

# Horticulture Produce Agreement Merchant



Grower details	Trader details
<b>Grower's Name:</b>	<b>Fruitico Pty Ltd</b>
<b>ACN:</b>	<b>ACN: 608 313 604</b>
<b>ABN:</b>	<b>ABN: 49 608 313 604</b>
<b>Address:</b>	<b>Address: 43 Kirkham Road, Meelon WA 6208</b>
<b>Email:</b>	<b>Email: <a href="mailto:Accounts.Payable@fpg.com.au">Accounts.Payable@fpg.com.au</a></b>
<b>Phone:</b>	<b>Phone: +61 (08) 9530 3141</b>

**1. Agreement** For the term of this Agreement, the Grower agrees to deliver, and the Trader (as Merchant) agrees to buy horticultural produce (also referred to as "produce") of the type, quantity, quality and specifications set out in this Agreement or as ordered by the Trader and confirmed in writing by the Grower from time to time, for the prices stated in, or calculated in accordance with, this Agreement.

**2. Term of Agreement** This Agreement: *(tick one)*  
 Is for an unspecified term and will terminated in accordance with clause 20.  
 Commences on \_\_\_\_\_ and will terminate on \_\_\_\_\_, unless the Agreement is terminated under clause 20.

**3. Type of produce** The Grower will deliver the following types of produce in accordance with the terms of this Agreement:  
\_\_\_\_\_

**4. Quantity of produce** The Grower will deliver the produce in the quantity agreed by the Trader and Grower, by phone or in writing, in advance of the delivery.

**5. Quality of produce** Unless otherwise agreed, the quality of horticulture produce provided by a Grower must comply with the FreshSpecs standard for class one (or equivalent) produce. Specifications are available at <http://freshmarkets.com.au/fresh-specs/>.

**6. Delivery of produce** Unless otherwise agreed, the Grower is responsible for organising the delivery of the horticulture produce.  
The Grower agrees to provide documentation to the Trader that accurately describes the quantity, variety, size, class, description and characteristics of the produce, including packaging, prior to delivery or immediately upon delivery of the produce. Any documentation provided by the Grower must state the Horticulture Produce Agreement Number under which the produce is delivered.  
Delivery of the horticulture produce occurs when the produce arrives at the delivery address:  
\_\_\_\_\_  
Days for delivery:  Mon  Tue  Wed  Thu  Fri  Sat  Sun  ALL  
Hours for delivery: after \_\_\_\_\_ and before \_\_\_\_\_ on the agreed days.

**7. Price** *(tick one option)*  
 The Trader will pay the Grower for the produce in the amount agreed **in writing before delivery**. The Trader will raise a Recipient Created Tax Invoice (RCTI). Payment will be made within 14 days from invoice date.  
 The Trader will pay the Grower for the produce in the amount agreed **in writing immediately upon delivery**. Payment will be made within \_\_\_\_ days of delivery and acceptance of the produce.  
 The Trader will pay the Grower for the produce in an amount **calculated by the following method(s)**: *(circle which method(s) apply)*  
(Method A) Market price (i.e. the price the Trader sells or expects to sell the produce to a third party) less a margin of \_\_\_\_% of the sales price. Payment will be made within \_\_\_\_ days of delivery and acceptance of the produce.  
(Method B) Calculated payback at a rate of \_\_\_\_\_ per \_\_\_\_\_ over a payback period of \_\_\_\_\_  
(Method C) other \_\_\_\_\_. Payment will be made within \_\_\_\_ days of \_\_\_\_\_.  
Where the Trader and Grower agree that multiple methods of calculating the price of produce will apply throughout the duration of this Agreement, the specific method used to calculate the price of the produce for each delivery or part thereof, will be agreed by the Trader and Grower orally or in writing before or upon delivery and recorded in the statement for the reporting period.

