



Stores 71 & 73
18 Ricky Way, Epping, VIC. 3076
Phone: (03) 8401 1000
Fax: (03) 9408 6444
Email: info@kapisbros.com.au

KAPIRIS BROS. (VIC.) PTY LTD

TERMS OF TRADE DOCUMENT

BUSINESS NAME:

("Business"):

Trading as:

Kapis Bros. (Vic.) Pty Ltd

ABN: 59 393 738 061

Horticulture Produce Merchants

TERMS OF TRADE

15/04/2025

USE OF THIS DOCUMENT

This document comprises the business' 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 business will trade with growers in respect of horticultural produce.

Expressions and terms defined in the Horticulture Produce Agreement (HPA) have the same meaning when used in this document, unless the context otherwise requires. Any italicized references in this document are references to those terms or expressions as defined in the Code.

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 HPA. In the event of inconsistency between this document and the HPA, the HPA prevails to the extent of the inconsistency.

BUSINESS IS AN AGENT & MERCHANT

The business acts as an agent & 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(A). 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(A). The produce must be fit for human consumption and comply with any statutory regulations relating to but without limitation, food safety, packaging and/or labelling.

- 3(A).** The supplier must comply with all applicable laws with respect to the produce including without limitation the *National Measurement Act 1960 (Cth)* as amended.
- 4(A).** The produce must be fit for its purpose, as specified by the business from time to time.
- 5(A).** The produce must be delivered at the time and location specified in the relevant purchase order or otherwise as specified by the business from time to time.
- 6(A).** The produce must be packed, presented and comply with the following product specifications including quality and shelf life:
- 6.1(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).
 - 6.2(A).** 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 point 6.1(A) – the Australian Chamber of Fruit and Vegetable Industries requirements.
- 7(A).** The supplier must not dispatch produce to the business that:
- Does not comply with the requirements in points 6(A); or
 - Has not been ordered by the business.

CIRCUMSTANCES WHERE THE BUSINESS MAY REJECT PRODUCE

The business is entitled to reject all or some of the produce where:

- 1(B).** The supplier does not have all right, title and interest in and to the produce.
- 2(B).** The supplier cannot pass title to the business clear of all encumbrances, claims and other third-party interests.
- 3(B).** The supplier is not the grower of the produce.
- 4(B).** The produce does not comply with points 1(A) to 5(A) above.
- 5(B).** Within 2 business days following receipt of the produce by the business, the business considers, in its sole discretion, that:
 - 5.1(B).** Market conditions in respect of the relevant produce or generally, are not conducive to procuring an appropriate sale price for the produce; or
 - 5.2(B).** There is a relative oversupply of the produce in the market.
- 6(B).** 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 points 1(B) to 5(B) above.

REQUIREMENTS WHERE PRODUCE IS REJECTED

The business may only elect to reject produce within 2 business days of:

- In the case of points 1(B) to 5(B) - receipt of the produce.
- In the case of point 6(B) – 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 2 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 or taken ownership of that produce. The supplier retains the title and risk for the produce and is not entitled to the purchase price.

DISPUTE RESOLUTION

1(C). Notification of Dispute

1.1(C). If a dispute arises between the business and the supplier in relation to any matter under these terms of trade or a Horticulture Produce Agreement (HPA), the party raising the dispute (the "notifying party") must provide written notice to the other party (the "receiving party").

1.2(C). The notice must include details of the dispute, the relevant circumstances, and the outcome sought.

2(C). Internal Negotiation

2.1(C). Within 10 business days of receiving the dispute notice, senior representatives of both parties must meet (in person, by telephone, or by video conference) and make a genuine attempt to resolve the dispute in good faith.

2.2(C). Any agreed resolution must be documented in writing and signed by both parties.

3(C). Mediation

3.1(C). If the dispute is not resolved within 15 business days from the date of the dispute notice, either party may refer the matter to mediation.

3.2(C). Mediation must be conducted in accordance with the rules of the Australian Small Business and Family Enterprise Ombudsman (ASBFEO) or another agreed mediation service.

3.3(C). The cost of mediation will be shared equally unless otherwise agreed.

3.4(C). The mediation must take place within 30 business days of referral unless both parties agree to an extension.

