

**FSL NOMINEES (AUST) PTY LTD ACN 159 237 724
[t/as Melbourne Markets Credit Service (MMCS)]**

RULES

These Rules form part of the Agreement between the Buyer, the Seller or the Buyer/Seller as the case may be and the MMCS.

The MMCS operates a credit service known as the 'Melbourne Markets Credit Service'.

These Rules, as amended from time to time, govern the services provided by the MMCS and compliance by Buyers, Sellers and Buyer/Sellers is obligatory.

1 DEFINITIONS

1.1 In these Rules, unless inconsistent with the context or subject matter:

"Act of Default" means any one of the following:

- (a) a Buyer who has not paid the amount stipulated in the Buyer's Invoice Statement by the due date; or
- (b) a Buyer who has exceeded its Purchase Limit, subject to Rule 3.2 and Rule 24 of these Rules; or
- (c) a Buyer who breaches the warranty provided in Rule 24.1 herein; or
- (d) a Buyer who has not paid any Risk Fee levied by the MMCS in accordance with the provisions stipulated in **Schedule 3** herein (as may be varied by the MMCS from time to time) and otherwise with these Rules; or
- (e) a Buyer who is deemed to be a Defaulting Buyer by the MMCS pursuant to Rule 6.2 or Rule 9.1 herein;

"Agency Agreement" means the agreement authorising the MMCS to act as agent on behalf of a Buyer; a Seller; or a Buyer/Seller as the case may be in respect of the MMCS's

credit services as set out in these Rules;

"Australian Consumer Law" means Schedule 2 to the *Competition and Consumer Act 2010* (Cth);

"Bad Debt" has the meaning given in clause 6 of the Code where the context permits, and otherwise means a monetary amount owed to a Seller that is unlikely to be paid and, or which the Seller or the MMCS as the Seller's agent is not willing to take action to collect because of any reasons;

"Bad Debt Fund" means a fund so set aside to compensate Sellers for losses suffered by them as a result of the Bad Debt of a Buyer;

"Buyer" means a person registered as such with the MMCS who has purchased Produce or Services under a Credit Sale from a Seller and who has entered into an Agency Agreement;

"Buyer/Seller" means a person who is a Buyer and a Seller;

"Buyers Account" means an account in the name of the Buyer, as held and maintained by the MMCS;

"Code" means the *Competition and Consumer (Industry Codes—Horticulture) Regulations 2017* (Cth);

"Code Agent" has the meaning given to the term "Agent" in clause 5 of the Code;

"Costs" includes:

- (a) all claims, demands, suits or actions of any kind, no matter how arising, whether at law or in equity;
- (b) any liabilities, damages, losses or expenses; and
- (c) any legal costs and disbursements calculated on an indemnity basis,

including but not limited to claims, demands, suits, actions, liabilities, damages, losses, expenses or costs in connection with injury or death.

"Collection Fee" means the costs of or relating to the Services provided by the MMCS, including the Commission Rate, GST, any interest accruing on the monies in the Clearing Account plus all fees, Costs, expenses, charges, and any other out of pocket expenses, (including and without limiting bank charges, bank fees, and state and federal taxes) incurred by, or charged to the MMCS, arising from either the collection of funds for, or the disbursement of funds to that particular Seller.

"Commission Rate" means the rates set out in Schedule 2 to these Rules, expressed as a percentage of the monies collected on behalf of each Seller payable to the MMCS by the Seller or the Buyer as the case may be. The Commission Rate may be revised and notified to the Sellers and Buyers from time to time in writing.

"Confidential Information" means the information, statements, financial documentation concerning:

- (a) the operations and dealings of the Buyer's or the Seller's business; and
- (b) the operations, finances, suppliers, customers, trading patterns and general dealings of customers of the MMCS including the Buyer or the Seller and other Buyers and Sellers, which has been acquired by the MMCS in the course of dealing with its customers in its business operations,

which is not in the public domain, or which is brought into the public domain by the failure of a party to perform and observe its agreements and obligations under this Agreement and which has been obtained by the MMCS in the course of providing its services to its customers.

"Clearing Account" means an account established by the MMCS for the purposes of depositing all monies collected from Buyers for distribution in accordance with the

Agreement;

“Contract Documents” means:

- (a) the Personal Information Collection Consent Form submitted by a Buyer, Buyer/Seller and/or a Guarantor to the MMCS;
- (b) the Trading Terms Application submitted by a Buyer or a Buyer/Seller to the MMCS to participate in the MMCS’s credit service;
- (c) the Buyer/Seller Application Form as the case may be, being the application form submitted by the Buyer to the MMCS to participate in the MMCS’s credit service;
- (d) in respect of a Buyer, any Trading Terms notified by the MMCS to the Buyer as a condition of the MMCS acceptance of the Buyer’s Trading Terms Application;
- (e) the Agency Agreement, which in the case of the Buyer is the Buyer Agreement and in the case of the Seller is the Seller Agreement;
- (f) the Guarantee;
- (g) the Rules including any schedules to the Rules; and
- (h) the Privacy Policy being the MMCS’s privacy policy as varied from time to time.

