

1. INTRODUCTION

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 Code and the Horticulture Produce Agreement (HPA).

For specific arrangements between the Merchant and Grower 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 an HPA. In the event of any inconsistency between this document and the HPA, the HPA prevails to the extent of the inconsistency.

Any disputes will be referred to the Merchant and Grower's contacts as stated in the HPA. In the case of a dispute relating to quality, the FreshSpecs Produce Specifications will apply as the benchmark standard for all Class 1 Produce (as defined in the FreshSpecs Produce Specification).

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:
 - i. 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
 - ii. if there are no requirements agreed pursuant to 4(e)(i), 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.

The Grower shall be liable to insure (for defined events including fire, theft and accidental damage and other than deterioration of quality or any other inherent losses) the Produce until Delivery and the Merchant shall not be liable for any loss or damage to the Produce by the Grower's failure to do so.

The ownership of the Produce passes from the Grower to the Merchant:

- a. if the Purchase Price of the Produce, or a method or formula to calculate the Purchase Price, has been agreed to by the Merchant and Grower before Delivery: on Delivery of the Produce to the Merchant; or
- b. if the Merchant is to perform a Service in relation to the Produce: at the time the Service is completed.

During the period the Produce is under the Merchant's control, the Merchant will exercise all reasonable care and skill in handling and storage to ensure that the Produce remains of the highest quality possible having regard to the quality and state of the Produce upon receipt by the Merchant.

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;

TERMS OF TRADE – MERCHANT

Freshmax Pty Ltd ABN: 91 120 592 510

Freshmax National Pty Ltd ABN: 61 050 197 343

Freshmax Australia Pty Ltd t/a Freshmax Wholesale ABN: 57 124 947 824

DeLuca Banana Marketing Pty Ltd ABN: 45 105 141 553



- c) the Grower is not the grower of the Produce; or
- d) the Produce does not comply with paragraphs 4a) to 4e) above.

6. MERCHANT MAY CLAIM A CREDIT

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 no later than one (1) Business Day of Delivery occurring for the purposes of the HPA.

The Merchant must within twenty-four (24) hours give notice to the Grower of the decision to reject Produce and give notice of the reasons for such rejection within the Statement Period as stated in the HPA.

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 the Statement Period due date as per the HPA.

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.

12. INDEMNITY

Without limitation, the Grower hereby indemnifies the Merchant against:

- a) all claims, losses or expenses that may be brought against or incurred or suffered by the Merchant and which arise as a result of the Produce not complying with any provision of these terms or the HPA; and
- b) any liability, loss or expense 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 arising out of any:
 - i. breach of these terms or the HPA; or
 - ii. negligent act or omission of the Grower.

13. INSURANCE

The Merchant will not be liable for loss or damage to the Produce arising from any cause or event outside of the control of the Merchant beyond the extent of the cover provided by the Insurance as stated in the HPA, if any.

14. GOOD FAITH

The Grower and the Merchant must perform their obligations under these terms and HPA in good faith and use all reasonable but commercially prudent endeavours in accordance with the Code.

15. GROWER ACKNOWLEDGEMENT AND COOLING OFF

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.

The Grower is entitled to the Cooling Off period as per the HPA.