

RETAILER BRAND GUIDELINES AGREEMENT

PARTIES

Chamber of Fruit & Vegetable Industries in WA (Inc) – Trading as: Market West (MW)

ABN: 89 685 243 302

Retailer Name:

ABN/ACN:

BACKGROUND

- A. Market West (MW) has collaborated with The Australian Chamber of Fruit and Vegetable Industries Ltd ACN 065 246 808 trading as Fresh Markets Australia (FMA) and certain members of the Central Markets Association of Australia (CMAA) to create and develop the “A Better Choice” brand, to increase the share of voice of the independent fresh produce retailers in a fiercely competitive trading environment to encourage buyers to shop at their local independent retailer.
- B. As a part of implementing the “A Better Choice” brand and marketing campaigns, MW, FMA and certain members of the CMAA have also established the National Retail Program Project Steering Committee (NRPPSC) and the National Retail Program Marketing Guiding Committee (NRPMGC) (together, the **Committees**).
- C. Market West has been granted a licence to the digital and print materials developed in relation to the “A Better Choice” brand (**Materials**) as well as the Trade Marks.
- D. Market West now wishes to grant a sub-licence to the Retailer to use the Materials and Trade Marks, on the terms and conditions set out in this deed.

IT IS AGREED

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement:

Brand Guidelines means the guidelines, directions and requirements relating to the use of Materials and Trade Marks and the purposes for which they may be used, as may be published or directed by Market West to the Retailer from time to time (including this deed).

Intellectual Property Rights means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder’s rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Term means:

- (a) the term from the date this deed is executed by both parties until 30 June 2019; and
- (b) any renewal of that term in accordance with clause 2.

Trade Marks means:

- (a) the common law trade mark for A BETTER CHOICE; and
- (b) any other trade mark (whether registered or common law) as advised by FMA or the Committees from time to time in writing.

2. TERM

Subject to clause 5, upon expiry of the current Term, unless a party notifies the other party of their intent not to renew the Term prior to the expiry of the current period, this deed shall automatically renew for a further 1 year period, on the terms and conditions of this deed.

3. MATERIALS LICENCE

3.1 Ownership of Materials

The parties agree that ownership in the Materials (including all Intellectual Property Rights therein) shall be unaffected by this agreement and shall remain vested in (and to the extent necessary, be assigned to) the State Chamber’s licensor, FMA.

3.2 Materials licence

Market West grants to the Retailer a non-exclusive, revocable, non-transferable licence to the Materials, to use in accordance with the Brand Guidelines.

4. TRADE MARKS LICENCE

4.1 Grant of licence

Market West grants to the Retailer a non-sub-licensable, non-exclusive, revocable, non-transferable licence for the term to use the Trade Marks in accordance with the requirements of clause 4.2.

4.2 Trade Mark Quality Control

- (a) The Retailer agrees that:
 - (1) it must only use the Trade Marks in accordance with the Brand Guidelines and as otherwise specified under this agreement; and
 - (2) if requested by MW, it will provide examples of the Retailer’s use and application of the Trade Marks and Materials within within 2 weeks of such request being made.
- (b) The Retailer agrees that it will not:
 - (1) use the Trade Marks in such a way which has or is likely to have an adverse effect on the goodwill of the Trade Marks;
 - (2) do any act or thing in relation to the Trade

Marks which may expose MW or FMA to any liability or any potential liability;

- (3) use the Trade Marks in such a way as to deceive or cause confusion;
- (4) do anything which could have an adverse effect on the distinctiveness or exclusiveness of the Trade Marks or bring the Trade Marks into disrepute; or
- (5) use, register or attempt to register any company name, business name or trade mark which is substantially identical or deceptively similar to any Trade Mark.

4.3 Notices and directions

- (a) Market West may give notice and direct the Retailer to cease or amend its use of any Trade Mark where:
 - (1) the Trade Mark application or registration is cancelled or expires;
 - (2) the Trade Mark application or registration is amended in relation to its classes of goods or services;
 - (3) any claim is made by a third party in relation to the Trade Mark; or
 - (4) any other circumstances reasonably required by FMA or Market West.
- (b) Where notice is provided to the Retailer under clause 4.3(a):
 - (1) the Retailer must, where required by Market West, cease use of all materials bearing the relevant Trade Mark and, at the option of MW, either return to MW or destroy the relevant Materials; and
 - (2) the Retailer must, where required by Market West, amend or cease the use of the Trade Mark as required by MW.
- (c) The Retailer acknowledges that if it fails to comply with the requirements of a notice under clause 4.3(a) within the timeframe set out in the notice:
 - (1) the Retailer authorises Market West to undertake the required action on the Retailer's behalf, including to enter onto the Retailer's premises to take steps to effect the required action under 4.3(b); and
 - (2) the Retailer must indemnify Market West and/or its nominees for any costs, damage, or other loss incurred by Market West in undertaking the required action on the Retailer's behalf.

5. TERMINATION

- (a) This deed will automatically terminate upon the termination or expiry of Market West's agreement with FMA under which MW receives the right to sub-licence to the Trade Marks and Materials.
- (b) Market West or its nominees may terminate this agreement immediately:
 - (1) by 5 days' written notice to the Retailer identifying a breach of this agreement, and the Retailer has failed to remedy that breach; or
 - (2) by written notice where, in Market West's sole discretion, MW considers that the Retailer has committed a breach of this agreement which is incapable of remedy.

6. CONSEQUENCES OF TERMINATION

Upon termination or expiration of this agreement:

- (a) the licence granted to the Retailer to the Materials and the Trade Marks terminates;
- (b) the Retailer will immediately return or (if requested to do so by Market West or its nominees) destroy all Materials provided by Market West in the Retailer's possession or control; and
- (c) the Retailer will cease using the Trade Marks in any manner whatsoever.

