



PREMIER FRESH AUSTRALIA TERMS OF TRADE (MERCHANT) (CGPP0008)

Premier Fresh Australia Terms of Trade (MERCHANT)

In accordance with the Horticulture Code of Conduct

These Premier Fresh Australia (PREMIER) Terms of Trade (Merchant) are effective from 1 April 2018 and apply to trade on a merchant basis in horticulture produce with the following companies:

Premier Fresh Australia Pty Ltd (ABN 87 004 843 556)
LaManna Bananas (Adelaide) Pty Ltd (ABN 31 964 373 610)
Premier Fruits Pty Ltd (ABN 17 059 689 217)
Premier Fruits Brisbane Pty Ltd (ABN 91 108 644 211)
Premier Fruits Adelaide Pty Ltd (ABN 21 122 627 374)
Premier Fruits Group Pty Ltd (ABN 26 119 895 742)
Premier Farms Pty Ltd (ABN 31 103 403 603)
Fresh Choice WA Pty Ltd (ABN 63 082 733 006)
Col Johnson & Co Pty Ltd (ABN 96 097 104 606)
Australia Banana Company Pty Ltd (ABN 41 110 475 833)

("Premier Fresh Australia Companies")

HOW WE WILL TRADE WITH OUR SUPPLIERS

We offer suppliers a choice of trading with us on a merchant or agency basis. These terms apply to suppliers who have entered into a Horticulture Produce Agreement (Merchant) with us and under these terms we will act as a **merchant** for the purposes of the Horticulture Code of Conduct.

DEFINITIONS

In this Agreement:

Agreed Price means a price no less than the price agreed in writing upon Delivery of the produce to us.

Agreement means the Premier Fresh Australia Horticulture Produce Agreement which incorporates these Premier Fresh Australia Terms of Trade.

Delivery for the purpose of this Agreement occurs when your produce is received by us and we accept it for resale. Delivery does not occur if we reject the produce. Produce that has to be ripened or conditioned prior to it being saleable will be considered to be delivered when it has been conditioned to such an extent that it becomes readily saleable.

GST means goods and services tax.

Horticulture Code of Conduct means the Horticulture Code of Conduct prescribed by the *Competition and Consumer (Industry Codes – Horticulture) Regulations 2017*, as amended from time to time.

PREMIER Receiving Agent means the Premier Fresh Australia Company to whom you supply horticulture produce.

PREMIER Reporting Agent means the Premier Fresh Australia Company that has sold the horticulture produce supplied by you and is responsible for reporting to you.

Oversupply occurs when we have reached capacity for particular horticulture produce.

Reporting Period ('reporting period', 'the report'), means either the period between Delivery of each individual consignment of horticulture produce that you send to us and the date that consignment is fully sold, or two months, whichever is shorter.

Service Schedule is the Schedule attached to this Agreement.

Statement Period ('statement period', 'the statement') means 21 days after the end of the Reporting Period.



Supplier ('supplier', 'you') means a person who supplies horticulture produce to us.

Wholesaler ('wholesaler', 'us', 'we', 'our') means each of the Premier Fresh Australia companies listed above.

HORTICULTURE PRODUCE AGREEMENT

All Suppliers of horticulture produce to any of the Premier Fresh Australia companies are required to have signed a Horticulture Produce Agreement as a condition of acceptance of any consignment of produce.

OUR FEE STRUCTURE

We will purchase the produce from the Supplier at the Agreed Price.

For the purposes of this Agreement we are authorised by you to prepare your product for resale.

If GST is payable on a supply of services by us to you, you must also pay the amount of that GST.

The PREMIER Receiving Agent reserves the right to transfer part or all of any consignment received from you to any other Premier Fresh Australia Company to be sold by that company, who will become the PREMIER Reporting Agent.

SERVICES

If you elect to use any other services provided by us then the charge for these services will be deducted from amounts payable to you under this Agreement.

The type of services may include: ripening, repacking, grading / sorting and similar handling services. The price for Services is the price set out in the Service Schedule which may be updated from time to time.

POOLING OF PRODUCE

We may pool produce delivered by you under this Agreement with other produce if:

- a) the other produce is of the same quality as the produce delivered by you, and
- b) the produce delivered by you and the other produce meet the quality requirements in this Agreement.

RESPONSIBILITIES OF EACH PARTY

We agree to:

1. trade in horticulture produce with you as a merchant as set out in our Horticulture Produce Agreement with you;
2. advise you in writing of any quality specifications or requirements in relation to the horticulture produce prior to you sending horticulture produce shipments;
3. hold insurance for horticulture produce under our control.

