

DEFINITIONS

In this Agreement—

"Agreed Price" shall mean the Purchase Price (inclusive of all taxes) of all or part of the Produce payable to the Supplier by the Business as agreed in writing by the parties pursuant to this Agreement.

"Agreement" consists of this document, together with the Referenced Schedule and any annexures.

"Business" means the entity described above or related Persons deemed to be in association with the Business.

"Business Day" means a day that is not a Saturday, Sunday or a designated holiday in the State in which the Business is located.

"Business Requirements" means the written requirements and specifications regarding Produce quality, shelf life and presentation, provided by the Business to the Supplier from time to time prior to the Purchase Price being set with respect to the Produce.

"Chamber Requirements" means Market Produce Specifications - FreshSpecs standards that may be published by the Australian Chamber of Fruit and Vegetable Industries from time to time.

"Code" means the Horticulture Code of Conduct contained in the Trade Practices (Horticulture Code of Conduct) Regulations 2006 (Cth).

"Delivery" occurs when Produce is voluntarily received by the Business during its opening hours and is under the direct control of the Business for the sole purpose of re-sale by the Business, and for the avoidance of doubt:

- a) delivery will be deemed not to have occurred for the purposes of this Agreement and the Code (**Non-Delivery Event**):
 - i. if the Produce is received by the Business (or a third party) as bailee pursuant to a service agreement (including, without limitation, a service agreement relating to the storage and warehousing of the Produce); or
 - ii. where this Agreement provides otherwise (including, without limitation, where a separate agreement(s) is entered into between the parties under clause 20(b)); or
 - iii. if the Produce is left at the Business' premises outside its opening hours; and
- b) where a Non-Delivery Event has occurred, delivery will be deemed to have occurred under this Agreement when the Business changes the nature of its possession of the Produce such that it is held for the sole purpose of re-sale by the Business (eg. at the conclusion of the Service or warehousing agreement).

"GST" has the same meaning as that term has in the GST Law

"GST Law" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings.

"Inspection Certificate" shall mean a report prepared by an independent authority or third party assessor who is qualified by experience and/or education to declare the Produce unfit for human consumption, unsuitable for sale or not meeting a particular specification or standard.

A reference to **"including"** or similar expressions are not words of limitation.

"Non-Complying Produce" has the meaning prescribed to it in clause 25.

"Market" means the Melbourne Wholesale Markets.

"Nursery Products" includes:

- a. trees, shrubs, plants, seeds, bulbs, corns and tubers (other than edible tubers);
- b. propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers and foliage; and
- c. cut flowers and foliage.

"Person" shall include an incorporated body or other entity. If a party consists of more than one Person then this Agreement binds them jointly and each of them severally and includes the party's executors, administrators, successors and permitted assigns.

"Produce" means unprocessed:

- a. fruits;
 - b. vegetables, including mushrooms and other eligible fungi;
 - c. nuts;
 - d. herbs; and
 - e. other edible plants;
- but does not include Nursery Products.

"Product Specifications" means:

- a. the Business Requirements; or where there are no relevant Business Requirements
- b. the Chamber Requirements.

"Purchase Order" means a written purchase order for Produce detailed in an order form, submitted from time to time by the Business to the Supplier under this Agreement.

"Purchase Price" means the amount determined under clause 9.

"Reporting Period" means the reporting period for the Statement specified in the Schedule;

"Supplier" means any producer or other Person who sends Produce to the Business in accordance with this Agreement.

"Statement" means the statement to be provided by the Business under clause 14.

"Tax Invoice" has the same meaning as that term has in the GST Law.

"Week" means the period Saturday to Friday inclusive.

TERMS AND CONDITIONS

General

1. This Agreement is effective from whichever date is later between that of the commencement of the Code and the execution of this Agreement by the Supplier (**Commencement Date**). This Agreement shall apply to all transactions between the Business and the Supplier on or after the Commencement Date unless:
 - a. by specific written notice to the contrary; or
 - b. this Agreement is replaced by another agreement at a later date; or
 - c. the transaction is not a transaction that would be covered by the Code.
2. The Business will purchase the Produce from the Supplier as a Merchant, for the purposes of the Code.
3. For the avoidance of doubt, the Business is not:
 - a. required to buy a minimum quantity of Produce from the Supplier, unless expressly specified in this Agreement; or
 - b. prevented from buying goods of the same or similar nature as the Produce from any person other than the Supplier.