“Credit Sale” means a sale of Produce or the provision of Services or an amount of money owing as a result thereof for which payment is not made at the time the sale or provision of the Services is effected or before the close of business on the last day of the Trading Week in which the sale was effected or the Services provided;

“Defaulting Buyer” means a Buyer that is deemed to be a defaulting buyer by the MMCS in accordance with the Rules;

“Distribution Summaries” means a summary issued by the MMCS to each Seller consolidating Invoice Statements, Short Payment Advices and payments received (if any) from Buyers in relation to Credit Sales made by that Seller;

"Grower" has the meaning given in clause 3 of the Code;

"GST" means GST within the meaning of the *A New Tax System (Goods & Services Tax) Act 1999 (Cth)* as amended from time to time;

"Guarantee" means the Deed of Guarantee and Indemnity including the Schedule "A" submitted by a Guarantor in favour of the MMCS;

"HPA" means a horticulture produce agreement between a Grower and a trader under Part 3 of the Code;

"Interstate Credit Service" means a credit service established in another State or Territory of Australia providing similar services in interstate wholesale produce markets, to the services provided by the MMCS;

"Invoice Statement" means a statement issued by the MMCS from time to time to each Buyer containing a consolidation of all Credit Sales made to that Buyer;

"Joint Venture" means the Joint Venture Agreement made 1 July 2014 between Fresh State Financial Services Pty Ltd ACN 159 150 133, FSL Members Pty Ltd ACN 158 960 840 and FSL Nominees (Aust) Pty Ltd ACN 159 237 724;

"Markets" means the Melbourne wholesale fruit and vegetable market at 35 Produce Drive, Epping known as **Melbourne Market**;

"MMCS" means FSL Nominees (Aust) Pty Ltd ACN 159 237 724 [t/as Melbourne Markets Credit Service] and being the operating company under the Joint Venture of Melbourne Markets, 35 Produce Drive, Epping 3076;

"Monitor List" means the list of Buyers, published by the MMCS which the MMCS considers in its absolute opinion to be a financial risk to Sellers in accordance with Rule 12.3;

"Moving Average" means the average weekly monetary purchases made by a Buyer

through the MMCS over any consecutive 8 week period, divided by that number of weeks providing a weekly average;

Example 01:

Buyer A has a Purchase Limit of \$20,000.00 per week.

Buyer A makes the following monetary purchases:

Week 1 - \$25,000.00;

Week 2 - \$18,000.00;

Week 3 - \$27,000.00;

Week 4 - \$20,000.00;

Week 5 - \$25,000.00;

Week 6 - \$27,000.00;

Week 7 - \$28,000.00;

Week 8 - \$30,000.00;

Total - \$200,000.00

Moving Average - \$200,000 divided by 8 = \$25,000.00

*Therefore, no Risk Fee levied upon the Buyer in accordance with **Schedule 3** herein.*

Example 02:

Buyer A has a Purchase Limit of \$100,000.00 per week.

Buyer A makes the following monetary purchases:

Week 1 - \$130,000.00;

Week 2 - \$110,000.00;

Week 3 - \$150,000.00;

Week 4 - \$100,000.00;

Week 5 - \$130,000.00;

Week 6 - \$120,000.00;

Week 7 - \$120,000.00;

Week 8 - \$140,000.00;

Total - \$1,000,000.00

Moving Average - \$1,000,000 divided by 8 = \$125,000.00

*Therefore, **Risk Fee** imposed upon the Buyer in accordance with Schedule 3 herein.*

"Produce" means fresh fruit and vegetables, cut flowers and horticultural products;

"Purchase Limit" means the weekly monetary limit allocated to a Buyer by the MMCS in its Trading Term Classification for purchasing Produce and Services on credit from Sellers;

"Purchaser" means a purchaser of Produce and/or Services other than a Buyer;

"Reinstatement Notice" means the notice issued by the MMCS to Sellers notifying Sellers that a Buyer has been reinstated to a Trading Term Classification;

"Risk Fee" means a risk mitigation fee (plus GST) attributable to the increased risk arising as a result of a Buyer's Moving Average at any time exceeding their Purchase Limit, in accordance with the Risk Fee points and the amounts stipulated in **Schedule 3** (as may be varied by the MMCS from time to time);

"Rules" means these Rules including the Schedules hereto;

"Seller" means a person who sells Produce or supplies Services to Buyers and who has signed an Agency Agreement with the MMCS;

"Seller Statement" means a statement provided by Sellers to the MMCS consolidating all Credit Sales made by the Seller to Buyers in a Trading Week;

"Services" means services provided by the Seller to the Buyer from time to time, including but not limited to the supply of Produce, freight, storage, distribution, ripening, packing, and the supply of plant and/or equipment that may be hired by the Buyer from the Seller;

"Short Payment Advice" means a notice in the form prescribed by the MMCS sent by the Buyer to the MMCS notifying the MMCS that it has not paid the full amount stipulated in the Invoice Statement;

"Trading Term" means any trading terms notified by the MMCS to the Buyer including any Trading Term Classification;

"Trader's Terms of Trade" has the meaning given in clause 5 of the Code;

"Trading Term Classification" means the buyer classification assigned by the MMCS to a Buyer as set out in Schedule 1;

"Trading Week" shall be the period of trading in the Markets commencing on the first trading day after Sunday and ending on the last trading day of that same week;

"Warning Bulletin" means the list of Buyers published by the MMCS in accordance with Rule 11.1.

1.2 Interpretation

(a) References to:

- (i) a statute includes a reference to that statute as amended, modified or replaced and includes all orders, ordinances, regulations, rules and by-laws made pursuant to it;
- (ii) a "business day" is a reference to a business day in the place where the governing law applies;
- (iii) a person includes a company, corporation and unincorporated association;
- (iv) a currency are to the currency of Australia, unless otherwise expressly stated;

(b) The singular number includes the plural and vice versa, and the neuter gender

includes the masculine and feminine genders and vice versa;

- (c) Headings have been inserted for convenience only and should not be used to construe the meaning of any provision and do not form part of this Agreement.

