

# Horticulture Produce Agreement Merchant



Grower details	Trader details
Grower's Name: _____	Name: <b>Fruitico Pty Ltd</b>
ACN: _____	ACN: <b>608 313 604</b>
ABN: _____	ABN: <b>49 608 313 604</b>
Address: _____	Address: <b>43 Kirkham Road,</b>
_____	<b>Meelon WA 6208</b>
Email: _____	Email: <a href="mailto:Accounts.Payable@fpg.com.au">Accounts.Payable@fpg.com.au</a>
Phone: _____	Phone: <b>+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 terminate 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 \_\_\_\_\_ days / weeks / months.

(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.

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**8. Levies** Where levies apply to the horticulture produce: (*tick one*)

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.

The Grower will pay levies. The Grower's levies exemption number is: \_\_\_\_\_

Where Royalties are payable under a Licensed Marketing Agreement, Grower authorises the Trader to deduct these and remit them to the nominated Licensor.

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**9. Services and fees** The Trader will provide the following services:

Warehousing at a rate of \_\_\_\_\_ per pallet / day       Other: \_\_\_\_\_ at a rate of \_\_\_\_\_ per \_\_\_\_\_

Repacking at a rate of \_\_\_\_\_ per package       None

Conditioning / ripening at a rate of \_\_\_\_\_ pallet

The amount of fees due will be deducted from the payment to the Grower.

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**10. Payment** The Trader will pay the Grower for the purchase of the produce in accordance with this Agreement and as follows:

by  EFT Bank details: BSB: \_\_\_\_\_ Account: \_\_\_\_\_ Account name: \_\_\_\_\_

or  SMCS    Brismark    MMCS    FPAA   Buyer/Member No: \_\_\_\_\_

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**11. Pooling** 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.

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**12. 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 clause 5;
- 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 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.

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.

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**13. Circumstances where Grower sends produce without notice or produce is non-compliant** 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).

If the Trader determines to accept part or all of the produce, within 24 hours of delivery:

- The Trader will notify the Grower of its acceptance of all or part of the produce;
- The Trader will seek to reach an agreement **in writing** with the Grower on the price or method of calculating the price of the produce;
- 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.

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**14. 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 or any other inherent losses).

Details of the insurance policy can be found in the Trader's "Terms of Trade" accessible via the Trader's web site and/or provided directly to the Grower from time to time.

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.

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**15. Statement for reporting period** The Trader will issue a statement to the Grower:

within 14 days of the end of each month       within 7 days of each Consignment

The statement will specify *dealings* with the horticulture produce:

each month    between and including the date of each Consignment

**Dealings** 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.

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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.

**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.

**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.

**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 30 days provided by the Trader or Grower to the other party's contact person.

**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.

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.

**Signed on behalf of the Grower by a duly authorised representative:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Signed on behalf of Fruitico Pty Ltd (ABN 49 608 313 604) by a duly authorised representative:**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Date: \_\_\_\_\_

*Fruitico Pty Ltd Finance Team Only*

Payment Terms accepted: \_\_\_\_\_

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Grower details verified by: \_\_\_\_\_

Entered to systems on: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Entered to systems by: \_\_\_\_\_