Transfer of Title and Risk

4. The parties acknowledge that despite the Delivery of the Produce under this Agreement, title and risk in respect of the Produce shall only pass in accordance with clauses 5 and 6.
5. Subject to clauses 20 and 28, title to the Produce will be deemed to have passed to the Business as follows:
 - a. if the Purchase Price of the Produce has been agreed to by the Business and Supplier in writing before Delivery of the Produce to the Business, title to the Produce will pass on Delivery of the Produce to the Business; or
 - b. if the purchase price of the Produce has not been agreed to in writing by the Business and the Supplier before delivery, title to the Produce will pass at the time after Delivery when the Business and the Supplier agree in writing on the Purchase Price for the Produce.
6. The Supplier covenants and warrants that:
 - a. they have all right, title and interest in and to the Produce;
 - b. title will pass to the Business clear of all encumbrances, claims and other third party interests; and
 - c. the Supplier is the grower of the Produce.
7. Subject to clauses 20 and 28, the Business will assume risk in respect of the Produce once title to the Produce passes to the Business under clauses 5 and 6.
8. The Business shall not be obliged to keep insurances in respect of Produce in their legal and physical control. If the Business does have insurance, the Business' insurer, the maximum amount of claims covered by the Business' insurance and the defined events covered by the insurance including fire, theft and accidental damage and other deterioration and/or inherent loss of any kind (**Insurance**), is set out in the Schedule. The Business will not be liable for loss or damage to the Produce arising from any cause or event outside of the control of the Business. If the details of Insurance in the Schedule are blank, the Business does not hold Insurance.

Price Determination

9. The Purchase Price for Produce shall be the Agreed Price:
 - a. as provided in the Schedule; or
 - b. if the Schedule does not contain the Agreed Price, the parties may agree on the Agreed Price no later than a reasonable time (to be assessed on a case by case basis) after Delivery of the Produce to the Business.

10. The Agreed Price must be agreed by the Business and the Supplier in writing.

Limit on Claims

11. The Business shall not be liable in respect of any claim by the Supplier unless such claim is received in writing within the number of Business Days, as advised in the Schedule to this Agreement, from the issue by the Business of the Statement in respect of the relevant Produce.

Business Payments and Reporting Obligations

12. The Business agrees to make payments to the Supplier in accordance with the following manner –
 - a. Payment will be made no later than the number of Business Days, as advised in the Schedule to this Agreement, from the end of the Week during which the relevant Produce is received by the Supplier.
 - b. Such payments shall be by cheque or direct bank deposit as determined by the Business, to the credit of the Supplier's bank account as specified in the Schedule.
13. The Supplier is responsible for all transport and other costs incurred in delivering the Produce to the Business and will not be reimbursed by the Business for such costs unless specifically provided for in this Agreement or in a separate agreement. The Business is authorised to deduct charges from payments to the Supplier for-
 - a. any payments made on behalf of the Supplier where the Business has agreed to make such payments (eg. transport/unloading/packaging);
 - b. levies and fees for service payable under State or Commonwealth legislation or any voluntary arrangement; or
 - c. if applicable, Goods and Service Tax in respect of any supply for which a Tax Invoice has been issued.

The Business will not charge the Supplier a fee, commission or other amount for services performed by the Business, other than as set out in any service agreement between the parties relating to services not covered by the Code.

14. The Business will provide a statement to the Supplier containing the following details, covering the Reporting Period (**Statement**) –
 - a. Supplier's reference or shipping note number;
 - b. Description of the quality of Produce purchased;
 - c. Details of the quantity of Produce purchased;
 - d. The date or dates of the purchases of Produce;
 - e. The Purchase Price for the Produce;
 - f. The time at which the Produce was Delivered to the Business;
 - g. Details of any Non-Complying Produce that is disposed of, or otherwise dealt with, in accordance with clauses 26, 27, 28, 29 and 30 of this Agreement;
 - h. A copy of any relevant Inspection Certificate obtained in accordance with clause 28(d)(ii) of this Agreement.

The Statement must be given to the Supplier within such number of days following the end of the relevant Reporting Period as identified in the Schedule.

15. The Business will issue a Tax Invoice to the Supplier in respect of any item for which Goods and Services Tax is chargeable.

Supplier Obligations and Warranties

16. The Supplier agrees to provide documentation that is suitable to the Business that accurately describes the quantity, variety, size, class, description and characteristics of the Produce, including containers, prior to Delivery to the Business.