<b>8. Levies</b>	<p>Where levies apply to the horticulture produce: <i>(tick one)</i></p> <p><input type="checkbox"/> The Trader will collect and pay all levies on behalf of the Grower. The amount of levies due will be deducted from the payment to the grower.</p> <p><input type="checkbox"/> The Grower will pay levies. The Grower's levies exemption number is: _____</p>
<b>9. Services and fees</b>	<p>The Trader will provide the following services:</p> <p><input type="checkbox"/> Warehousing at a rate of _____ per pallet / day      <input type="checkbox"/> Other: _____ at a rate of _____ per _____</p> <p><input type="checkbox"/> Repacking at a rate of _____ per package      <input type="checkbox"/> None</p> <p><input type="checkbox"/> Conditioning / ripening at a rate of _____ pallet</p> <p>The amount of fees due will be deducted from the payment to the Grower.</p>
<b>10. Payment</b>	<p>The Trader will pay the Grower for the purchase of the produce in accordance with this Agreement and as follows: by</p> <p><input type="checkbox"/> EFT Bank details: BSB: _____ Account # _____ Account Name: _____</p> <p>or <input type="checkbox"/> SMCS   <input type="checkbox"/> Brismark   <input type="checkbox"/> MMCS   <input type="checkbox"/> FPAA   Buyer/Member No: _____</p>
<b>11. Pooling</b>	<p>The Trader may pool horticulture produce supplied by the Grower under this Agreement with other produce, where the produce is of the same quality as the produce delivered by the Grower. The quality of produce will be determined according to clause 5.</p>
<b>12. Rejection of produce</b>	<p>Horticulture produce supplied by the Grower may be rejected by the Trader:</p> <ul style="list-style-type: none"> <li>- If the produce does not meet the agreed quality requirements described in clause 5;</li> <li>- If the Trader and Grower have not agreed, in advance, for the produce to be delivered; or</li> <li>- If the Trader reasonably suspects or is aware that the produce has been delivered contrary to Law, including in contravention of the obligations of the Grower or Trader or both under the Heavy Vehicle National Law.</li> </ul> <p>The Trader will notify the Grower's contact person in accordance with clause 18 within 24 hours following delivery, if it rejects any horticulture produce (rejection notice). The Trader will advise the Grower in writing of the rejection and the reasons for the rejection within 2 business days following delivery of the horticulture produce.</p> <p>Where the Trader rejects the produce, the Grower is responsible for recovery and/or movement and disposal of the horticulture produce. Where the Grower does not respond to the rejection notice within 24 hours of its issuance, or fails to retake possession of the produce within 5 business days of the rejection notice, the Grower may destroy and dispose of the rejected produce, or deliver the rejected produce to the Grower, at the Grower's expense. The Trader will provide reasonable assistance to the Grower to move and/or dispose the rejected produce at the Grower's expense.</p>
<b>13. Circumstances where Grower sends produce without notice or produce is non-compliant</b>	<p>If the Grower sends produce to the Trader and the Trader has not agreed to the delivery of the produce or the produce does not comply with the quantity or quality requirements specified in this Agreement, the Trader reserves the right to reject that produce (clause 12).</p> <p>If the Trader determines to accept part or all of the produce, within 24 hours of delivery:</p> <ul style="list-style-type: none"> <li>- The Trader will notify the Grower of its acceptance of all or part of the produce;</li> <li>- The Trader will seek to reach an agreement <b>in writing</b> with the Grower on the price or method of calculating the price of the produce;</li> <li>- Where agreement on the price or method of calculating the price of the produce cannot be reached, the produce will be taken to be rejected (clause 12) and the Trader will issue a rejection notice to the Grower.</li> </ul>
<b>14. Insurance</b>	<p>The Trader has insurance in respect of the horticulture produce once the produce is under the Trader's control. The insurance held by the Trader covers fire, theft and accidental damage (other than deterioration of quality of or any other inherent losses).</p> <p>Details of the insurance policy are as follows:</p> <p>Insurance provider name: <b>AIG Australia Limited</b>, Insurance Policy No: <b>34-300014255-56</b></p> <p>Valued at: either the Invoiced Value if the product is sold or Cost Price if stored and not yet sold.</p> <p>The Trader may vary its insurance policy during the term of this Agreement. The Trader will notify the Grower in writing of any variation to its insurance policy prior to, or within a reasonable period after, its commencement. To the extent that there is any inconsistency between this clause and clauses 18 and 19, this clause prevails.</p>
<b>15. Statement for reporting period</b>	<p>The Trader will issue a statement to the Grower:</p> <p><input type="checkbox"/> within 14 days of the end of each month      <input type="checkbox"/> within 7 days of each consignment</p> <p>The statement will specify <i>dealings</i> with the horticulture produce:</p> <p><input type="checkbox"/> Each month      <input type="checkbox"/> between and including the date of each consignment</p> <p><i>Dealings</i> include the quality and quantity of produce purchased by the Trader, the date(s) of the purchases, price for the produce, where multiple methods are agreed for calculating the produce price, the method applied for calculating the produce price for a particular purchase, any fees or levies deducted from payment and the date the produce was delivered.</p>

