



## Smart Berries Pty Ltd

### Merchant Terms of Trade

This document details our Merchant Terms of Trade under the Horticulture Code of Conduct as outlined in the *Competition and Consumer (Industry Codes – Horticulture) Regulations 2017*.

#### 1. Horticulture Produce Agreement

These Merchant Terms of Trade ("**Terms**"), when signed, create a Horticulture Produce Agreement ("**Agreement**") between the Company specified in Item 2 of Schedule 1, and the Grower specified in Item 3 of Schedule 1, concerning the Produce specified in Item 4 of Schedule 1.

#### 2. Termination of Previous Agreements

This Agreement replaces all Horticulture Produce Agreements between the Company and the Grower executed prior to 1st June 2024.

#### 3. Period

The Agreement is effective from the commencement date listed in Item 5 of Schedule 1 and continues indefinitely until terminated in accordance with Terms of this Agreement ("**Period**").

#### 4. Agreement

For the Period of this Agreement, the Grower agrees to deliver horticulture produce ("**Produce**") in accordance with the Terms of this Agreement.

#### 5. No Commitment or Obligation

This Agreement is not a commitment to purchase Produce from a Grower and does not oblige the Company to accept any unsolicited Produce from the Grower.

#### 6. Quantity

The Grower will provide the produce in the quantity agreed in writing by the Company and Grower prior to the Acceptance of the delivery ("**Quantity**").

#### 7. Quality

The Grower will deliver Produce that is:

- of merchantable quality, and
- fit for purpose, and
- in accordance with the specifications agreed in writing prior to Acceptance of Delivery, and
- unless otherwise agreed to in writing prior to Acceptance of Delivery, in compliance with the Schedule 3 'Smart Berries Quality Standards' as periodically updated ("**Quality**").

#### 8. Delivery

The Grower will deliver the Produce to the Company at the address agreed prior to the delivery ("**Delivery Address**"). The Grower will do so at its own risk and expense, unless otherwise agreed in writing.

Prior to delivery being agreed, the Company may specify any additional delivery requirements in writing.

Prior to despatch, the Grower will notify the Company of the Produce quantity and the expected delivery date and time.

#### 9. Pre-Grading and Packing

This clause applies where the Grower requires produce to be graded and packed according to class, size or other criteria as determined by the Grower and the Company in order to prepare the Produce for purchase ("**Pre-Grading and Packing**").

Where the pre-grading and packing service is performed, a fee will be charged in accordance with Schedule 2 "*Smart Berries M-Block Packing Shed Service Fees*" as updated and distributed to the Grower 14 days prior to changes.

A report will be provided to the Grower within 3 business days of the service being completed for all Produce received in a Delivery, outlining the date of delivery, kilograms of produce received, size and quality specifications of Produce packed, and amount of Produce unsuitable for packing and deemed waste.

Where Pre-grading and Packing services are provided, the cost of these services will be deducted from any amounts payable to the Grower in accordance with clause 16.

#### 10. Additional Services

The Company is entitled to charge, and the Grower agrees to pay, for any additional services provided to the Grower in relation to the Purchase of Produce under this Agreement. These services include, but are not limited to, freight, repacking, packaging, fumigation and storage ("**Additional Services**").

Where Additional Services are performed, a fee will be charged in accordance with Schedule 2 "*Smart Berries M-Block Packing Shed Service Fees*" as updated annually and distributed to the Grower prior to the season commencing, or as mutually agreed with the Grower prior to the service being performed.

Where additional services are provided, the cost of these services will be deducted from any amounts payable to the Grower in accordance with clause 16.

## 11. Acceptance of Delivery

The title for the Produce will transfer to the Company when the Produce delivery has been Accepted.

Acceptance, for the purpose of these Terms, occurs when:

- a. the Produce has arrived to and been unloaded at the Delivery Address; and
- b. if a Pre-Grading service has been provided, the Produce has been Pre-Graded; and
- c. the Company, or a third party nominated by the Company, has had a reasonable opportunity to inspect the Produce upon receipt at the Delivery Address and completion of services provided; and
- d. has not rejected the Produce in accordance with clause 13 (“**Acceptance**”).

## 12. Inspection

In addition to the inspection outlined in clause 11, the Grower, prior to dispatch and at its own expense, will make the Produce available for inspection by the Company, or a third-party nominated by the Company, at the Company’s request.

## 13. Rejection

The Company is entitled to reject all or part of the Produce delivered under this Agreement if:

- a. the Produce has not been delivered in accordance with this Agreement, including, but not limited to, the Delivery terms;
- b. some, or all, of the Produce does not meet the Quality and/or Specifications agreed prior to delivery;
- c. the Company determines some, or all, of the Produce is unfit for sale;
- d. the Company determines or reasonably suspects that some or all of the Produce is contaminated (whether microbial, chemical, or otherwise) or has not been grown and harvested in compliance with the Company’s food safety and biosecurity standards as outlined in the Supplier Code;
- e. where some, or all, of the Produce is not made available for inspection by the Company;
- f. if the Company reasonably suspects, or is aware that, the Produce is or has been delivered contrary to Law or the Fresh Produce Group Supplier Code, including in contraventions to Heavy Vehicle National Law.

Produce delivered in a form that requires Pre-Grading cannot be inspected and accepted or rejected until after the service has been provided.

If the Company rejects all or part of the Produce, it will:

- a. notify the Grower’s contact person within 24 hours of rejection; and
- b. advise the Grower in writing of the rejection, and the reasons for the rejection, within 5 business days (“**Rejection Notice**”).

