

PERFECTION FRESH AUSTRALIA PTY LIMITED

TERMS OF TRADE - MERCHANT

DEFINITIONS

In these terms of trade –

“**Acceptance**” by the Business means the later of:

- (i) the time at which any Produce in the possession of the Business is, in the opinion of the Business, ready and available for Sale; and
- (ii) the time at which the Business and the Supplier agree upon a price in writing.

“**Agreed Price**” means the purchase price of all or part of the Produce payable to the Supplier by the Business as determined from time to time in writing by the parties pursuant to these Terms.

“**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.

“**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 _____

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

“**Default Event**” means where a Delivery of Produce 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 Acceptance of the Produce by the Business; or for a Delivery made directly to a Customer by the Supplier, immediately upon Acceptance of the Produce by that 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 twenty (20) 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.

“Sale” means a sale of Produce by the Business to a Customer.

“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 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 Business will purchase the Produce from the Supplier subject to these Terms and resell, dispose of, or otherwise deal with the Produce at the Business’ discretion to the exclusion of the Supplier provided that the Produce meets the Minimum Quality Specifications upon Delivery.

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.

Rejection of Produce

6. 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 that the Produce is unfit for human consumption, unsuitable for sale or not meeting the Minimum Quality Specifications; or
 - (c) 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.
7. 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) at the Agreed Price.
8. 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, direct the Business to sell the Produce on an agency basis whereupon the subject Produce will be sold by the Business pursuant to the Terms of Trade – Agent of the Business (the “Direction”).
9. Upon the issuing of a Rejection Notice, the Business shall be entitled to recover from the Supplier any Expenses incurred in respect to the Produce.
10. If the Supplier does not give the Direction within twenty-four (24) hours of provision of the Rejection Notice, then subject to clause 11, the Supplier shall be deemed to have elected to destroy the entire Produce at its sole cost.
11. 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 8(c) (the “Default Direction”).

Business Obligations – Price and Payment

12. The Purchase Price for Produce shall be the Agreed Price with such agreement reached at the farm gate or immediately upon Delivery of the Produce to the Business.
13. If a Default Event occurs, the Supplier agrees that the Agreed Price for the Produce is voided, the Purchase Price is not payable by the Business and the provisions of clauses 6-11 will apply.
14. The Business will confirm the description, quantity and quality of the Produce purchased with the Supplier within five (5) Business Days of Delivery of the Produce where the Business has established an Agreed Price to purchase the Produce from the Supplier and a Default Event has not occurred.
15. The Business shall pay the Purchase Price to the Supplier on the Payment Date after deducting the following amounts:
 - (a) any authorized deductions including levies and fees for service payable under State or Commonwealth legislation or under any other agreed arrangement between the Supplier and the Business; and
 - (b) GST in respect of any item for which a Tax Invoice has been issued (if applicable).
 - (c) any pre-agreed promotional levies as determined by the Business and acknowledged in writing by the Supplier from time to time.
16. 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.
17. 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.
18. At the same time as the Business makes the payment in accordance with clause 15, the Business will provide the following details to the Supplier:
 - (a) date of purchase of the Produce;
 - (b) description of the Produce purchased;
 - (c) details of the quantity purchased;
 - (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 15 of these Terms.

Title and Risk

19. The parties acknowledge that title and risk in respect of the Produce shall pass upon Delivery of the Produce and once an Agreed Price has been determined.
20. The Supplier covenants that title to the Produce will pass to the Business clear of all encumbrances, claims and other adverse interests.
21. The Business will assume risk in respect of the Produce once title to the Produce passes to the Business under clause 19.
22. The Supplier must insure the Produce pending the passing of title to the Business 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.
23. The Supplier acknowledges and agrees that title and risk in respect to the Sale Proceeds shall always be and remain with the Business to the exclusion of the Supplier.

Miscellaneous

24. The Business shall keep insurances in respect of goods 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. Until Delivery, 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.
25. 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.
26. 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").
27. 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.
28. The Business will issue a Tax Invoice to the Supplier in respect of any item for which GST is chargeable.
29. The Business will not be liable for any consequential loss to the Supplier or any other Person howsoever caused.
30. The Supplier guarantees that the Produce delivered to the Business is fit for human consumption and complies with all statutory regulations concerning food safety, product quality, packaging and/or labeling.
31. The Supplier guarantees that the Produce delivered to the Business is fit for purpose and complies with the Minimum Product Specifications.
32. 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.
33. The Supplier acknowledges and agrees that the Customer 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 Agreed Price offered to the Supplier, the Business will from time to time require that the Supplier deliver Produce

directly to a Customer of the Business. The Supplier agrees not to solicit (or attempt to solicit) sales with a Customer of the Business to the exclusion of the Business.

34. 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.
35. 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.
36. 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.
37. The Supplier agrees to supply details of their registered Australian Business Number (ABN) prior to any payment being made by the Business.
38. 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.
39. The parties must keep all of the Confidential Information obtained from the other party strictly confidential. "Confidential Information" means all information disclosed (whether orally, in writing or in any other form) by one party to the other which is identified as being confidential or is by its nature confidential which is not in the public domain (otherwise than as a result of a breach of these terms and conditions).

Interstate Certification Assurance and Social Accountability

40. (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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