17. The Supplier warrants that:
 - a. the Produce is fit for human consumption and complies with any statutory regulations including food safety, packaging and/or labeling;
 - b. it has complied with the Trade Measurement Act 1999 (Tasmania) with respect to the Produce;
 - c. the Produce is of merchantable quality fit for its purpose;
 - d. the Produce complies with the Purchase Order;
 - e. the Supplier has absolute title to the Produce free of any encumbrance or interests held by third parties; and
 - f. the Produce in every case complies with the Product Specifications.
18. The warranties provided in clause 17 are taken to be repeated on each day from Delivery on the basis of the facts and circumstances in existence as at that date.
19. The Supplier acknowledges that the Business has entered into this Agreement in reliance on the warranties referred to in clause 17.
20. The Supplier must not despatch Produce to the Business that:
 - a. does not comply with the Product Specifications; or
 - b. has not been ordered by the Business in a Purchase Order. In the event that Produce is received by the Business which is in excess of the quantity as specified in the Purchase Order, the Business may at its sole discretion either:
 - i. elect to purchase the excess Produce at a price to be agreed between the parties, notwithstanding that such excess Produce is deemed to be Non-Complying Produce; or
 - ii. treat the Produce as Non-Complying Produce and deal with it pursuant to clause 28 of this Agreement.
21. The Supplier agrees that in the event that 20(b)(ii) occurs and the Supplier subsequently enters into negotiations with other traders within the Market to sell the Produce, the Business will have first right of refusal over the Produce on terms no less favourable to the Business than those of any offer of sale to other traders.
22. Any agreement entered into by the parties under clause 20(b) shall be on terms substantially similar to this Agreement (other than the price), and shall comply with the requirements of the Code (to the extent applicable),
23. The Supplier agrees to implement and maintain an industry recognised HACCP based food safety and quality system that is subject to an annual third party audit. Copies of any current certification must be sent to the Business.
24. The Supplier agrees to supply details of their registered Australian Business Number (ABN) prior to any payment being made by the Business.

Complying and Non-Complying Produce

25. The Supplier must ensure that Produce supplied to the Business complies with clauses 6, 16, and 17 or that Produce will be treated as Non-Complying Produce.
26. Where this Agreement provides that Produce is to be treated as Non-Complying Produce, then the Business shall be entitled within TWO (2) Business Days of the later of:
 - a. the Produce becoming treated under clause 33 as Non-Complying Produce; or
 - b. receipt of the Produce by the Business, to elect (the day the election is made being the **Non-Compliance Day**) to:
 - i. reject all of the Produce;
 - ii. accept all of the Produce; or
 - iii. accept part of the Produce and reject the balance of the Produce.

27. Where the Business elects to accept all or part of the Produce under clause 26, or fails to give a notice under clause 28 to reject all or part of the Produce (**Accepted Produce**), then this Agreement generally applies to require the Business to purchase the Accepted Produce for the Purchase Price relevant to that Accepted Produce.
28. Where the Business elects to reject all or part of the Produce (the **Rejected Produce**) under clause 26, then subject only to clause 28(d):
 - a. the Business shall be deemed not to have purchased the Rejected Produce, and the Supplier shall retain title and risk in and to the Rejected Produce if the title to the Produce has not passed (pursuant to clauses 5 and 6);
 - b. The Supplier is not entitled to the Purchase Price with respect to the Rejected Produce;
 - c. the Business will immediately advise the Supplier by telephone, fax, e-mail or other electronic means of the rejection;
 - d. within TWO (2) Business Days of the Non-Compliance Day, the Business will advise the Supplier in writing of the rejection and the reasons for such rejection and request that the Supplier advise as to whether the Supplier:
 - i. wishes to retake possession of the Produce; or
 - ii. requires an independent inspection and assessment of the condition of the Produce to determine whether an Inspection Certificate should be issued at the Supplier's cost; or
 - iii. wishes to make other arrangements for the storage or warehousing of the Produce, sale or resale of the Produce or its removal from the Business premises.
29. Despite anything else in this Agreement, the Business may elect to destroy and dispose of the Produce, or deliver the Produce to the Supplier if:
 - a. the Supplier does not respond within TWENTY FOUR (24) hours of notification in accordance with Clause 28(d); or
 - b. the Supplier fails to retake possession of the Produce within TWO (2) Business Days of the Supplier indicating an intention to do so under clause 28(d).

The Supplier authorises and confirms by virtue of entry into this Agreement, such action by the Business.
30. Where clause 29 applies any destruction, disposal and/or delivery of Produce is at the Supplier's expense. The Supplier agrees to reimburse the Business for all costs and expenses incurred in returning, destroying or disposing of such Produce.