The Company, at its discretion, may seek to renegotiate with the Grower on an alternative agreement to manage or prevent rejection, prior to providing the Rejection Notice.

The Grower is responsible for the recovery, transportation, and disposal of Rejected Produce. The Company will provide reasonable assistance to the Grower to transport or dispose of the rejected Produce at the Grower’s expense.

Where the Grower does not respond to the Rejection Notice within 5 business days, or fails to retake possession of the Produce within 10 business days of the Rejection Notice, the Company may destroy or dispose of the rejected Produce, or deliver the rejected produce to the Grower, at the Grower’s risk and expense.

## 14. Price

The price the grower will be paid is an amount to be calculated using the Pricing Formula as specified in Item 6 of Schedule 1 (**Price**).

## 15. Levies

The responsibility for collection and payment of all levies associated with the Produce under this Agreement is outlined in Item 8 of Schedule 1.

Where the Company is responsible for payment of Levies, the amount will be deducted from amounts payable to the Grower under clause 16.

## 16. Payment

The Company will pay to the Grower the Price, calculated in accordance with clause 14, less the cost of any Pre-Grading and Packing, Levies and other charges incurred by the Grower in accordance with this Agreement.

Payment will be made to the Grower in the period specified in Item 9 of Schedule 1.

## 17. Advanced Payments

At the Company’s discretion, it may make advance payments to the Grower of any amount or at any time prior to the Price being finalised (“**Advanced Payments**”).

Advanced payments will offset amounts owing to the Grower for future Payments.

## 18. Royalties

This clause applies where the Grower has entered into a licensing agreement with the Company or a Licensor for a trademarked plant variety.

The Company shall collect royalties on behalf of the Grower for any Produce sold under an agreement relating to trademarked plant varieties. The Company will remit the royalty to the Intellectual Property holder in line with the terms of the relevant agreement.

## 19. Discretionary Sales

The Grower consents to the Company selling the Produce to any third party at its discretion, including to any related body corporate of the Company.

## 20. Set-Off

The Company is entitled to set-off any amounts payable by the Grower to the Company under this or any other agreement between the Company and the Grower, against any amounts payable by the Company to the Grower under this Agreement.

## 21. Statements

The Company will provide a statement ("**Statement**") to the Grower within one month of the end of the reporting period, ("**Statement Period**") covering the activities between July 1 and June 30 the following year ("**Reporting Period**"). The Statement will include the following information with respect to Produce delivered or sold under this Agreement during the Statement Period:

- a. Quantity and Quality of Produce purchased during the Statement Period,
- b. Dates the Produce was delivered to the Company during the Statement Period.
- c. Dates of purchase of Produce during the Statement Period,
- d. The Gross Sales Price of the Produce,
- e. The Price paid to the Grower for the Produce,
- f. Details of Produce not sold,
- g. Details of Produce destroyed and the reason for this.

## 22. Termination

Where these Terms constitute a Horticulture Produce Agreement, the Company or Grower may terminate this Agreement:

- a. at any time during the cooling-off period, being 14-days from the date of execution of the Agreement; by providing the other party written notification, or
- b. by providing no less than 90 days' notice to the other party in writing, or
- c. by signing a new Horticulture Produce Agreement that supersedes this Agreement.

## 23. Insurance

The Company has insurance in respect of the Produce once it is under the Company's control. The insurance held by the Company covers fire, theft and accidental damage (other than deterioration of quality or any other inherent losses).

Insurance provider name: AIG Australia Limited

Insurance policy number: 34-300014255-56

## 24. Variation

Where these Terms constitute a Horticulture Produce Agreement, the Company and Grower may agree to vary this Agreement by writing signed by both parties, or by a

written notice of offer to vary the Agreement and a written notice of acceptance. Any offer, acceptance or signed variation must state the Horticulture Produce Agreement Number, noted in Item 1 of Schedule 1, to which it refers and the date the variation is to take effect.

## 25. Disputes

In the event of a dispute, the aggrieved party must first contact the other party's Relationship Manager as specified in Item 10 and Item 11 of Schedule 1, detailing the nature of the dispute.

For disputes initiated by the Grower, which the Grower seeks to escalate further, they are able to provide Notice of the dispute by emailing the Horticulture Produce Agreement Management team at the contact provided in Item 12 of Schedule 1.

## 26. Covenants and Warrants

The Grower covenants and warrants that:

- a. It has all right, title and interest in and to the Produce;
- b. Title will pass to the Company clear of all encumbrances, claims and other adverse interests;
- c. The Grower is the grower of the Produce; and
- d. The person signing this Agreement has the authority to enter into binding agreements, and appoint the Company as a Merchant pursuant to these Terms.

## 27. Indemnity

The Grower agrees to indemnify the Company for any liability, loss or expense of any kind arising from or in respect of the death of, or personal injury to, or disease suffered by, any person and/or any damage to or loss of any property (or the use of that property), arising out of any negligent act or omission of the Grower in connection with this Agreement. This clause survives termination of an Agreement.

## 28. Supplier Code

The Grower acknowledges receipt of the Company's Supplier Code and confirms that they have read and understood it. The Grower agrees to adhere to the Supplier Code, as it may be updated periodically throughout the period of supplying Produce to the Company.

## 29. GST

All amounts expressed in or pursuant to these Terms are expenses in AUD and are exclusive of GST. The Grower is responsible for the payment of all GST arising from any supply made by the Company under this agreement.

## 30. Independent Legal Advice

The Company recommends that the Grower seeks independent legal advice in relation to the Horticulture Produce Agreement prior to it being entered into between the Company and the Grower.