1.3 If any act or function to be performed by the MMCS, a Buyer, Seller or any other person in accordance with these Rules, falls on a day other than a business day, then that act or function shall be performed by the relevant person on the first business day after that day.

1.4 If the MMCS is entitled to exercise any discretion under these Rules, the MMCS may do so in its absolute and unfettered discretion.

2 AGENCY AGREEMENTS

2.1 The MMCS acts as agent:

- (a) for Buyers who enter into Credit Sales with Sellers; and
- (b) for Sellers who enter into Credit Sales with Buyers; and
- (c) for Buyer/Seller who enter into Credit Sales with Sellers and/or Buyers.

2.2 The MMCS shall enter into an Agency Agreement with each Seller, Buyer and Buyer/Seller.

2.3 The MMCS shall act as agent for the collection and distribution of monies due under Credit Sales made between Buyers, Sellers and Buyer/Seller as the case may be in each Trading Week.

2.4 Services provided to Sellers & Buyers

The MMCS shall:

- (a) receive all Seller Statements;
- (b) review the Seller Statements to collate in respect of each Buyer an Invoice

Statement setting out the Credit Sales made to that Buyer;

- (c) issue an Invoice Statement to each Buyer weekly, or at such other regular intervals as the MMCS may determine in relation to Credit Sales;
- (d) receive payment from each Buyer of the amount(s) due under the Invoice Statement issued to that Buyer and maintain a record of those receipts;
- (e) issue Distribution Summaries to each Seller;
- (f) subject to Rules 9.4 and 15.2, distribute payments received from each Buyer to the relevant Seller(s) for the amount(s) stipulated in the Invoice Statement in satisfaction of that Buyer's obligation to pay the relevant Seller(s) the said amount(s).

The MMCS may:

- (f) at the request of a Seller and if the MMCS considers it appropriate to do so, commence legal proceeding on behalf of that Seller for the recovery any amount plus Costs which are not paid in accordance with an Invoice Statement;
- (g) maintain a Monitor List;
- (h) in its discretion, procure from a Buyer any directors guarantee, bank guarantee and/or other security in favour of Sellers and the MMCS to secure payments due to Sellers and otherwise better secure a Seller's financial dealings with Buyers.

3 BUYERS

- 3.1 The MMCS will not act as an agent for a Buyer unless that Buyer has completed a Trading Terms Application in the form prescribed by the MMCS from time to time. The approval of any Trading Terms Application shall be in the discretion of the MMCS and may be subject to any Buyer Classification, guidelines or policies set by the MMCS from time to time.

3.2 The MMCS may at any time in its discretion:

- (a) assign a Trading Term Classification to a Buyer;
- (b) review the Buyer Classification of a Buyer (including any Defaulting Buyer), including by requiring a Buyer to provide additional information or submit a new Buyer Application;
- (c) vary, suspend or cancel the Trading Term Classification of any Buyer;
- (d) issue or vary any guidelines or policies concerning the Trading Term Classification;
- (e) without derogating from the provisions of clause 3.2(c) herein, levy a Risk Fee upon an applicable Buyer in accordance with the amounts stipulated in Schedule 3 (as may be varied by the MMCS from time to time) and otherwise with these Rules;
- (f) notify Sellers of any matters set out in this Rule 3.2.

3.3 Change of Control or Ownership of a Buyer

Where a Buyer is a company and a change is effected in the shareholding of the company or the directorship of the company which alone or in aggregate with previous changes constitute a change of more than 50% of the shareholding of that company or the directorships thereof, then that Buyer shall provide the MMCS with details of any change and the MMCS may in its discretion take any of the steps set out in Rule 3.2.

3.4 Purchase Limit

A Buyer shall not exceed its allocated Purchase Limit.

3.5 If, in breach of Rule 3.4, a Buyer consistently exceeds its Purchase Limit, the MMCS may in its discretion take any of the steps set out in Rule 3.2.

3.6 Defaulting Buyer

A Buyer who commits an Act of Default may be deemed by the MMCS in its discretion to be a Defaulting Buyer having regard to all relevant circumstances and policies (if any) of the MMCS from time to time. If a Buyer is deemed to be a Defaulting Buyer, the MMCS shall notify the Sellers as soon as practicable.

4 SELLERS

4.1 A Seller must not enter into a Credit Sale with, deal on credit with or represent the availability of credit to:

- (a) a Defaulting Buyer;
- (b) a Buyer otherwise than upon the terms of the Trading Term Classification allocated to that Buyer.

4.2 Each Seller shall in the manner provided in these Rules:

- (a) process all Credit Sales made to Buyers through the MMCS; and
- (b) provide the MMCS with a Seller Statement in accordance with these Rules.

4.3 A Seller shall not include any Credit Sale made to a Purchaser in their Seller Statement.

4.4 The MMCS is not under any obligation to collect from a Purchaser any monies due to the Seller arising from any Credit Sale made to that Purchaser.

5 PROCEDURES FOR THE PROCESSING AND DISPATCH OF INVOICE STATEMENTS

5.1 Each Seller shall prepare and deliver to the MMCS a Seller Statement in the form, by such time and at such frequency as may be determined from time to time by the MMCS.

5.2 A Seller Statement must identify:

- (a) the week of sale;
- (b) the total value of Produce sold or Services provided for each week;
- (c) the Buyer's registration number; and

(d) the amount due to the Seller for that Week.

