

TERMS OF TRADE - HORTICULTURE PRODUCE

Commencing 21 November 2022

RL & DFN Investments Pty Ltd as trustee for RL & DFN Investments Trust (ABN 82 107 906 929) of CTA 22, Market City, 280 Bannister Road, Canning Vale WA 6155 trading as **Five-A-Day Farm Store (Trader)** is prepared to deal with the grower of horticultural produce (**Grower**) by purchasing such Produce, as a Merchant or by selling such Produce to third parties as an Agent for the Grower, only on the terms set out in these terms of trade (**Terms**) and the applicable Horticultural Produce Agreement(s) (**HPA**) between the Trader and the Grower.

1 TERMS APPLYING TO BOTH AGENT AND MERCHANT HPAS

1.1 Grower liability. The Grower will:

- (a) be liable to the Trader for any losses suffered by the Trader as a result of the Grower's actions or failure to comply with the Grower's obligations under these Terms or the relevant HPA;
- (b) any damage to property or death of, or injury to, any person caused directly or indirectly by the Produce;
- (c) any claim against the Trader in relation to the Produce or the consumption of the Produce; and
- (d) any other thing in relation to which the Trader has assumed the risk or liability under this Agreement.

1.2 Insurance. The Trader does not insure the Produce either before or after delivery to the Trader.

1.3 Delivery requirements.

- (a) Prior to delivery the Grower must provide documentation to the Trader which accurately describes the quantity, type of container, variety, size, class and description of the Produce being supplied in a shipment.
- (b) The Grower must not ship Produce to the Trader which is unsolicited or where an HPA has not been signed with the Trader.
- (c) Produce provided by a Grower must be of good quality, fit for human consumption and comply with any statutory requirements, including food safety, packaging, labeling and weights and measures, including compliance with FreshSpecs Produce Specifications.

1.4 Rejection of Produce.

- (a) Produce may be rejected by the Trader if it does not meet any of the delivery requirements set out in clause 1.3 above.
- (b) The Trader will notify the Grower by telephone, fax, email or other electronic means within 24 hours after delivery if it rejects any Produce and will confirm the reasons for rejection in writing within 3 business days after delivery of the Produce to the Trader request that the Grower advise as to whether the Grower:
 - (i) wishes to retake possession of the Rejected Produce; or
 - (ii) requires an independent inspection and assessment of the condition of the rejected Produce at the Grower's cost; or
 - (iii) wishes to make other arrangements to deal with the rejected Produce.

- (c) If the Trader rejects all or part of a shipment of Produce, the Grower is responsible for organizing the removal of the rejected Produce from the Trader's premises within 3 business days of being notified of the rejection pursuant to paragraph 1.4(a) above.
- (d) The Trader will exercise reasonable care and skill in handling and storing any rejected Produce until it has been dealt with in accordance with clause 1.4(c) above.
- (e) The Trader may elect to destroy or dispose of rejected Produce at the cost of the Grower if the Grower fails to retake possession of the Produce within 3 business days of the Grower indicating an intention to do so under clause 1.4(b) above.
- (f) If the Trader has paid for the Produce prior to it being rejected, the Trader may elect to receive a credit from the Grower for the cost of the Produce; or may claim the relevant amount as an offset to any amounts owed to the Grower by the Trader; or may require the Grower to immediately reimburse the Trader for the purchase price paid.
- (g) In the event that the Trader sells Produce to a third party, which then claims a credit in respect of the Produce due to it failing to comply with the requirements of paragraph 1.3(c) above, the provisions of paragraph 1.4(f) above will apply as if the Produce was rejected by the Trader.

1.5 The Trader is authorised to deduct from any amount owing to the Grower the relevant amounts with respect to the following:

- (a) any payments made on behalf of the Grower where the Trader has been asked by the Grower to make such payments (e.g. transport/unloading/packaging);
- (b) levies and fees for service payable under State or Commonwealth legislation or any voluntary arrangement; and
- (c) GST in respect of any item for which a tax invoice has been issued.