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**16. Title** The Grower covenants and warrants that:

- The Grower has all right, title and interest in and to the produce;
- Title will pass to the Merchant clear of all encumbrances, claims and other adverse interests; and
- The Grower is the grower of the produce.

Title in the horticulture produce supplied by the Grower will pass to the Trader in accordance with this Agreement, where the method of calculating the price has been agreed by the Merchant and Grower, on the delivery of the horticulture produce.

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**18. Contact details for notices, disputes, variations and rejections** The details of the primary contact people for the Trader and Grower are:

Grower's Contact Name: _____	Trader's Contact Name: _____
Telephone: _____	Telephone: _____
Mobile: _____	Mobile: _____
Email: _____	Email: _____

These individuals may be contacted, by telephone, mobile, text, facsimile, email or any other mode of communication contemplated this clause, in the event of a contract notice, variation, dispute or rejection of produce by the Trader or Grower.

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**19. Variation** The Trader 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 to which it refers and the date the variation is to take effect.

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**20. Termination** The Trader or Grower may terminate the Agreement in writing within the cooling-off period (see Terms of Trade). The Agreement may otherwise be terminated by written notice of \_\_\_ days provided by the Trader or Grower to the other party's contact person.

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**18. Terms of Trade** This Agreement is subject to the Trader's Terms of Trade (available online at the date of this Agreement). In the event of any inconsistency between this Agreement and the Terms of Trade, this Agreement prevails to the extent of the inconsistency.

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**This Agreement is deemed to be accepted by signature of both parties or upon the Trader's receipt of a written notice of acceptance of the Agreement by the Grower.**

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<p><b>Signed on behalf of the Grower by a duly authorised representative:</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Date: _____</p>	<p><b>Signed on behalf of Fruitico Pty Ltd (ABN 49 608 313 604) by a duly authorised representative:</b></p> <p>Signature: _____</p> <p>Name: _____</p> <p>Date: _____</p>
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<p><i>Fruitico Pty Ltd Finance Team Only</i></p> <p>Payment Terms accepted: _____</p> <p>Date: _____ / _____ / _____</p>	<p>Grower details verified by: _____</p> <p>Entered to systems on: _____ / _____ / _____</p> <p>Entered to systems by: _____</p>
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## Terms of Trade

### 1. When Terms of Trade apply

These Terms of Trade set out the terms and conditions on which the Trader (being Fruitico Pty Ltd, ABN 49 608 313 604) as Merchant or Agent under the Horticulture Produce Agreement is prepared to trade in horticultural products with the Grower as required by the Horticultural Code of Conduct 2017 (**the Code**). These Terms of Trade set out the general terms on which the Trader will trade with Growers in respect of horticulture produce.

### 2. Good faith

The Grower and the Trader will deal with each other in good faith.

### 3. Horticulture Produce Agreement prevails

The Code requires that transactions between a Trader and Grower must be conducted pursuant to a Horticulture Produce Agreement. In the event of any inconsistency between this document and the Horticulture Produce Agreement, the Horticulture Produce Agreement prevails to the extent of the inconsistency.

### 4. Quality of produce

Unless otherwise agreed, the quality of horticulture produce provided by a Grower must comply with the FreshSpecs standard for class one (or equivalent) produce. Specifications are available at <http://freshmarkets.com.au/fresh-specs/>.

### 5. Rejection of produce

Horticulture produce supplied by the Grower may be rejected by the Trader:

- If the produce does not meet the agreed quality requirements described in Item 4;
- If the Trader and Grower have not agreed, in advance, for the produce to be delivered; or
- If the Trader reasonably suspects or is aware that the produce has been delivered contrary to Law, including in contravention of the obligations of the Grower or Trader or both under the Heavy Vehicle National Law.

