SH Chin Bros Pty Ltd
ABN 85 004 530 812

Terms of Trade - Merchant

(January 2024)

1. Use of this Document

This Document comprises the Merchant 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 Merchant 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 Merchant 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 Merchant's general terms of trade, the Code requires transactions between a Grower and the Merchant 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. Merchant is a Merchant

The Merchant acts as a Merchant and is only prepared to trade as a Merchant for the purposes of the Code.

4. Requirements for delivery and quality of Produce

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

(a) prior to delivery, the Grower must provide documentation that is suitable to the Merchant that accurately describes the quantity, variety, size, class, description and characteristics of the Produce, including containers;

(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 Merchant has provided to the Grower or otherwise agreed in writing with the Grower in accordance with the HPA (if any); or

(2) if there are no requirements agreed pursuant to 4(e)(1), the FreshSpecs Produce Specifications.

The Grower must not dispatch Produce to the Merchant that does not comply with the requirements in paragraph 4, has not been solicited by the Merchant and where a HPA has not been accepted by the Grower.

5. Circumstances where the Merchant may reject Produce

The Merchant 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 to the Merchant clear of all encumbrances, claims and other adverse interests;

(c) the Grower is not the grower of the Produce; or

(d) the Produce does not comply with paragraphs 4(a) to 4(e) above.

6. Merchant may claim a credit for Produce

The Merchant is also entitled to claim a credit for Produce that it has purchased whether or not it has been onsold to a third party in accordance with the HPA.

7. Requirements where Produce is rejected

The Merchant may elect to reject Produce before Delivery or immediately upon "Delivery" occurring for the purposes of the HPA.

The Merchant 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 2 Business Days after the day that the Merchant elects to reject the Produce.

Where Produce is rejected, the Merchant is deemed not to have accepted that Produce, the Grower will retain title and risk in the Produce and the Grower is not entitled to the Purchase Price.

8. Purchase Price and Additional Fees

The Purchase Price for Produce as well as Additional Fees for actions performed by the Merchant for the benefit of the Grower will be set out in the HPA which is required to be accepted in writing by the Grower.

9. Payment of Purchase Price and Additional Fees

Payment of the Purchase Price, Agreed Price or any other Additional Fees will be made no later than (to be negotiated and agreed on between both parties) Business Days from the end of the Week during which Delivery of the relevant Produce is deemed to have been accepted by the Merchant.

For the avoidance of doubt, the Merchant may still elect to charge for the Additional Fees even where the Produce is rejected in accordance with the HPA.

10. Independent Legal Advice

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

11. Changes to Terms of Trade

The Merchant may from time to time amend these Terms of Trade in accordance with the requirements of the Code, provided that the Merchant provides the Grower with notice of the changes to the Terms of Trade. Such notice can be provided by way of publication on the Merchant's website.

12. Grower Acknowledgement

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

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

13. Insurance (if applicable)

The Merchant holds the following insurances for Produce:

Insurer	
Maximum amount of insurance cover provided by policy in respect of claims that may be made	
Defined events covered by insurance	

If the above table is left blank the Merchant does not hold insurance for Produce required to be disclosed for the purposes of the Code.