



The Melbourne Pear Company Pty Ltd

Store 141 Epping Market

Mail Box 141, 35 Produce Dve, Epping VIC 3046

ABN: 76 078 135 574

Trading as Produce Agent (Agent)

Terms of Trade

(Commencing 1st September 2017)

1. Use of this Document

This Document comprises the Agent Terms of Trade for the purposes of the Horticulture Code of Conduct contained in the *Competition and Consumer (Industry Codes Horticulture) Regulations 2017* (Cth) (**Code**).

It sets out the general terms upon which the Agent will trade with Growers in respect of horticultural produce. Terms not defined in this document have the meaning ascribed to them in the Horticulture Produce Agreement (**HPA**).

For specific arrangements between the Agent and Grower only please refer to the HPA. Specific terms may refer to pooling of produce, applicable fees and charges for services provided, reporting and payment processes and dispute resolution mechanisms.

2. Horticulture Produce Agreement Prevails

Whilst this document sets out the Agent's general terms of trade the Code requires transactions between a Grower and the Agent to be conducted pursuant to a HPA. In the event of any inconsistency between this document and the HPA, the HPA prevails to the extent of the inconsistency.

3. Agent is an Agent

The Agent acts as an Agent and is only prepared to trade under these Terms of Trade as an Agent for the purposes of the Code.

4. Requirements for delivery and quality of Produce

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

- (a) prior to delivery, the Grower must obtain:
 - (i) verbal agreement from the Agent or
 - (ii) provide documentation that is suitable to the Agent,
 that accurately describes the quantity, variety, size, class, description and characteristics of the Produce, including containers; Time and date of delivery must also be agreed upon with the Agent. Documentation must accompany the produce.
- (b) the Produce must be fit for human consumption and comply with any statutory regulations or applicable laws including laws or regulations relating to food safety, packaging and/or labelling;

- (c) the Grower must have complied with the *National Measurement Act 1960* (Cth) and *National Trade Measurement Regulations 2009* (Cth) as amended from time to time with respect to the Produce;
- (d) the Produce must be fit for its purpose; and
- (e) the Produce must be packed, presented and comply with the following product specifications including quality and shelf life:
 - (1) the Produce Specification Requirements that the Agent has provided to the Grower or otherwise agreed in writing with the Grower in accordance with the HPA (if any); and/or
 - (2) if there are no requirements agreed pursuant to clause 4(e)(1), the FreshSpecs Produce Specifications.

The Grower must not Deliver Produce to the Agent that does not comply with the requirements in clause 4, has not been solicited by the Agent and where a HPA has not been accepted in writing by the Grower.

5. Circumstances where the Agent may reject Produce

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

- (a) the Grower does not have all right, title and interest in and to the Produce;
- (b) the Grower cannot pass title clear of all encumbrances, claims and other adverse interests;
- (c) the Grower is not the grower of the Produce;
- (d) the Produce does not comply with clauses 4(a) to 4(e) above; or
- (e) a claim for credit is made following the sale of the Produce by the Agent to a third party which is accepted by the Agent (**Return**), due to the Produce not complying with paragraphs 5(a) to 5(d) above.

6. Requirements where produce is rejected

The Agent may elect to reject Produce within one (1) Business Day of:

- (a) in the case of clauses 5(a) to 5(d) – Delivery of the Produce to the Agent;
- (b) in the case of clause 5(e) – the decision to accept the claim for credit.

The Agent must within 24 hours give notice to the Grower of the decision to reject Produce and give notice of the reasons for such rejection within the set Business Day period set out in the Schedule to the relevant HPA after the day that the Agent elects to reject the Produce.

7. Commission

The Agent will be entitled to the following fees and commissions:

- (a) a standard Commission; and
- (b) where the Agent accepts Produce delivered under the HPA in circumstances where it is entitled to reject it (other than following a Return) – the Default Commission in addition to the standard Commission; and
- (c) any fees or charges relating to the Service or other actions performed by the Agent for the benefit of the Grower provided that such fees are set out in the HPA which the Grower is required to accept in writing to.

The Commission and Default Commission operate on a percentage of sale proceeds basis.

Payment of the Commission and Default Commission is contingent upon a Sale occurring. However, the Agent is entitled to deduct fees and extra costs including but not limited to service and administrative fees under the HPA whether or not a Sale has occurred.

8. Credit Service

Fresh State Ltd operates a credit approval and clearing house service to its Members known as the Credit Service. Under this service, Fresh State Ltd arranges for the billing and receipt of Sale Proceeds from third party buyers and, in certain circumstances, recovery of Bad Debts.

As Fresh State Ltd only offers this services to persons entitled to the benefits of the Credit Service, where a Grower does not have Benefit Accreditation, the Sale Proceeds and Bad Debts are only able to be recovered through the Credit Service where the Grower applies for such Benefit Accreditation.

Growers are able to elect, under the HPA Schedule, for the Agent to apply for Benefit Accreditation on behalf of a Grower and otherwise engage the Credit Service.

A Benefit Fee is payable to the Credit Service for such Benefit Accreditation.

9. Bad Debts

The Agent assumes responsibility for the collection of the Grower's Bad Debts and will make every endeavour to collect all monies owing as a result of a sale made. Where the Grower has elected for the Agent to apply for Benefit Accreditation, the Agent is authorised to utilise the Credit Service to collect Sale Proceeds and Bad Debts. If the Agent utilises the Credit Service the Grower's rights are suspended unless the Sale Proceeds or Bad Debts are not recovered within 120 Business Days following a Sale.

The Agent will not be involved in the collection of Bad Debts other than described above.

10. Payment of Sale Proceeds

Payment of the Sale Proceeds and any Additional Fees will be made no later than 21 Business Days from the end of the Week during which Produce is received by the Agent providing a Sale is made by the Agent to a third party buyer.

11. Insurance

The Agent does not hold insurance for the Produce required to be disclosed for the purposes of the Code.

12. Independent Legal Advice

The Agent recommends that Growers seek independent legal advice in relation to the HPA prior to it being entered into between the Agent and the Grower.

13. Changes to Terms of Trade

The Agent may from time to time amend these Terms of Trade in accordance with the requirements of the Code.

14. Grower Acknowledgement

The Grower acknowledges that it must not supply any Produce to the Agent without having accepted the HPA in writing.

Unless a Grower has entered into a HPA with the Agent, the Agent will have no obligations of any kind to the Grower in respect of Produce despatched by the Grower to the Agent.