

# TERMS OF TRADE for TRADING AS A PRODUCE MERCHANT

EFFECTIVE FROM 25<sup>th</sup> January 2018

## 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 (as those terms are defined in the Code). Terms not defined in this document have the meaning ascribed to them in the Horticulture Produce Agreement (HPA).

For specific arrangements between the Business and the Supplier only, please refer to the HPA. Specific terms may refer to pooling of product, applicable fees and charges for services provided, reporting and payment processes and dispute resolution mechanisms.

## 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 Horticulture Produce Agreement (HPA). In the event of inconsistency between this Document and the HPA, the HPA prevails to the extent of the inconsistency.

## BUSINESS IS A MERCHANT

The Business acts as a 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. 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), the Date of Packing, the Order/Reference Number and the estimated time of arrival (ETA);
2. the Produce must be fit for human consumption and comply with any statutory regulations including food safety, packaging and/or labelling;
3. the Supplier must have complied with the National Measurement Act 1960(Cth) and National Trade Measurement Regulations 2009 (Cth) with respect to the Produce;
4. the Produce must be fit for its purpose;
5. the produce must be packed and presented and comply with the following product specifications including quality and shelf life:
  - 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); and/or
  - b. if there are none, the Freshspecs Produce Specifications

The Supplier must not dispatch Produce to the Business that:

- does not comply with the requirements in paragraph 5; or
- has not been solicited by the Business.

## CIRCUMSTANCES WHERE THE BUSINESS MAY REJECT PRODUCE

The Business is entitled to reject all or some of the Produce where:

- i) the Supplier does not have all right, title and interest in and to the Produce;
- ii) the Supplier cannot pass title to the Business clear of all encumbrances, claims and other adverse interests;
- iii) the Supplier is not the grower of the Produce;
- iv) the Produce does not comply with paragraphs 1 to 5 above;

## CIRCUMSTANCES WHERE THE BUSINESS MAY CLAIM A CREDIT FOR PRODUCE

The Business is also entitled to claim a credit for all or some of the Produce which has been purchased by it where any of the above circumstances occur (and the Business has not already elected to reject the Produce) or 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 paragraphs i) to iv) above.



**REQUIREMENTS WHERE PRODUCE IS REJECTED**

The Business may only elect to reject Produce prior to or immediately upon "Delivery" occurring for the purposes of the Horticultural Produce Agreement.

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 two (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 accepted that Produce, the Supplier will retain title and risk in the Produce and the Supplier is not entitled to the Purchase Price.

**PURCHASE PRICE**

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

**PAYMENT OF PURCHASE PRICE**

Payment will be made no later than twenty (20) Business Days from the end of the Week during which the relevant Produce is received from the Supplier or as otherwise agreed between the Business and Supplier.

**INSURANCE**

The Business holds the following insurances for Produce:

Insurer	<b>No Insurance Held by the Business for Produce in Transit or Produce deterioration.</b>
Maximum amount of claims covered by insurance	<b>Not Applicable</b>
Defined events covered by insurance	<b>Not Applicable</b>

The Business only holds insurance for the following events: Public Liability and Fire & Theft at premises.

**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.

**VARIATION OF TERMS OF TRADE**

The Business, Carter & Spencer Pty Ltd, reserves the right to vary these Terms of Trade from time to time at its sole discretion.

**SUPPLIER ACKNOWLEDGEMENT**

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

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