5.3 The amount specified in the Seller Statement is deemed by these Rules to be GST inclusive and the MMCS treats all amounts collected for Sellers to be inclusive of GST. It is a Seller's responsibility to pay the GST (if any) on any amount collected by the MMCS on the behalf of the Seller.

5.4 The MMCS will allocate the Credit Sales made by Sellers to the Buyer to which that Credit Sale relates and will issue an Invoice Statement to each Buyer incorporating and consolidating all Credit Sales made by Sellers to that Buyer.

5.5 The MMCS shall no later than 5.00pm Monday of every Trading Week issue an Invoice Statement to each Buyer.

6 PAYMENT BY BUYERS

6.1 Each Buyer must pay the amount stipulated in the Invoice Statement to the MMCS no later than the due date stipulated on the Invoice Statement and, if required by the MMCS, must pay the invoiced amount by direct credit or by Electronic Funds Transfer into the Clearing Account.

6.2 Until a Buyer's payment to the MMCS has cleared in the Clearing Account, a Buyer shall not have satisfied its obligation to pay the monies due under its Invoice Statement and may be deemed a Defaulting Buyer.

6.3 Each payment by a Buyer must be accompanied by a copy of the Invoice Statement issued by the MMCS to which the payment relates.

7 CLEARING ACCOUNT

7.1 Subject to clause 7.2, where the MMCS receives payment from Buyers on behalf of a Seller, the MMCS shall hold the monies due (other than the interest) on trust for the Sellers and shall deposit the payment received from the Buyers into the Clearing Account.

- 7.2 The MMCS may from time to time transfer the Collection Fee from the Clearing Account to its own general office account and is irrevocably authorised by all Buyers and Sellers to do so.
- 7.3 The MMCS will make all reasonable enquiries to ensure that payments from the Clearing Account to Sellers have been cleared for drawing by the banker of the Clearing Account.
- 7.4 Interest paid on the funds held in the Clearing Account is for the exclusive use and benefit of the MMCS and no Seller shall have any right to claim the interest or any part thereof which has accrued to the Clearing Account and Sellers release and waive all claims in relation to the interest.

8 TRANSACTIONS

- 8.1 The MMCS shall keep proper accounting records that disclose at all times a Buyer's position in relation to the payments received by the MMCS on behalf of a Seller. The accounting records shall be kept in a manner that enables them to be conveniently and properly audited.

9 PART PAYMENT BY BUYERS AND DISTRIBUTION

- 9.1 If a Buyer makes a part payment to the MMCS of the amount stated in that Buyer's Invoice Statement by the due date, then until the Buyer pays the amount stated in the Invoice Statement in full:-
- (a) the MMCS may retain the funds paid by the Buyer in the Clearing Account; and
 - (b) the Buyer may be deemed to be a Defaulting Buyer.
- 9.2 A Seller shall not accept any funds from a Buyer which is due to the MMCS under an Invoice Statement issued to that Buyer.
- 9.3 If any Buyer pays to a Seller rather than the MMCS any monies due in respect of a Credit Sale, the MMCS shall be entitled to deduct its Collection Fee from the Seller's next

distribution.

- 9.4 Subject to the MMCS being satisfied in its reasonable opinion that the funds have been cleared, the MMCS will distribute monies due from Buyers to Sellers no later than the Friday after payment in full is received from the Buyer.
- 9.5 Where funds have been paid by the MMCS to a Seller in error, for example, in circumstances where the monies received from a Buyer have not cleared, the Seller shall within 3 days of being informed by the MMCS of the error, refund the amount to the MMCS.
- 9.6 If the Seller fails to reimburse the MMCS, then the MMCS is authorised by the Seller to deduct that amount from the following payment to be made to the Seller by the MMCS. If payment is not made by the Seller to the MMCS within the said three days, then interest shall be charged on the dishonoured amount at the rate specified in Rule 10.4.
- 9.7 Notwithstanding anything to the contrary herein, the Buyer consents to a deduction from, and set-off against, any amounts owed to Buyer by any Seller or the MMCS from time to time to the extent of the amounts owed to the Seller or the MMCS by the Buyer under these Rules or any Agency Agreement.

10 NON-PAYMENT BY BUYERS

- 10.1 The MMCS shall complete a reconciliation of all payments received by the MMCS on behalf of Sellers and identify any Invoice Statements which at the due date specified therein are wholly or partially unpaid by a Buyer.
- 10.2 The MMCS shall use its best endeavours to notify Defaulting Buyers that Produce and Services will not be sold to them on credit by Sellers until full payment of the amount due under the Invoice Statement has been made.
- 10.3 Upon a Buyer being classified a Defaulting Buyer, the MMCS may reclassify the Buyer's Trading Term Classification, where appropriate, to the classifications set out in Schedule

1.

10.4 Defaulting Buyers shall at the option of the MMCS, pay:

- (a) interest at a rate being 3% higher than the interest rate prescribed by the *Penalty Interest Rates Act 1983* calculated on a daily basis on the total amount stipulated on the Invoice Statement accruing from the due date for payment until payment is made in full to the MMCS irrespective of any part payment that has been made; and
- (b) Costs relating to or arising from the Buyer's failure to pay the total amount stipulated on the Invoice Statement to the MMCS, irrespective of any part payment that has been made.