Warranty Claims

31. Without prejudice to any other remedies available to the Business, in respect of a claim by the Business under this Agreement, in addition to any other obligations the Supplier may have under this Agreement, the Supplier will at its own expense and risk (but at the Business' election):
 - a) promptly replace the relevant Produce; and/or
 - b) give the Business a refund or credit (at the Business' election) in respect of the relevant Produce equivalent to the Purchase Price [plus any associated costs incurred by the Business].

Third Party Returns of Produce

32. For the avoidance of doubt the parties agree that clause 31 will apply where, following the sale of the Produce by the Business to a third party, a claim is made by that third party which is accepted by the Business (**Return**) due to the Produce not complying with clause 6, 16, or 17, subject to notification by the Business within TWO (2) Business Days from receipt of such claim request.

33. Produce returned under clause 31 and 32 will be treated as Non-Complying Produce.
34. Without prejudice to any other remedies available to the Business, the Supplier hereby indemnifies the Business against all claims or losses that may be brought against or incurred or suffered by the Business and which arise as a result of the Produce not complying with clause 6, 16 or 17. This indemnity is a continuing indemnity and shall survive the termination of this Agreement.

Dispute Resolution

35. In the case of a dispute that may arise under this Agreement:
- the person that the Business should contact in that event, on behalf of the Supplier (**Supplier's Contact**) is set out in the Schedule;
 - the person that the Supplier should contact in that event, on behalf of the Business (**Business' Contact**) is set out in the Schedule;
 - the Business and the Supplier shall use the following to resolve the dispute:
 - if required by the Business - the Business' own Internal Dispute Resolution Procedure; and/or
 - the dispute resolution procedures under the Code.
 - In the case of a dispute relating to quality, the Market Produce Specifications – FreshSpecs standards will apply as the benchmark standard for all Class 1 Produce.

Costs

36. Unless otherwise expressly provided in the Agreement, each party must pay its own costs in connection with this Agreement and the documents and transactions contemplated by this Agreement.

No Waiver

37. Any time or other indulgence that the Business may grant to the Supplier shall not affect the rights of the Business except to the extent that the Business expressly waives such term, or part thereof, in writing.

Governing Law

38. This Agreement is governed by and is to be construed in accordance with the laws in force in the State of Tasmania. Each party submits to the non-exclusive jurisdiction of the courts of Tasmania.

Entire Agreement

39. This Agreement represents the entire agreement and understanding between the Business and the Supplier and it is acknowledged that the Supplier has not relied on any other written or oral representation, arrangement, understanding or agreement not expressly provided.

Severance

40. If any provision of this Agreement shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of this Agreement will not be affected and will continue in full force and effect.

Varying this Agreement

41. This Agreement can only be varied by agreement in writing between the Business and the Supplier.

Terminating this Agreement

42. Despite anything else in this Agreement, this Agreement may be terminated by either the Business or the Supplier within the cooling-off period under the Code, and in such event:
- clause 44 and clause 45 shall apply; and
 - any payment, of money or other valuable consideration, that was made for the purposes of, and directly related to, a purchase of Produce by the Business that would have occurred after the Termination Notice (**Trade**), must be returned to the party who made the payment within 14 days of the Termination Notice (less reasonable expenses incurred under this Agreement for the purpose of, and directly relating to the Trade).

43. Term

- Subject to clause 43(b), the term of this Agreement commences on the Commencement Date and will continue until the expiry of 7 days written notice by either the Business or the Supplier.
- The Supplier or the Business may terminate this Agreement with immediate effect by serving written notice on the other of those parties if:
 - the other of those parties becomes unable to lawfully perform this Agreement;
 - an insolvency event happens to the other of those parties; or
 - (subject to section 15 of the Code) the other of those parties breaches the Agreement and fails to remedy such breach within [2] days after receiving written notice from the terminating party specifying the breach and setting out the steps required to be taken in order to remedy the breach.

44. Any such termination:

- except where clause 42 applies - Shall apply prospectively to prevent any despatch of Produce by the Supplier under this Agreement after the Termination Notice but shall not apply to any Produce despatched by the Supplier (whether delivered to the Business or not) before the Termination Notice; and
- where clause 42 applies - Shall apply prospectively to prevent any purchase of Produce by the Business under this Agreement after the Termination Notice but shall not apply to any Produce purchased by the Business before the Termination Notice; and
- will not affect any accrued rights or obligations of the Business or the Supplier prior to the Termination Notice.

45. Following termination, the Supplier and the Business shall be entitled to pursue any other claim they may have against the other which have accrued or arisen up to the date of termination.

Right of Set-off

46. The Business may set off any amount owing by the Business to the Supplier against any amount due for payment (including under any indemnity or reimbursement obligation) by the Supplier to the Business under this Agreement or any other agreement (including any service agreement between the parties relating to services not covered by the Code).