4(C). Escalation to Arbitration or Legal Proceedings

4.1(C). If mediation fails to resolve the dispute within 30 business days, either party may:

- Refer the dispute to binding arbitration under the Arbitration Act 1991 (Vic); or
- Pursue legal proceedings in an appropriate jurisdiction.

5(C). Continued Performance of Obligations

5.1(C). During the dispute resolution process, both parties must continue to fulfill their obligations under these terms of trade to the extent possible, except where performance is directly affected by the dispute.

REJECTED GOODS

1(D). Grounds for Rejection

1.1(D). The business may reject all or part of the produce if the produce does not comply with quality standards, including but not limited to:

- Failing to meet agreed product specifications.
- Being unfit for human consumption.
- Does not meet shelf-life expectations.
- Non-compliance with packaging regulations.
- The produce has been damaged in transit.
- Market conditions that prevent a reasonable sale within 4 business days.

2(D). Notice of Rejection

2.1(D). If the business rejects produce, it must:

Provide the supplier with written notice within 2 business days of receipt, specifying the reasons for rejection.

If the rejection is due to quality or compliance issues, provide supporting evidence (e.g., photos, test reports, inspection results).

3(D). Supplier's Responsibilities for Rejected Produce

3.1(D). Upon rejection, the supplier retains ownership and bears the risk of the produce.

3.2(D). The supplier must arrange for collection of the rejected produce within 48 hours of receiving the rejection notice.

3.3(D). If the supplier does not collect the rejected produce within the specified timeframe, the business may:

- Dispose of the produce in a manner it deems appropriate at the supplier's cost.
- Recover reasonable costs incurred for storage, handling, or disposal.

4(D). Financial Consequences of Rejection

4.1(D). The business is not liable to pay for rejected produce unless otherwise agreed in writing.

4.2(D). If the supplier disputes the rejection, both parties must engage in good-faith negotiations to resolve the matter (refer to the Dispute Resolution Clause).

4.3(D). If the rejection is due to a supplier error, the supplier must:

- Reimburse the business for any costs incurred in handling the rejected goods.
- Cover any fees associated with return transport, disposal, or re-inspection.

FORCE MAJEURE

1(E). Definition of Force Majeure

1.1(E). "Force Majeure Event" means any event beyond the reasonable control of either party that prevents or delays the performance of any obligations under these terms of trade. Such events include, but are not limited to:

- Natural disasters (e.g., floods, fires, earthquakes, extreme weather conditions).
- Acts of war, terrorism, or civil unrest.

- Government actions, trade restrictions, or changes in law.
- Epidemics, pandemics, or public health emergencies.
- Industrial disputes, strikes, or supply chain disruptions.
- Failure of transportation, power supply, or telecommunications services.

2(E). Effect of Force Majeure

2.1(E). If either party is unable to perform its obligations due to a Force Majeure Event:

The affected party must notify the other party in writing as soon as practicable, providing details of the event and expected impact on performance.

The obligations of the affected party will be suspended for the duration of the Force Majeure Event, to the extent that they are affected.

The affected party must take reasonable steps to mitigate the impact and resume performance as soon as possible.

3(E). Right to Terminate

3.1(E). If the Force Majeure Event continues for more than 30 business days, either party may terminate the affected contract by giving written notice to the other party.

3.2(E). In the event of termination under this clause, neither party will be liable for any loss, cost, or damage arising from the non-performance, except for obligations that were due before the Force Majeure Event occurred.

4(E). Exclusion of Payment Obligations

4.1(E). A Force Majeure Event does not excuse a party from making payments that were due before the event occurred.

PAYMENT OF PURCHASE PRICE

Payment for the produce will be made no later than 21 business days from the end of the week during which the relevant produce is received and accepted by the business.

COMMISSION AND FEES

Payment by the supplier to the business of any fees, commissions and extra costs is contingent on the sale and sale price of the produce. Any fees, commissions and extra costs are:

- Charged on a percentage basis; and...
- Only charged upon agreement between the parties.

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 point 6.1(A) above of the terms of trade, the requirements of the business are as follows: Fresh Specs as at

<http://www.freshmarkets.com.au/FreshSpec/freshspecs.html>.

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