



FRESH CHOICE WA TERMS OF TRADE (Effective 10 December 2007)

1. USE OF THIS DOCUMENT

This Document comprises the Fresh Choice WA Pty Ltd ("Fresh Choice") Terms of Trade for the purposes of the Horticulture Code of Conduct contained in the Trade Practices (Horticulture Code of Conduct) Regulations 2006 (the "Code").

The Code requires that a Trader ("Fresh Choice", "us", "our", "we") and a Supplier ("you") may only trade in horticulture produce with each other if they have entered into and signed a Horticulture Produce Agreement ("HPA") that complies with the Code.

These terms of trade may be included in a HPA between Fresh Choice and the Supplier and form part of the terms and conditions of that agreement.

2. HOW WE WILL TRADE WITH SUPPLIERS

Fresh Choice will act as either an **Agent** or a **Merchant** in transactions with Suppliers. The HPA with each Supplier will specify how Fresh Choice will trade with that Supplier.

3. REQUIREMENTS FOR DELIVERY AND QUALITY OF PRODUCE

Produce supplied to Fresh Choice must comply with the following requirements:

- 3.1 Prior to delivery, the Supplier must provide documentation that is suitable to Fresh Choice that accurately describes the quantity, variety, size, class, description and characteristics of the produce, including containers.
- 3.2 The produce must be fit for human consumption and comply with any statutory regulations including food safety, packaging and/or labelling.
- 3.3 The Supplier must have complied with the WA Weights and Measures regulations with respect to the produce;
- 3.4 The produce must be fit for its purpose.
- 3.5 The produce must be packed and presented and comply with the following product specifications including quality and shelf life:
 - (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 despatch, including the correct labelling of all produce in accordance with the statutory requirements set by Food Standards Australia New Zealand;
- 3.6 The Supplier must not dispatch produce to Fresh Choice that:
 - does not comply with the above requirements; or
 - has not been solicited by Fresh Choice.

4. REJECTION OF PRODUCE

Fresh Choice will inform you in writing of any problem or discrepancy with the horticulture produce immediately upon discovery of the problem or discrepancy, and will provide you with the reasons for the rejection and consequences of the rejection within 48 hours of discovery of the problem or discrepancy. A discrepancy may occur where you have not met the delivery and quality specifications set out in clause 3 above, or you have delivered horticulture produce to us without firstly having signed a Horticulture Produce Agreement as required by the Code.

If we can not reach agreement with you on how to trade the rejected produce you may either engage (at your cost) a Horticulture Produce Assessor 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 buyer in the market, or disposing of the horticulture produce and obtaining a disposal certificate.

5. COMMISSION (If trading as an Agent)

Fresh Choice will be entitled to a standard commission of 15% of the gross sale proceeds. GST is payable on this commission. Commission will only become payable upon the sale of your produce.

Fresh Choice also has the right to deduct other charges associated with the sale of the produce. These charges as well as the amount of the charge will be detailed in your HPA.

6. TRANSFER OF TITLE AND RISK

Risk (and title if trading as a merchant) in the produce will pass from the Supplier to Fresh Choice upon us taking delivery of the Produce. Subject to clause 3, Fresh Choice will be responsible for all damage to, or loss of, produce after risk and and/or title has passed to us.

7. BAD DEBTS

If Fresh Choice acts as an agent we will pursue the bad debts of a Supplier arising from the failure of a person who has agreed to buy the horticulture produce of the Supplier through us. Fresh Choice is authorised to utilise FPAA Pty Ltd (the Credit Service) to collect sale proceeds and bad debts.

8. PRICE (If trading as a Merchant)

Fresh Choice will purchase the produce from the Supplier at a price agreed in writing upon delivery of the produce to Fresh Choice.

9. PAYMENT OF SALE PROCEEDS / PURCHASE PRICE

Fresh Choice will pay the Supplier the proceeds of a sale of the Supplier's produce every fortnight. This payment will cover, when Fresh Choice is acting as an Agent, the Produce Statements - Tax Invoices and, when Fresh Choice is acting as a Merchant, the Account Sale - Recipient Created Tax Invoices, for the two weeks immediately preceding the week in which the payment is made. These payments will be made either by cheque or a direct deposit to the supplier's nominated bank account.

10. INSURANCE

Fresh Choice has the following insurance in respect of the of the horticulture produce once the produce is under our control:

Insurer	Zurich Australia Insurance Ltd
Maximum amount of claims covered by insurance	\$500,000 Produce stock stored \$10,000,000 Public and Product liability
Defined events covered by insurance	Fire, theft and accidental damage (other than deterioration of quality or any other inherent losses)

11. VARIATION OF TERMS OF TRADE

We may vary or replace these terms of trade by giving you seven days notice and publishing the new terms of trade.

We reserve the right to vary or exclude the application of any of these terms in any HPA entered into with a Supplier.

12. INDEPENDENT LEGAL ADVICE

Fresh Choice recommends that Suppliers seek independent legal advice in relation to the HPA prior to it being entered into between Fresh Choice and the Supplier.

13. TRANSPARENCY

A Supplier can at any time by appointment visit Fresh Choice and discuss the details such as the sales price, customers etc. relating to the sale of their produce.

14. QUERIES & CORRESPONDENCE

Any queries in relation to our Terms of Trade or your Horticulture Produce Agreement should be directed to Mark Hobbs on (08) 9455 2355 or 0403 466 413.

PRIVACY STATEMENT

By entering into a business relationship with Fresh Choice, the Supplier provides consent for Fresh Choice to collect personal information for business and taxation law purposes. This information is collected primarily for the sale and payment of produce. Any secondary use is for directly related business purposes (e.g. Crate Exchange). Fresh Choice will take every care to ensure this information is held securely and is accurate, complete and up to date.

For further details please contact Mark Hobbs, General Manager on (08) 9455 2355.