11 WARNING BULLETIN

11.1 On the first trading day of the Trading Week and/or at such other times the MMCS considers appropriate, the MMCS shall publish and distribute a Warning Bulletin to all Sellers providing details of:

- (a) at the discretion of the MMCS, Buyers who have committed an Act of Default and/or are deemed Defaulting Buyers;
- (b) Buyers who have defaulted and classified as "Cash Sales Only" or "Suspended accounts" due to recovery/legal action.
- (c) Defaulting Buyers who have been issued a Reinstatement Notice;
- (d) Buyers and Purchasers against whom the MMCS has commenced legal proceedings in accordance with these Rules.

11.2 Interstate Credit Services

If a Buyer published on the Warning Bulletin is also registered with an Interstate Credit Service, the MMCS may provide information concerning that Buyer on the Warning

Bulletin to the relevant Interstate Credit Service but shall not otherwise disclose the details of the Buyers on the Warning Bulletin to that Interstate Credit Service .

12 RECLASSIFICATION OF BUYER TERMS

12.1 A Defaulting Buyer who has been re-classified by the MMCS shall only be reinstated to the original or an improved Buyer Classification when payment of the amount outstanding in the Invoice Statement together with the interest accrued thereon and all Costs incurred by the MMCS has been received by the MMCS in full subject to the following conditions:

- (a) for *"Cash Sales Only"*: the Buyer may be reinstated to the original Buyer Classification provided that a Buyer which has been reclassified "Cash Only" on two (2) or more occasions will first be required to provide the MMCS with such security that the MMCS considers reasonably necessary .
- (b) for *"Stop Supply/Legal Proceedings Pending"*: the Buyer may be reinstated to a classification set out in Schedule 1 provided that the Buyer has provided the MMCS with such security that the MMCS considers reasonably necessary.

12.2 Where a Defaulting Buyer is reinstated to its original Trading Term Classification, the MMCS shall as soon as reasonably practicable issue a Reinstatement Notice to all Sellers that the Defaulting Buyer has paid all monies due to the MMCS and has been reinstated to its original Trading Term Classification.

12.3 Monitor List

A Buyer who:-

- (a) has committed an Act of Default or has been deemed a Defaulting Buyer;
- (b) was a Defaulting Buyer but has been reinstated to original or improved Trading Term Classification;

may at the discretion of the MMCS, be published on a Monitor List until the MMCS believes the Buyer no longer represents a financial risk to Sellers.

13 SHORT PAYMENT ADVICES & DISPUTES

The MMCS's policy, as amended from time to time, for Short Payment Advices and Disputes is available on the MMCS's website at <http://www.mmcsonline.com.au/Wholesaler/MasterFiles.aspx> and forms part of these Rules.

14 LEGAL STATUS OF DEBTS

14.1 Before commencing legal action against a Buyer, the MMCS will notify all Sellers to whom that Buyer is indebted that the MMCS intends to commence legal action to recover amounts by that Buyer.

14.2 Subject to:

- (a) Rule 4.1; and
- (b) any requirements under the Code, to the extent that the Seller is acting as a Code Agent is a party to a HPA with a Grower and the Code applies,

the MMCS may but is not required to take any steps whether legal or otherwise to recover a payment owing by a Buyer on behalf of a Seller.

14.3 The MMCS does not accept and expressly denies the assignment of any debts from a Seller owing to that Seller by any Buyer.

14.4 Nothing in these Rules prevents a Seller from commencing its own legal action against a Buyer so long as it notifies the MMCS that it intends to do so.

15 FEES, CHARGES AND SUBSCRIPTIONS

15.1 Collection fee for Sellers

In consideration of providing its services to Sellers, the MMCS will charge Sellers a Commission Rate. Sellers shall also be responsible for any GST as provided in Rule 17.

15.2 The MMCS is entitled to deduct the Collection Fees from the monies collected by the MMCS on behalf of each Seller and where those Collection Fees include any Costs (including legal costs), the MMCS may at its discretion pay those Costs and charge the Seller or the Buyer or the Buyer/Seller as the case may be, an amount equal to those Costs to be deducted from the Clearing Account.

15.3 Nothing in this Agreement shall be taken to affect or limit the Seller's obligation to pay the Collection Fees to the MMCS. For clarity, the Seller must pay the Collection Fees on the full amount(s) specified in each Seller Statement, whether or not:

- (a) the MMCS collects any or all of the monies from the Buyer; or
- (b) the Seller receives payment from the Buyer directly or indirectly via any other means outside the MMCS whatsoever.

15.4 The Commission Rate and the Collection Fee may be varied by the MMCS upon giving 28 days written notice to Sellers.

16 COMMISSION RATE FOR BUYERS

16.1 Buyers agree to pay from time to time the Commission Rate, if applicable.

16.2 The Commission Rate payable by the Buyer shall be added to the total amount stipulated in the Invoice Statement as payable by the Buyer.

16.3 The Commission Rate may be varied by the MMCS by giving 28 days written notice to the Buyer.

16.4 A statement by an authorised representative of the MMCS as to the amount for the time being owing by the Buyer to a Seller or the MMCS or as to the interest from time to time payable is prima facie proof of the amount and/or interest owing at that time.

17 GOODS & SERVICES TAX

17.1 All amounts to be increased for any GST

If any GST is payable by any party (**Supplier**) in respect of the supply of any Produce, goods, Services, or any other things to another party (**Recipient**), then the amount expressed to be payable by that party (**Original Amount**) is to be increased so that the Supplier receives an amount (**Increased Amount**) which, after subtracting the GST liability of the Supplier on that Increased Amount, results in the Supplier retaining the Original Amount after payment of that GST liability.

17.2 Out of pocket expenses are GST inclusive

All out of pocket expenses incurred by the MMCS for a Buyer or a Seller are GST inclusive.