1.6 Produce standards. Unless exempted in writing by the Trader, the Grower will:

- (a) grow and deal with its Produce pursuant to a Hazard Analysis and Critical Control Point (**HACCP**) process that is audited annually by a suitably qualified third party;
- (b) hold a certification to one or both of the following standards:
 - (i) Freshcare Code of Practice Food Safety and Quality; or
 - (ii) Safe Quality Food (SQF) and
- (c) If requested to do so by the Trader, provide copies to the Trader of its current HACCP certification and any certification obtained under clause (b) above

1.7 Resolving disputes. If a dispute arises between the Parties, they agree to proceed as follows:

- (a) The contact person (**Contact**) for each of the Parties will be as set out in the HPA and each of the Parties agrees to only deal with the other Party's Contact in relation to the dispute; and
- (b) 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).

2 **TERMS APPLYING TO MERCHANT HPAS ONLY**

2.1 Interpretation. In this part of these Terms:

- (a) a reference to the **Merchant** is a reference to the Trader; and

- (b) any indulgence granted by the Merchant or Grower will not be construed as a waiver of that party's rights under these Terms or the applicable HPA.
- 2.2 Payment. The Merchant will pay the Grower for the Produce within 28 days after accepting delivery of the Produce. Payment will be made by direct bank transfer or deposit to the Grower's account, as notified to the Trader in the HPA.
- 2.3 Merchant's statement. The merchant will give the Grower a statement for the reporting period, specifying for the Grower's Produce received by the Merchant during the reporting period:
 - (a) the quality and quantity of the Produce bought by the Merchant;
 - (b) the date or dates of the purchases;
 - (c) the price paid for the Produce;
 - (d) if the price for the Produce was determined by a method or formula specified in the HPA:
 - (i) the gross sale price of the Produce;
 - (ii) the details of any Produce not sold; and
 - (iii) the details of any Produce destroyed, or to be destroyed, and the reason why the Produce was, or is to be, destroyed; and
 - (e) the date on which the Produce was delivered to the Merchant.

3 TERMS APPLYING TO AGENT HPAS ONLY

- 3.1 Interpretation. In this part of these Terms:
 - (a) a reference to the **Agent** is a reference to the Trader; and
 - (b) any indulgence granted by the Agent or Grower will not be construed as a waiver of that party's rights under these Terms or the applicable HPA.
- 3.2 Payment. The Agent will pay the Grower for the Produce within 28 days after the Grower receives the proceeds of sale for the Produce from a buyer. Payment will be made by direct bank transfer or deposit to the Grower's account, as notified to the Trader in the HPA.
- 3.3 Insurance. The Agent does not insure the Produce either before or after delivery to the Agent.
- 3.4 Commission and costs. The Agent will not require the payment of commission by the Grower in respect of any portion of the Produce which fails to sell. However, the Agent may charge a handling fee that reflects its incurred costs in respect of unsold Produce.
- 3.5 Bad debts. The Agent will pursue the recovery of bad debts of the Grower arising from a failure of a third party to pay by the due date for Produce it has purchased from the Agent on behalf of the Grower. The Agent reserves the right to charge a fee that reflects its costs in pursuing such bad debts.
- 3.6 Agent's statement. The Agent will give the Grower a statement for a reporting period, specifying for the Grower's Produce received by the Agent during the reporting period:
 - (a) the date on which the Produce was delivered to the Agent;
 - (b) the date or dates of the sale of the Produce by the Agent;
 - (c) the type and quantity of the Produce sold;
 - (d) the price received for the Produce sold;
 - (e) details of each amount deducted by the Agent from the sale price of the Produce; and

- (f) details of any amounts of the Produce not sold by the Agent during that period, including:
 - (i) the reasons why the Produce was not sold;
 - (ii) details of any amounts of the Produce destroyed by the Agent, and the costs incurred in destroying the Produce; and
 - (iii) details of any amounts of the Produce held by the Agent at the end of