The Trader will notify the Grower's contact (identified in the Horticulture Produce Agreement) by telephone, fax, email or other electronic means within 24 hours following delivery, if it rejects any horticulture produce (**Rejection Notice**). The Trader will advise the Grower in writing of the rejection and the reasons for the rejection within 2 business days following delivery of the horticulture produce.

Where the Trader rejects the produce, the Grower is responsible for recovery and/or movement and disposal of the horticulture produce. Where the Grower does not respond to the Rejection Notice within 24 hours of its issuance, or fails to retake possession of the produce within 5 business days of the Rejection Notice, the Grower may destroy and dispose of the rejected produce, or deliver the rejected produce to the Grower, at the Grower's expense. The Trader will provide reasonable assistance to the Grower to move and/or dispose the rejected produce at the Grower's expense.

### 6. Price and additional costs and fees

The Purchase Price for the produce as well as additional costs and fees for actions performed by the Trader in connection with the produce under the Horticulture Produce Agreement will be set out in the Horticulture Produce Agreement which is required to be accepted in writing by the Grower.

### 7. Payment by Trader as Merchant

When the Trader is a Merchant, unless otherwise agreed in the Horticulture Produce Agreement, the Trader will pay the Grower for the produce within 21 days of delivery and acceptance of the produce.

### 8. Payment by Trader as Agent

When the Trader is an Agent, unless otherwise agreed in the Horticulture Produce Agreement, the Trader will pay the Grower the proceeds of the sale of accepted produce less applicable Agent's commission, additional fees, costs and levies (as agreed between the Trader and Grower under the Horticulture Produce Agreement) within 7 days of the sale of the Grower's produce.

Only the Trader's commission is contingent on the sale of the Grower's produce. All other additional fees, costs and levies arising under the Horticulture Produce Agreement may be charged or deducted from proceeds of sale by the Trader where they arise.

Extra costs may be incurred in the event of rejection of the produce or if the Trader pursues bad debts.

### 9. Bad debts

When the Trader is an Agent, the Trader is not liable to pay the Grower for any bad debts. Where there is a bad debt the period specified for the Trader to pay the Grower the proceeds of the sale of produce may be suspended to satisfy any outstanding fees, costs and levies owed to the Trader.

The Trader may pursue the bad debts arising under this Agreement from the failure of a purchaser to pay the Trader for some or all of the Grower's horticulture produce by the time that payment is required. The Trader will deduct any costs associated with pursuing bad debts from the proceeds of sale which it pays to the Grower.

Where requested by the Trader, the Grower will provide assistance in accordance with that request to the Trader, in order for the Trader to pursue the bad debt.

If the Trader determines that the bad debt ought not to be pursued because the costs of pursuing the debt will exceed the proceeds to be recovered from payment of the bad debt, then it will notify the Grower in writing of its decision not to pursue the debt and its reasons for deciding not to pursue the bad debt. Where the Trader notifies the Grower of its decision and reasons for not pursuing the bad debt the Grower may elect to pursue the bad debt independently.

## **10. Insurance**

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

Details of the insurance policy are as follows:

Insurance provider name: AIG Australia Limited, Insurance Policy No: 34-300014255-56

Valued at: either the Invoiced Value if the product is sold or Cost Price if stored and not yet sold.

## **11. Cooling-off period**

The Trader or Grower may terminate the Horticulture Produce Agreement in writing within the cooling-off period, being, 14 days after the execution date if the Agreement is for a period of 90 days or longer or has no specified term, or 7 days after the execution date if the Agreement is for a period less than 90 days.

## **12. Covenants and warrants**

The Grower covenants and warrants that:

- The Grower has all right, title and interest in and to the produce the subject of the Horticulture Produce Agreement;
- Title will pass to the Trader, or third parties where sold by the Trader as agent, clear of all encumbrances, claims and other adverse interests; and
- The Grower is the grower of the produce.

## **13. Title**

Title in the horticulture produce supplied by the Grower will pass to the Trader as Merchant in accordance with the Horticulture Produce Agreement, where the method of calculating the price has been agreed by the Merchant and Grower, on the delivery of the horticulture produce.

Title in the horticulture produce supplied by the Grower will pass to the Trader as Agent in accordance with the Horticulture Produce Agreement until the Agent sells the produce.

## **14. Indemnity**

The Grower agrees to indemnify the Trader 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.

## **15. Independent legal advice**

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