17.3 Out of pocket expenses to be reduced for any input tax credits

If the Recipient is obliged to reimburse the Supplier for all or any part of any out of pocket expense, the amount which the Recipient must reimburse is limited to the Recipient's portion of the amount paid or payable by the Supplier in respect of that out of pocket expense less the corresponding proportionate amount of any input tax credit claimable by the Supplier in respect of that out of pocket expense, plus any adjustment to that amount under Rule 17.1.

17.4 Supplier to assist Recipient

The Supplier will do all things reasonably available to it to assist the Recipient to claim on a timely basis any input tax credits (if any) the Recipient may be entitled to claim for any acquisition of goods, services, or any other thing from the Supplier.

17.5 Rule 17 does not affect Rule 5.3

This Rule 17 does not affect Rule 5.3. To avoid any doubt, for any amount to be collected

by the MMCS for a particular Credit Sale, the MMCS treats the supply as either GST free or the amount to be collected is GST inclusive.

18 AMENDMENT TO RULES

18.1 These Rules may be amended from time to time without any requirement to obtain the authority of any Buyer or Seller.

18.2 The MMCS shall, within 21 business days of any amendment to these Rules notify the Sellers and Buyers of the nature of the amendments and the date from which the amendments took, or will take, effect. Any Buyer or Seller which does not agree to the amended Rules may elect to discontinue using the MMCS's services and close their account with the MMCS as a Buyer, a Seller or a Buyer/Seller as the case may be before the amended Rules become effective. If a Buyer, a Seller or a Buyer/Seller as the case may be continues using the MMCS's services after the amended Rules become effective, that Buyer, Seller or Buyer/Seller is taken to accept the amended Rules and agrees to be bound by them.

18.3 Failure to comply with the requirements of this Rule 18 shall not invalidate any amendment of these Rules.

18.4 A copy of the Rules as amended from time to time shall be available for inspection on the online portal operated by the MMCS.

19 BAD DEBT FUND

19.1 A Seller will be eligible to participate in the Bad Debt Fund by contributing to the Bad Debt Fund at a rate of an additional 0.2% (or such other rate set by the MMCS from time to time) in addition to the Collection Fees.

19.2 Monies paid by a Seller in accordance with Rule 19.1 shall:

- (a) be held by the MMCS to compensate Sellers participating in the Bad Debt Fund for losses suffered by them as a result of the financial failure of a Buyer; and

- (b) accrue interest payable to the MMCS for its exclusive use and benefit. For clarity, no Seller shall have any right to claim the interest or any part thereof which has accrued and Sellers release and waive all claims in relation to the interest.
- 19.3 The Directors will meet annually in July to review all Bad Debt from the preceding financial year or in some circumstances may choose to complete a review at any time within the current financial year, and may in their discretion determine to pay a Seller from the Bad Debt Fund in respect of the Bad Debt attributable to the Seller.
- 19.4 Payment of the amount(s) so set aside from the Bad Debt Fund for the Seller(s) (if any) shall be in such proportion and on such terms and conditions as the Directors deem appropriate.
- 19.5 Without limiting the foregoing, the Directors may take the following factors into account when making a determination concerning Bad Debt:
 - (a) Payments made for Bad Debt may be calculated based on the actual amount of the Bad Debt (as set out in the Seller Statement) or the average of the Bad Debt accrued in the previous 4 weeks of Credit Sales multiplied by the Trading Term Classification.
 - (b) If a Seller has participated in the Bad Debt Fund for less than 6 months, that Seller shall not be entitled to any payment for Bad Debts from the Bad Debt Fund.
 - (c) If a Seller has participated in the Bad Debt Fund for a period of 6 months to 12 months, a discount of 50% shall be applied in respect of payments made (if any) for the Bad Debt attributable to the Seller.
 - (d) If a Seller has been given written notice of a breach of the Rules in the financial year to which the Bad Debt relates, that Seller shall not be entitled to any payment for Bad Debts from the Bad Debt Fund.
- 19.6 The Seller agrees that if it receives a payment from the Bad Debt Fund:

- (a) the whole of the Bad Debt is irrevocably assigned to the MMCS; and
- (b) if the Seller subsequently recovers all or part of the Bad Debt, the Seller must promptly account to the MMCS for those monies and hold them separately as fiduciary agent of the MMCS.

Example:

Buyer A has a Trading Term Classification of 14 days.

Seller B makes a number of Credit Sales to Buyer A as follows:

Week 1 \$25,000

Week 2 \$36,000

Week 3 \$28,000

Week 4 \$31,000

Actual Total \$120,000

In Week 7, Buyer A is deemed to be a Defaulting Buyer and the MMCS suspends or cancels Buyer B's Trading Term Classifications. Buyer A has paid for the Credit Sales in Weeks 1 and 2 but has not paid for the Credit Sales in Weeks 3 and 4, giving rise to a Bad Debt of \$59,000.

The MMCS may at its discretion make a determination to pay Seller B from the Bad Debt Fund an amount equal to:

- the Actual Total amount of the Bad Debt being \$59,000; or
- the average weekly Credit Sales for the 4 weeks prior to Buyer A becoming a Defaulting Buyer, multiplying the Trading Term Classification where:
 - the average Credit Sales for Weeks 1 – 4 is \$30,000; and
 - Buyer A's Trading Term Classification is 14 days (2 weeks)

so the averaged Bad Debt is \$60,000.

