

HORTICULTURE PRODUCE AGREEMENT
BETWEEN AGENT AND GROWER

THIS AGREEMENT is made between the two parties detailed below.

Details of Trader:

Name: **ORGANIC FRESH AUSTRALIA PTY LTD**

ABN: **76 139 186 084**

Address: **MP 68, 280 Bannister Road, Canning Vale WA 6155**

Fax: **(08) 9455 1714**

Email: **jez@organicfreshaustralia.com**

Phone: **(08) 9455 1171**

Contact Person: **Matt Jay or John Colbert**

Details of Grower:

Name:

ABN:

Address:

Fax:

Email:

Phone:

Contact Person:

Bank Person - BSB
Account No.

TERMS AND CONDITIONS

1. Trader Acts as Agent

- 1.1 Under this agreement, the Trader acts as an agent on the Grower's behalf to sell produce supplied by the Grower ("Produce").
- 1.2 The Grower and the Trader must each notify the other in writing of any change in the above details.

2. Delivery Requirements for Produce

- 2.1 Produce may be delivered to the Trader without prior notice so long as it complies with clauses 2.2 – 2.6.
- 2.2 Produce must be fully and correctly labeled with all applicable organic or biodynamic details in accordance with the Grower's certification and the Trader's requirements from time to time and an accurate statement as to whether the Produce is grade 1 or grade 2. Produce mistakenly marked grade 2 may be sold by the Trader as grade 2.
- 2.3 Produce must be fit for human consumption and comply with any statutory requirements including food safety, packaging and labeling.
- 2.4 The Grower's costs of delivering produce to the Trader must be paid by the Grower.
- 2.5 Produce must be packaged in accordance with any requirements or directions given by the Trader to the Grower from time to time.
- 2.6 Produce must not be labeled as biodynamic or organic unless the Produce was grown in accordance with the Australian Quarantine and Inspection Service export standard for biodynamic and organic produce.

3. Circumstances and Procedures Where Produce May Be Rejected

- 3.1 Produce may be rejected by the Trader within 3 business days after delivery if:
 - a. Clauses 2.2 – 2.6 have not been complied with;
 - b. The Trader considers the Produce is not saleable; or
 - c. The Trader ascertains that the Grower is not the actual grower or owner of the Produce.

- 3.2 Produce may be rejected by the Trader more than 3 business days after delivery if:
- a. The Produce has not been sold within 3 business days after delivery, has decayed or started to show signs of decay and the Grower refuses to instruct the Trader to dispose of the Produce at the best discount price which the Trader can obtain; or
 - b. Paragraph 3.1(c) applies.
- 3.3 The Trader will give immediate notice to the Grower of a decision by the Trader to reject any Produce and give reasons for the rejection within 2 business days after rejection. The Grower must at its cost collect or arrange for disposal of rejected Produce.

4. Advice of Sale and Payment

- 4.1 On completion of sale of a lot of Produce, the Trader will send the Grower advice of the sale.
- 4.2 On Tuesday each week, the Trader will send to the Grower:
- a. Remittance advice of the amount calculated in accordance with clause 4.3 to be transferred by the Trader on the Thursday night to the Grower's bank account from sales of lots (Account Sales) in the week ending the previous Friday;
 - b. Details of any stock on hand of the Grower's Produce on that Tuesday not subject to an Account Sale.
- 4.3 Payment will be made each Thursday night by the Trader of the amount of the sale price obtained for Account Sales of the Grower's Produce in the week ending the previous Friday less commission of 15% of the price which is payable to, and to be deducted by, the Grower and the following additional deductions.
- a. All applicable Federal and State levies and charges;
 - b. Ripening fees - \$1 per box or \$0.50, or as varied in writing, per tray plus GST; and
 - c. Any other costs or expenses incurred by the Trader on the Grower's behalf.
- 4.4 No payment will be made by the Trader except for the price of Produce which has been sold.

- 4.5 The Trader will pay the Grower the amount due for the Grower's deposit on crates when credit is received from the Buyer of Produce through the relevant crate exchange.
- 4.6 The reporting period under clause 20 of the *Trade Practices (Horticulture Code of Conduct) Regulations 2006* ("the Code") will be 1 July to the following 30 June, and the statement period for each reporting period will be 1 July – 31 August following the reporting period, so that the statement will be given not later than 31 August.
- 4.7 The Trader will recover bad debts for sales of the Grower's Produce, and may reimburse the Trader for amounts already paid to the Grower under this clause 4 from debts due from buyers of Produce when recovered.

5. Sales on Non-Arm's Length Basis

- 5.1 The Grower consents to the Trader selling any of the Grower's Produce to the Trader (for sale by the Trader under its Get Real™ brand or otherwise) subject to the Trader purchasing the Produce at the market price for such Produce at the time of purchase and otherwise acting in the best interests of the Grower in selling the Grower's Produce.
- 5.2 Produce sold under this clause 5 will be subject to clause 4 in all respects as if it was a sale to a third party.
- 5.3 The Grower acknowledges that one of the directors of the Trader company is a member of a Company that trades as a retailer of similar produce supplied by the Grower.

6. Insurance and Risk

- 6.1 The Trader holds the following insurance for the Grower's Produce:
- a. Fire - fully covered;
 - b. Theft through burglary - \$5,000 maximum each event;
 - c. Accidental damager - \$5,000 maximum each event;
 - d. Name of Insurer – Wesfarmers Insurance Ltd.
- 6.2 Until Produce is sold under this agreement, ownership of the Produce, and risk of loss of or damage to the Produce, remains with the Grower.

7. Variations of this Agreement

This agreement may be varied by agreement in writing between the Trader and the Grower.

8. Termination

8.1 Either the Trader or the Grower may terminate this agreement by giving notice in writing to the other stating that this agreement will terminate at the end of a stated day (being not less than 21 days after the date the notice given).

8.2 After termination, final payment for Produce sold by the Grower before termination will be made by the Trader in accordance with clause 4.3, a final statement required under the Code will be given in accordance with clause 4.6 and all other necessary accounts and adjustments taken and made to finalise all outstanding transactions and matters.

9. Compliance with the Code

9.1 The Trader and the Grower must comply with the Code in all respects.

9.2 If any provision of this agreement is inconsistent with the Code, the Code will prevail to the extent of the inconsistency.

10. Notices

10.1 Notices in writing may be sent by post, fax or email.

10.2 Notices must be sent to the address in the above details, or as varied by notice under clause 1.2.

.....
Signature of Trader

.....
Signature of Grower

.....
Name of Signatory

.....
Name of Signatory

.....
Position of Signatory

.....
Position of Signatory

.....
Date Signed

.....
Date signed