Produce will pass to the Business clear of all encumbrance, claims and adverse interests.
 - (c) The Supplier acknowledges and agrees that (pending payment of the Sale Proceeds to the Supplier as per clause 18) title and interest to the Sale Proceeds is held by the business.
 - (d) The Business acknowledges and agrees that risk in relation to collection and recovery of the Sale Proceeds rests with the Business and the Business will be responsible for the collection and recovery of the Sale Proceeds. Bad Debts which result from the Sale Proceeds not being paid by a Customer or recovered by the Business will be borne by the Business to the exclusion of the Supplier and the Supplier will not be required to contribute or pay for any legal or recovery expenses initiated by the Business or its servants or agents in the collection of the Sale Proceeds or Bad Debts.
25. The Produce will be at the Supplier's risk until title to the Produce passes under Clause 24. The Supplier must insure the Produce pending the passing of title for the Produce's full insurable value and shall during such times exercise or cause other relevant persons to exercise reasonable care in dealings with the Produce.

Returns

26. In the event that following a Sale, Produce is returned to the Business, the Business shall have a discretion as to whether or not to accept the Return of such Produce from the Customer for any reason whatsoever (including without limitation where in the opinion of the Business not to allow the Customer to return the Produce would potentially damage the commercial relations with the Customer) (the "Return").
27. Following a Return:
- (a) the Business shall provide written notice to the Supplier within two (2) Business Days of the Return;
 - (b) the Business shall use its best endeavours to procure a Sale of the Produce returned;
 - (c) any costs associated with the re-delivery, delivery, repacking, reworking or storage of the Produce shall be borne (reimbursed as the case may be) by the Supplier;
28. For the avoidance of doubt, the Supplier shall not be entitled to any part of the Sale Proceeds in respect of the Sale the subject of the Return and if the Sale Proceeds have been paid by the Business to the Supplier, the Supplier shall re-pay those funds to the Business for the purposes of reimbursement to the Business.
29. The Business is not entitled to the Commission in respect of the Sale the subject of the Return.
30. If the Business is unable to procure a Sale in respect of all or some of the Returned Produce, then:
- (a) the business is deemed to have provided a valid Rejection Notice in respect of that Produce and clauses 9 and 10 shall apply; and
 - (b) the Supplier is required to pay to or reimburse the Business for any Expenses incurred with respect to the Produce.

Further Information

31. The Supplier shall be entitled upon reasonable notice to the Business to inspect the Business records of all Sales relating to the Supplier's Produce and in particular the Business's records relating to the matters set out in clause 18. Nothing in this clause will entitle the Supplier to demand from the Business any information that is confidential to the Business.
32. Upon request by the Supplier, the Business will make available the following information in respect to the Sale of the Produce:
- (a) the date of Sale and Returns of the Produce;
 - (b) the itemized quantity and Sale Price of the Produce.
33. The Supplier acknowledges and agrees that the Customer of the Produce is a Customer of the Business and such Customer names and lists are and will remain the property of the Business to the exclusion of the Supplier. Notwithstanding this, the Supplier agrees that for business efficacy and in order to maximize the Sale Proceeds received by the Supplier, the Business will from time to time require that the Supplier deliver Produce directly to the Customer. The Supplier agrees not to solicit (or attempt to solicit) sales with a Customer of the Business to the exclusion of the Business.

Miscellaneous

34. The Business shall keep insurances in respect of Produce in their legal and physical control for defined events including fire, theft and accidental damage other than deterioration and/or inherent loss of any kind. The Business will not be liable for loss or damage to the Produce arising from any cause or event outside of the control of the Business.
35. The Business shall not be liable in respect of any claim by the Supplier unless such Claim is received in writing within seven (7) days from the date the Business gives notice under clause 18.
36. In the event of a dispute, the parties agree that in the first instance, an agreement on the manner in which the dispute will be resolved will be dealt with by the respective representatives of the Supplier and the Business.

In the event that a resolution cannot be reached then the dispute is to be itemized in writing by the disputing party to the CEO (or managing partner) of the alleged defaulting party (the "Dispute Notice"). The CEO (or managing partner) of each party will then meet to resolve the dispute (the "Internal Dispute Resolution Procedure").

37. If a Dispute Notice remains unresolved for a period of twenty-one (21) days after the Dispute Notice is issued, then either party may invoke the dispute resolution procedure under the Code of Conduct.
38. The Business will issue a Tax Invoice to the Supplier in respect of any item for which GST is chargeable.
39. The Business will not be liable for any consequential loss to the Supplier or any other Person howsoever caused.
40. The Supplier guarantees that the Produce delivered to the Business is fit for human consumption and complies with all statutory (or other) regulations concerning food safety, product quality, packaging and/or labeling.
41. The Supplier guarantees that the Produce delivered to the Business is fit for its purpose and complies with the Minimum Product Specifications.
42. The Supplier agrees that it will implement and maintain an industry recognized HACCP based food safety and quality system that is subject to an annual third party audit. Copies of any current certification must be sent to the Business.
43. The Supplier indemnifies the Business against any liability, loss, expense or demand from or arising from any false, misleading, deceptive or misdescriptive representation or statement made by the Supplier in respect of the Produce.
44. Despite anything else in these terms, the Supplier acknowledges that the Business has certain exclusive rights over fresh produce and that nothing in these Terms or any conduct or custom between the parties will operate to adversely affect any such right whether proprietary or otherwise.
45. The Supplier agrees to supply details of their registered Australian Business Number (ABN) prior to any payment being made by the Business.
46. These terms may be amended from time to time by the Business at its discretion. In this respect the Business agrees to inform the Supplier of such amendments or alterations no less than fourteen (14) days prior to the commencement date of such amended terms.
47. These Terms are governed by and are construed in accordance with the laws in force in the State of New South Wales and each party submits to the non exclusive jurisdiction of the Courts in that State.

Interstate Certification Assurance and Social Accountability

48. (a) The supply of the Product will be made to customers of Business throughout Australia. In order to supply the Product into different States, Interstate Certification Assurance (ICA) is required by law. In this regard the Supplier agrees to do all things necessary to obtain ICA accreditation. The Business will assist the Supplier in obtaining such accreditation if requested to do so by the Supplier.
- (b) The Supplier agrees with the Business that the Supplier is taking all steps in its business to protect the environment fundamental human rights and values in the workplace. This includes business policies to ensure;
 - the strict compliance with applicable Federal and State laws;
 - a safe and clean workplace;
 - fair terms of employment with no discrimination or forced labour;
 - no underage workers;
 - no physical punishment;
 - freedom of association; and
 - protection of the environment as per Federal, State and Local Environment Laws and Regulations.

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