Inconsistency

47. To the extent that any provision in this Agreement (including any definitions herein) are inconsistent with the Code, the provisions of the Code shall prevail to the extent of the inconsistency.

Business name: <u>ISLAND FRESH PRODUCE</u>		ABN: <u>89 743 048 843</u>		Trading as Produce Merchants	
Horticulture Produce Agreement					
Schedule					
SECTION A - DETAILS OF SUPPLIER					
Supplier:					
ABN:					
Warranty:		<p>The supplier listed above is the:</p> <p>(a) Grower of the Produce..... <input type="checkbox"/></p> <p>(b) Packing House, Co-operative, Marketing Group, Other <input type="checkbox"/></p> <p>If you have selected (b), these terms <u>do not apply</u> and you should contact <u>Island Fresh Produce on 03 63 411900</u></p> <p>If neither (a) or (b) are selected, a warranty is provided under the terms that the Supplier is the Grower.</p>			
Supplier Contact:					
Postal Address:					
Street Address:					
Telephone:		Bus:	Fax:	Mobile:	
E-mail:					
Bank A/c Details		Account Name:		Bank: _____ Branch: _____	
				BSB: _____ A/C No: _____	

SECTION B – DETAILS FOR HORTICULTURE PRODUCE AGREEMENT

INSURANCE (Clause 8)

Insurer	NIL INSURANCE
Maximum amount of claims covered by insurance	N/A
Defined events covered by insurance	N/A

PRICE DETERMINATION (Clause 9)

[Note: The following section is not compulsory. Parties do not need to agree on a Purchase Price upon signing this Agreement, however a Purchase Price must be agreed between the parties no later than on delivery of the Produce.]

The Agreed Price for the Produce shall be as follows:

Type of Produce	Agreed Price (AUD\$)
	See invoice with each delivery
	For seasonal price and
	Produce availability

CLAIMS (Clause 11)

Claims must be received within 5 (Five) Business Days from the issue of documentation advising the Purchase Price.

PAYMENTS (Clause 12.a)

Payment will be made no later than 30 (Thirty) business Days from the end of the Month during which the relevant Produce is received by the Business.

REPORTING PERIOD (Clause 14)

Reporting Period	Monthly
Date for provision of Statement	Within <u>30 (Thirty)</u> Business Days from the end of the relevant Reporting Period

DISPUTE RESOLUTION (Clause 35)

	Name	Address	Phone	Fax
Supplier's Contact				
Business' Contact	Administration Manager	10-16 Merino St. Kings Meadows Launceston 7249	03 63 411900	03 63 411999

SERVICE AGREEMENTS

The following service agreements have been entered into between the parties as at the date of this Agreement:

SECTION C – INDEPENDENT LEGAL ADVICE

STATEMENT – CHOOSE ONE STATEMENT BELOW

For the purposes of Clause 8 of the *Horticulture Code of Conduct* as contained in the *Trade Practices (Horticulture Code of Conduct) Regulations 2006*:

a. **The Supplier obtained legal advice**

the Supplier states that it retained("Advisor") to act for the Supplier in relation to the Horticulture Produce Agreement to be entered into between the Business and the Supplier ("the Agreement") and have received independent legal advice from the Advisor in relation to the agreement before entering into the Agreement;

OR*

b. **The Supplier did not obtain legal advice**

the Supplier acknowledges that the Business has recommended that the Supplier seeks independent legal advice in relation to the Horticulture Produce Agreement to be entered into between the Business and the Supplier ("the Agreement"). The Supplier warrants to the Business that it has read the Agreement and understands its meaning and effect and, in particular, has a full understanding of the liabilities and obligations of, and implications for, the Supplier's affairs and assets. Accordingly, the Supplier has elected not to obtain legal advice and waives any right or recourse the Supplier may have otherwise had against the Business for not having obtained such advice.

SECTION D - EXECUTION

By signing this Schedule I/we, for and on behalf of and with the authority of the Supplier, agree that I/we have read and understood the attached Horticulture Produce Agreement and that upon such signing the Supplier will be bound by the terms of it and that a formal contract shall be deemed constituted between the Business and the Supplier despite the Business not having executed the same. By signing this Schedule I/we also make, for and on behalf of and with the authority of the Supplier, the statement referred to in Section C above.

**EXECUTED AS A DEED POLL
SIGNED SEALED AND DELIVERED by SUPPLIER**

Supplier
I

Island Fresh Produce (Merchant)

Name (blocks):

Name (blocks):

Dated _____ / _____ / _____

Dated _____ / _____ / _____