

# Sinclair & Antico [Aust] Pty Ltd.

Wholesale Produce Merchants – Est 1953

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## Terms of Trade

01/09/2022

### 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 (Code).

It sets out the general terms upon which the Merchant will trade with growers in respect of horticultural produce (as those terms are defined in the Code). Terms not defined in this document have the meaning ascribed to them in the HPA.

For specific terms relating to the Merchant and Grower only please refer to the Horticulture Produce Agreement (HPA). Specific terms may refer to pooling of produce, applicable fees and charges for services provided, pooling of produce, reporting and payment processes and dispute resolution mechanisms.

### 2. HORTICULTURE PRODUCE AGREEMENT PREVAILS

Whilst this Document sets out the Merchant' general terms of trade, where the Code requires, transactions between growers and the Merchant must be conducted pursuant to a HPA. In the event of inconsistency between this Document and the HPA, the HPA prevails to the extent of the inconsistency.

### 3. MERCHANT IS A MERCHANT

The Merchant acts as a merchant for the purposes of the Code.

### 4. REQUIREMENTS FOR DELIVERY AND QUALITY OF PRODUCE

4.1 Produce supplied to the Merchant 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 including 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 with respect to the Produce;
- d. the Produce must be fit for its purpose;
- e. the produce must be packed and presented and comply with the following product specifications including quality and shelf life:
  - i. the Product Specification Requirements that the Merchant has with respect to Produce (set out below) or any requirements agreed to between the Merchant and the Grower (if any); and/or
  - ii. if there are none or where the requirements that may be published by the Fresh Markets Australia from time to time are not inconsistent with the requirements in paragraph e.i – the Australian Chamber of Fruit and Vegetable Industries requirements, FreshSpecs.

4.2 The Grower must not dispatch Produce to the Merchant that:

- a. does not comply with the requirements in paragraph e; or
- b. has not been solicited by the Merchant.

### 5. CIRCUMSTANCES WHERE THE MERCHANT MAY REJECT PRODUCE

The Merchant 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 the Merchant 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 4.1a to e above.

### 6. CIRCUMSTANCES WHERE THE MERCHANT MAY CLAIM A CREDIT FOR PRODUCE

The Merchant is also entitled to claim a credit for all or some of the Produce which has been purchased by it where any of the above circumstances occur (and the Merchant has not already elected to reject the Produce) or a claim for credit is made following the sale of the Produce by the Merchant to a third party which is accepted by the Merchant (Return), due to the Produce not complying with paragraphs 5a to d above.

### 7. REQUIREMENTS WHERE PRODUCE IS REJECTED

The Merchant may only elect to reject Produce within [insert timeframe, e.g. 24 hours] of "Delivery" occurring for the purposes of the HPA.

The Merchant 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 Merchant 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, the Merchant 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

The Purchase Price for Produce as well as any fees or charges relating to the Service or other actions performed by the Merchant for the benefit of the Grower will be set out in the HPA which is required to be signed by the Grower.

### 9. PAYMENT OF PURCHASE PRICE

Payment will be made no later than 28 Merchant Days from the end of the Week during which Delivery of the relevant Produce is deemed to have been accepted by the Merchant.

### 10. INSURANCE

The Merchant holds the following insurances for Produce:

Insurer	
Maximum amount of claims covered by insurance	\$35,000.00
Defined events covered by insurance	fire, theft and accidental damage

### 11. INDEPENDENT LEGAL ADVICE

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

### 12. PRODUCT SPECIFICATION REQUIREMENTS OF THE MERCHANT

For the purposes of paragraph 4.e.i of the Terms of Trade, the requirements of the Merchant are that in the absence of any written agreement to the contrary, the FreshSpecs Standards will apply as follows:

[If applicable, insert Merchant' specific product specification and delivery requirements]

### 13. CHANGES TO TERMS OF TRADE

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

### 14. GROWER ACKNOWLEDGEMENT

The Grower acknowledges that it must not supply any Produce to the Merchant without having signed and returned the agreed HPA to the Merchant.