In determining what amount to pay Seller B from the Bad Debt Fund (if anything), the MMCS may take into account the following factors:

- If Seller B has been a member of the Bad Debt Fund for less than 6 months, or has been given written notice of breach of the Rules in the same financial year as the Bad Debt, Seller B shall be entitled to receive not more than \$0.00.

- If Seller B has been a member of the Bad Debt Fund for 6 to 12 months, Seller B shall be entitled to receive not more than \$29,500 (half the Actual Total of the Bad Debt) or \$30,000 (half the averaged Bad Debt).

20 LIMITATION OF LIABILITY OF THE MMCS

20.1 The MMCS services are provided on an "as is" basis except as expressly set out in these Rules, the Agency Agreements or as required by legislation including Australian Consumer Law:

- (a) the MMCS does not make any express or implied representations or warranties regarding its services; and
- (b) no oral advice or written information given by the MMCS, its employees or contractors or other customers will create a warranty and Buyers and Sellers are not entitled to rely on any such information or advice; and
- (c) whether as agent or as principal, the MMCS will not be liable for any direct, indirect, special, incidental or consequential damages arising out of or in connection with the use of the services provided by the MMCS to either a Buyer or a Seller or any of them and without limiting the generality of this Rule, whether as agent or as principal, the MMCS will not be liable for any damages or losses whatsoever suffered by either a Buyer or Seller arising from:
 - (i) defamation; or
 - (ii) breach of Confidential Information; or
 - (iii) loss of data, use, revenue or profits; or
 - (iv) mistakes, defects, errors or omissions;
 - (v) interruptions, deletion of files, e-mail errors, viruses, delays in operation or transmission; or
 - (vi) any failure of performance, including acts of God, communications

failure, theft, destruction;

(vii) unauthorised access of a Buyer's or Sellers records, programs or services.

20.2 The MMCS's maximum liability for breach of warranty is limited to refund of the fees for the period that its services were reported and determined to have been unavailable or defective, except in the case of a warranty implied under Australian Consumer Law or equivalent state legislation, in which case the liability of the MMCS will be limited to supplying its services again or payment of the costs of having the services supplied again.

20.3 Where the MMCS acts as agent, Buyers and Sellers agree to indemnify and hold harmless the MMCS, its officers, directors, employees, agents and licensees, from any Costs, arising out of or relating to a Buyer's or Seller's conduct, or a Buyer's or Seller's use of the services provided by the MMCS, including in each case for defamation, breach of Confidential Information and breach of the rights of any other person.

20.4 The MMCS will not be liable to the Seller should any claim or legal action be compromised, settled or otherwise resolved for less than the full debt amount.

21 REGISTRATION CARD

21.1 Each Buyer is allocated:

- (a) an account number; and
- (b) if requested, a registration card setting out the name of the Buyer, the name of the cardholder, the Buyer's registration number and a provision for the cardholder's signature.

21.2 A Buyer must ensure that any persons authorised to buy Produce or Services for that Buyer at all times carry the registration card when buying Produce or Services at the Markets for presentation to the Seller on demand.

21.3 If a Buyer is purchasing Produce or Services outside the Markets, the Buyer must be able

to quote to a Seller the Buyer's Registration number and the name of the person making the order on the Buyer's behalf.

21.4 The Seller shall be entitled to rely on the Buyer's registration number for Produce or Services orders by any person as evidence that the person has the authority to enter the Credit Sale for the Buyer.

21.5 The registration card shall at all times remain the property of the MMCS and a Buyer shall return the registration card to the MMCS immediately upon termination of the Agency Agreement.

22 DEFAULTS BY SELLERS

22.1 If the MMCS reasonably considers that a Seller has:

- (a) failed to process all Credit Sales through the MMCS as required by these Rules;
- (b) dealt with a Buyer contrary to these Rules;
- (c) failed to make a payment received from a Buyer to the MMCS in accordance with these Rules;
- (d) breached any other provision of these Rules;
- (e) failed to furnish to the MMCS on three (3) or more consecutive Trading Weeks its Seller Statements;

the MMCS may in addition to and without prejudice to any other rights it may have against the Seller exercise any or all of the following powers:

- (i) suspend or expel the Seller from the MMCS;
- (ii) impose a monetary penalty on the Seller of an amount not exceeding \$2,000.00.
- (iii) impose such other penalty or condition to the continued participation by

the Seller in the MMCS.

22.2 If the MMCS exercises any power set out in Rule 22.1, it shall, as soon as practicable, serve a notice in writing on the Seller:

- (a) setting out the power exercised and the grounds on which it is based;
- (b) stating that the Seller may appeal the decision to the Directors at a meeting on a date specified which must be not less than seven (7) days and not more than fourteen (14) days from the date of the notice;
- (c) stating the date, place and time of that meeting; and
- (d) informing the Seller that the Seller may do either or both of the following:
 - (i) attend and speak at that meeting;
 - (ii) submit to the Directors at or prior to the date of that meeting representations relating to the power exercised against the Seller.

22.3 After considering the submissions of the Seller, the Directors may revoke, cancel, vary or confirm the power exercised against the Seller and the decision of the Directors shall be final and binding on all parties hereto.

23 NOTICES

23.1 Any notice, consent, offer, demand, request or other instrument or communication, including Invoice Statements and Seller Statements, required or permitted to be given under or pursuant to these Rules is to be in writing and may be delivered or sent by email, facsimile or prepaid registered mail as follows:

If to the MMCS; TO: Melbourne Markets Credit Services Mailbox 36, 35 Produce Drive, Epping, Vic, 3076. Fax: 03 8405 3746. Email: office@melbmcs.com.au

If to a Buyer or to a Seller; TO: the address the Buyer or Seller has nominated in its Trading Term Application or such other address that a Buyer or Seller will have

previously notified to the MMCS.