7. GOVERNING LAW AND JURISDICTION

7.1 Governing law

This agreement is governed by and construed in accordance with the laws of Western Australia.

7.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non exclusive jurisdiction of the courts of Western Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph 7.2(a).

8. MISCELLANEOUS

8.1 Legal effect

Each party acknowledges and agrees for the benefit of each other party that this document is intended to take effect as a deed. Each party executes this document with the intention that it will be immediately legally bound by this document.

8.2 Exercise rights

A single or partial exercise or waiver by a party of any right under or relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

8.3 No assignment

A party must not assign, transfer or novate all or any part of its rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of each other party, which cannot be unreasonably withheld.

8.4 Remedies cumulative

The rights and remedies under this agreement are cumulative and not exclusive of any rights or remedies provided by law.

8.5 Severability

If a provision of this agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

8.6 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

8.7 Costs

Each party is responsible for all its own costs incurred in the negotiation and performance of this agreement including legal costs.

8.8 Variation

An amendment or variation to this agreement is not effective unless it is in writing and signed by the parties.

8.9 Waiver

- (a) A party's waiver of a right under or relating to this agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.
- (b) No other act, omission or delay by a party will constitute a waiver of a right.

8.10 Counterparts

This agreement may be executed in any number of

counterparts each of which will be considered an original but all of which will constitute one and the same instrument. A party who has executed a counterpart of this agreement may deliver it to, or exchange it with, another party by:

- (a) faxing; or
- (b) emailing a pdf (portable document format) copy of, the executed counterpart to that other party.

8.11 Whole agreement

This agreement:

- (a) is the entire agreement and understanding between the parties relating to the subject matter of this agreement; and
- (b) supersedes any prior agreement, representation (written or oral) or understanding on anything connected with that subject matter.

9. AGREEMENT PERIOD

12 months beginning 1 October each year.

COLLECTION STATEMENT - MEMBER APPLICATIONS

Market West (MW) collects and uses a range of personal information so it can carry out its statutory functions and to otherwise conduct its functions and activities. By providing your personal information, you agree it will be used and disclosed by MW in accordance with this statement and our Privacy Policy.

If you do not agree, you must not provide us with your personal information, and we may not be able to communicate with you or provide you our products or services. We may disclose the personal information we collect from you to other parties in connection with our industry including Fresh Markets Australia and Market West, unless you ask us not to by ticking the box below, and to third parties who provide products or services to us or through us in the ordinary operation, administration or promotion of our business and otherwise in accordance with our Privacy Policy. From time to time these third parties may be located (and your personal information may be transferred) outside of Western Australia. We may use and disclose your personal information for direct marketing purposes.

We may also disclose your personal information to relevant third parties in the industry from time to time, for promotion of their products and facilitating further communications, unless you tick the box below. You can gain access to the personal information we hold about you and request that it be corrected if necessary.

- ☐ No, I do not want MW to share my information and contact details with Fresh Markets Australia in order for Fresh Markets Australia to publish those details in a publicly available online directory promoting Australian produce.
- ☐ No, I do not want MW to share my information with third parties in connection with the produce industry (eg Fresh Markets Australia and Market West) for those parties to communicate with me or promote their products and services to me.

SIGN HERE

Executed by - Market West

ABN: 89 685 243 302

Signed: Director/Sole Director/CEO or Secretary

Signed: Director/Secretary (if applicable)

Print full name

Print full name

Executed by - Retailer Name:

ABN/ACN:

Signed: Director/Sole Director/CEO or Secretary

Signed: Director/Secretary (if applicable)

Print full name

Print full names

Date signed:

NATIONAL RETAILER PROGRAM MEMBERSHIP APPLICATION FORM

THE BIGGEST MARKETING PROGRAM TO DRIVE CUSTOMER LOYALTY TO GREENGROCERS

Complete the details below to join the A Better Choice program. If you have more than one store, please complete an Application Form for **each** store.

Company Name:		Buyers Code:
Trading Name:		
Business Address:		
Suburb:	Post code:	
Phone:	Fax:	
Facebook URL:	Instagram URL:	
Twitter URL:	Other:	
Business Description:		
OPENING HOURS:	Monday:	Tuesday:
	Wednesday:	Thursday:
	Friday:	Saturday:
	Sunday:	

Please email a jpeg of your **COMPANY LOGO** to marketing@marketwest.com.au

PLEASE NOTE: The details listed above, will be published on www.abetterchoice.com.au

YOUR CONTACT DETAILS: Please attach a **BUSINESS CARD** to your application

Contact Person:

Role in business:

Phone (Office): **(Mobile):**

Email Address:

Please tick below how you would like to make your payments excl GST.

- ☐ Weekly through credit service **\$40 a week for 12 months**
- ☐ Annually in advance **\$2000**

As A Better Choice Member your business agrees to the terms and conditions of the Retailer Brand Guidelines and any terms and conditions of the A Better Choice Membership.

By completing this application form, I/we agree to be committed to the Program and actively:

- be involved in all marketing activities and promotions that are implemented in the Members Program;
- keep informed about all marketing activities and ensure staff members are briefed about their responsibilities;
- provide informative feedback about the Program , including marketing activities and promotions; and display the 'A Better Choice' branding prominently in-store (always in accordance with the Retailer Brand Guidelines)

Signature: **Print Name:**

Date:

Return **COMPLETED Application Form(s)** and **Retailer Brand Guidelines Agreement(s)**
to: [Market West, PO Box 1464, Canning Vale WA 6970](mailto:marketing@marketwest.com.au)
OR scan and email to: marketing@marketwest.com.au