The details of the insurance policy are as follows:

- (a) the insurance policy is with Brooklyn Underwriting through Lloyds of London;
 - (b) the maximum value of claims covered by the policy is \$1 million depending on location;
 - (c) the policy covers fire, theft and accidental damage (other than deterioration of quality or any other inherent losses);
4. take title and risk in the produce upon Delivery. Subject to clause 12 below, we will be responsible for all damage to, or loss of, produce after title and/or risk has passed to us;

5. purchase the product from you at a price agreed in writing **upon Delivery** of the produce to us;
6. pay the amounts payable to you under this Agreement within 21 days of the sale of the horticulture produce by us;
7. deduct all State, Federal and voluntary charges relating to the produce concerned from the price paid to you;
8. inform you within 24 hours if your horticulture produce has been rejected, which may occur where:
 - a) you have not met quality, quantity or labelling specifications set out by us in clause 3 below under "You agree to";
 - b) you have delivered horticulture produce to us without first having signed a Horticulture Produce Agreement; or
 - c) you have delivered horticulture produce to us despite us previously advising you that we cannot accept produce because of Oversupply. In those circumstances you may be charged disposal costs, which will be communicated to you in writing.
9. advise you in writing within 72 hours of the rejection the reasons for the rejection;
10. if we cannot reach agreement with you on how to trade the rejected produce you may either engage a Horticulture Produce Assessor (at your cost) to undertake an independent assessment or notify us in writing that you instruct us to return your consignment of produce, in each case within 24 hours of our notice of rejection of the produce. If you do not elect to appoint an assessor or instruct us to return your consignment, we will deal with the produce as we see fit, taking into account our obligation to exercise all reasonable care and skill in handling and storage, whether this is through achieving a sale at a reduced price to a retailer in the market, or disposing of the horticulture produce and obtaining a disposal certificate;
11. provide additional services requested by you as agreed between us;
12. promptly answer any concerns or deal with any complaints from you firstly in accordance with our dispute resolution procedures, and then by the procedures set out in the Horticulture Code of Conduct.

You agree to:

1. advise the PREMIER Receiving Agent before dispatching each horticulture produce shipment;
2. the prices for services listed in the Service Schedule;
3. ensure that horticulture produce delivered to the PREMIER Receiving Agent meets the following quality requirements:
 - (a) if dealing in Class One product, specifications as directed by FreshSpecs Produce Specifications as disclosed on the Fresh Markets website (www.freshmarkets.com.au/FreshSpec/freshspecs.html);
 - (b) if dealing in other classes of product, the specifications normally expected of that class of produce;
 - (c) provide accurate details of each horticulture produce shipment upon dispatch, including the correct labelling of all produce in accordance with the statutory requirements set by Food Standards Australia New Zealand;
4. not dispatch produce to us that has not been solicited by the Premier Fresh Australia and/or which does not comply with the requirements as set out in this Agreement;
be responsible for all costs of delivery of the horticulture produce to our designated point of receipt for each consignment, the cost of which you can choose to meet by:



- (a) electing to allow us to secure transport on your behalf and deduct an amount in accordance with the Service Schedule from your return;
 - (b) electing to secure your own transport and pay your own costs directly with the transport company;
5. ensure that all deliveries reach our designated point of receipt for each consignment within the agreed timeframe set for each consignment;
6. promptly advise us of any horticulture produce that does not meet the requirements set out in clause 3, above, or that does not comply with our specifications as advised by us from time to time; and
7. promptly advise us of any concerns or complaints and use our dispute resolution procedures in the first instance, before following the procedures as set out in the Horticulture Code of Conduct.

VARIATION OF PREMIER FRESH AUSTRALIA TERMS OF TRADE

If we wish to vary the Terms of Trade (Merchant) incorporated into the Agreement we will provide you with seven days' written notice before we publish the new terms of trade and the variation becomes binding. Before the end of the seven-day notice period, if you give us notice that you do not accept the variation, the Agreement will terminate within seven days from the date of your notice and you will not be bound by the variation during that period.

QUESTIONS AND CORRESPONDENCE

Any questions in relation to your Horticulture Produce Agreement should be directed to:

Chief Financial Officer

Premier Fresh Australia (ABN 87 004 843 556)
103-107 Hyde Street Footscray Victoria 3011
Phone: +61 3 9687 7725, Fax: +61 3 9687 7762
www.premierfresh.com.au

You may also contact your local Premier Fresh Australia State General Manager.