23.2 Any communication sent by post is deemed to have been received on the 2nd Business Day following the date of posting and any communication sent by email or fax is deemed to have been received at 10.00 a.m. (recipient's local time) on the next Business Day following the date of dispatch provided that in the case of a fax if:

- (a) the transmission has not been completed or the sender's machine indicates a malfunction in transmission;
- (b) the recipient notifies the sender of an incomplete transmission by 10.00 a.m. (recipient's local time) on the next Business Day following the date of dispatch,
- (c) the fax is deemed not to have been given or made.

24 RISK FEE

24.1 The Buyer warrants to the MMCS (and each Seller) that at all times material, the Buyer will not exceed its allocated Purchase Limit and will be liable for payment of any Risk Fee.

24.2 The Buyer will be required to pay any Risk Fee, which will be included in the Buyer's next Invoice Statement, by the stipulated due date.

24.3 In consideration of the MMCS, in its discretion, permitting a Buyer to continue to utilise the MMCS's services, in addition to any other obligations under these Rules, the Buyer agrees to be liable for any Risk Fee in accordance with the provisions stipulated in **Schedule 3** herein (as may be varied by the MMCS from time to time) and otherwise with these Rules.

24.4 The Seller agrees that any Risk Fee may be retained by the MMCS for its sole use and benefit.

SCHEDULE 1

TRADING TERMS CLASSIFICATION

7 Day Account

Terms requiring payment in full no later than 12.00 noon on the second Friday after the day on which the Credit Sale is made including any Credit Sales effected on the first Friday.

(Example: If a sale is made on Wed morning the 7th day of the month, then payment is required no later than 12.00 noon on the Friday the 16th day of the month.)

14 Day Account

Terms requiring payment in full no later than 12.00 noon the third Friday after the day on which the Credit Sale is made including any Credit Sales effected on the first Friday.

(Example: If a sale is made on Wed morning on the 7th day of the month, then payment is required no later than 12.00 noon on the Friday the 23rd day of the month.)

21 Day Account

Terms requiring payment in full no later than 12.00 noon the fourth Friday after the day on which the Credit Sale is made including any Credit Sales effected on the first Friday.

(Example: If a sale is made on Wed morning on the 7th day of the month, then payment is required no later than 12.00 noon on the Friday the 30th day of the month.)

28 Day Account

Terms requiring payment in full no later than 12.00 noon the fifth Friday after the day on which the credit sale is made including any credit sales effected on the last day of the trading week.

(Example: If a sale is made on Wed morning on the 7th day of the month, then payment is required no later than 12.00

Cash Sale Only

noon on the Friday the 6th or 7th day of the next month.)

Allocated to Buyers who have failed to pay the amount stipulated in their Invoice Statements by the due date.

Stop Supply /

Allocated to Buyers who have failed to pay the amount

Legal Proceedings Pending

stipulated in their Invoice Statement within seven (7) days of the due date.

SCHEDULE 2

COMMISSION RATES AND STATEMENT FEES

FSL Member Rates

7 Day Accounts Commission Rate payable by the Seller is 0.6% (or \$6 per \$1000).

14 Day Accounts Commission Rate payable by the Seller is 0.6% (or \$6 per \$1000).

21 Day Accounts Commission Rate payable by the Seller is 0.5% (or \$5 per \$1000).

In addition, the Commission Rate payable by the Buyer is 0.3% (or \$3 per \$1000) due to the additional risk associated with the "extra week's credit".

28 Day Accounts Commission Rate payable by the Seller is 0.4% (or \$4 per \$1000).

In addition, the Commission Rate payable by the Buyer is 0.6% (or \$6 per \$1000) due to the additional risk associated with the "extra two week's credit".

Non FSL Member Rates

7 Day Accounts Commission Rate payable by the Seller is 1.5% (or \$15 per \$1000).

14 Day Accounts Commission Rate payable by the Seller is 1.5% (or \$15 per \$1000).

21 Day Accounts Commission Rate payable by the Seller is 1.5% (or \$15 per \$1000).

28 Day Accounts Commission Rate payable by the Seller is 1.5% (or \$15 per \$1000).

SCHEDULE 3 RISK FEE POINTS

Item 1 – Risk Fee Point value

1 x Risk Fee Point = AUD\$75.00 (as varied from time to time) plus GST

Item 2 – Calculation of Risk Fee Points

Risk Fee Points

Account Limit/Purchase Limit	<\$9.9K	\$10K - \$30K	\$31K-\$100K	\$101K \$200K	\$201K - \$420K
Trigger Point \$1,501 to \$5,000 over limit	1	-	-		
Trigger Point \$5,001 - \$10,000 over limit	2	1	-		
Trigger Point \$10,001 - \$15,000 over limit	3	2	1		
Trigger Point \$15,001 - \$20,000 over limit	4	3	2	1	
Trigger Point \$20,001 - \$25,000 over limit	5	4	3	2	1
Trigger Point \$25,001 - \$30,000 over limit	6	5	4	3	2
Trigger Point \$30,001 - \$35,000 over limit	7	6	5	4	3
Trigger Point \$35,001 - \$40,000 over limit	8	7	6	5	4
Trigger Point \$40,001 - \$45,000 over limit	9	8	7	6	5
Trigger Point \$45,001 - \$50,000 over limit	10	9	8	7	6
Trigger Point \$50,001 + over limit	10 and referred to Board				