



**Australian Produce Brokers**

ABN: 77 076 070 883

## **Terms of Trade - Merchant**

**1 April 2018**

### **1. Use of this Document**

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 Australian Produce Brokers (APB) will trade with Growers in respect of horticultural produce.

For specific arrangements between APB and Grower only please refer to the HPA.

### **2. Horticulture Produce Agreement Prevails**

Whilst this document sets out APB's general terms of trade, the Code requires transactions between a Grower and APB to be conducted pursuant to a HPA. In the event of any inconsistency between this document and the HPA, the HPA prevails to the extent of the inconsistency.

### **3. Merchant is a Merchant**

APB 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 APB 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:
  - (1) the Produce Specification Requirements that APB has provided to the Grower or otherwise agreed in writing with the Grower in accordance with the HPA (if any); or
  - (2) if there are no requirements agreed pursuant to 4(e)(1), the FreshSpecs Produce Specifications.

The Grower must not dispatch Produce to APB that does not comply with the requirements in paragraph 4, has not been solicited by APB and where a HPA has not been accepted by the Grower.

### **5. Circumstances where APB may reject Produce**

APB 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 APB clear of all encumbrances, claims and other adverse interests;
- (c) the Grower is not the grower of the Produce; or
- (d) the Produce does not comply with paragraphs 4(a) to 4(e) above.

### **6. APB may claim a credit for Produce**

APB is also entitled to claim a credit for Produce that it has purchased whether or not it has been on sold to a third party in accordance with the HPA.

## 7. Requirements where produce is rejected

APB may elect to reject Produce before Delivery or no later than one (1) Business Day of "Delivery" occurring for the purposes of the HPA.

APB must within 24 hours give notice to the Grower of the decision to reject Produce and give notice of the reasons for such rejection within the set Business Day period set out in the Schedule to the relevant HPA after the day that the Merchant elects to reject the Produce.

Where Produce is rejected, APB 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 APB 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 15 Business Days from the end of the Week during which Delivery of the relevant Produce is deemed to have been accepted by APB.

For the avoidance of doubt, APB may still elect to charge for the Additional Fees even where the Produce is rejected in accordance with the HPA.

## 10. Independent Legal Advice

APB recommends that Growers seek independent legal advice in relation to the HPA prior to it being entered into between APB and the Grower.

## 11. Changes to Terms of Trade

APB may from time to time amend these Terms of Trade in accordance with the requirements of the Code.

## 12. Grower Acknowledgement

The Grower acknowledges that it must not supply any Produce to APB without having accepted the HPA in writing.

Unless a Grower has entered into a HPA with APB, APB will have no obligations of any kind to the Grower in respect of Produce despatched by the Grower to APB.

## 13. Insurance (if applicable)

The Merchant holds the following insurances for Produce:

<b>Insurer</b>	<b>Lloyd's BPK B0901BU16001170000</b>
<b>Maximum amount of claims covered by insurance</b>	\$350,000
<b>Defined events covered by insurance</b>	Fire & Explosion