



FRUITORAMA (SA) PTY. LTD. A.C.N. 007 716 378 A.B.N 27 007 716 378

HORTICULTURE PRODUCE AGREEMENT (LONG FORM)

Between: FRUITORAMA (SA) PTY LTD ABN: 27 007 716 378 (FRUITORAMA (SA) P/L)

And

ABN : _____ (the Grower)

INTRODUCTION

- A. This Agreement constitutes a *horticulture produce agreement* as defined by the Horticulture Code of Conduct (the “Code”) between FRUITORAMA (SA) P/L and the Grower made pursuant to the Trade Practices (Horticulture Code of Conduct) Regulations 2006 (the “Regulations”). Words in this Agreement in *italics* have the meanings set out in the Code. If a term of this Agreement conflicts with the Code, the Code prevails.
- B. This Agreement only applies to *horticulture produce* that is ready and available for resale at a reasonable price to a third party. Any *horticulture produce* that requires any additional services by FRUITORAMA (SA) P/L to ensure that the Produce is ready and available for resale at a reasonable price to a third party, such as but not limited to ripening, storing, repacking or sorting, will be subject to a separate agreement.

ACKNOWLEDGEMENT BY GROWER

- C. The Grower acknowledges having read and understood the terms on which FRUITORAMA (SA) P/L is prepared to trade in *horticulture produce* with *growers* published by FRUITORAMA (SA) P/L (the “Merchant’s Terms of Trade”) and that FRUITORAMA (SA) P/L’s Terms of Trade form part of this Agreement and apply to all transactions between FRUITORAMA (SA) P/L and the Grower. If a provision of this document conflicts with FRUITORAMA (SA) P/L’s Terms of Trade the provisions of this document prevails.

In consideration of the Grower agreeing to sell *horticulture produce* to FRUITORAMA (SA) P/L and FRUITORAMA (SA) P/L agreeing to purchase *horticulture produce* from the Grower the parties agree:

1. CERTAIN DEFINED TERMS

Certain terms used in this Agreement are defined in the Dictionary Terms attached to this document.

2. WARRANTY OF GROWER

The Grower warrants that it is the *grower* and owner of any *horticulture produce* despatched to FRUITORAMA (SA) P/L under this Agreement and no other person has any interest of any kind in that *horticulture produce*. For avoidance of doubt the Code defines a *grower* as a *person who grows his or her own horticulture produce for sale*.

3. WARRANTY OF MERCHANT

FRUITORAMA (SA) P/L warrants it is trading as a *merchant* under this Agreement.

4. TERM

This agreement commences on the date that it is executed and remains in effect until the date either party terminates the Agreement by a notice in writing to the other. Any such notice will have effect to terminate this Agreement 14 days after the date on which the notice is served. A notice under this clause may be given without the need for cause.

5. VARIATION

This Agreement shall not be changed or modified in any way subsequent to its execution except in writing signed by the parties to it.

6. PRICE AND PURCHASE

(a) Where FRUITORAMA (SA) P/L and the Grower agree before, or upon, delivery of any *horticulture produce* to FRUITORAMA (SA) P/L, in a document other than this Agreement, as to the price of that *horticulture produce* the price so agreed shall be the price of that *horticulture produce*.

(b) Upon the acceptance of any *horticulture produce* in accordance with paragraph 7 of this Agreement and agreement between FRUITORAMA (SA) P/L and the Grower with respect to the price payable for that *horticulture produce* being reached and recorded in writing, whether in this document or in another document, a contract for the purchase of that *horticulture produce* by FRUITORAMA (SA) P/L from the Grower will come into effect upon those terms. Prior to acceptance FRUITORAMA (SA) P/L shall have no obligation to purchase any *horticulture produce*.

7. **ACCEPTANCE**

The *horticulture produce* is accepted by FRUITORAMA (SA) P/L at the later of:

- (a) the time at which any *horticulture produce* in the possession of FRUITORAMA (SA) P/L, in the opinion of FRUITORAMA (SA) P/L, is ready and available for resale at a reasonable price to a third party; and
- (b) the time at which FRUITORAMA (SA) P/L and the Grower agree upon the price, in writing.

8. **RISK**

Prior to acceptance, title in, and the risk in respect of, the *horticulture produce* of the Grower shall remain with the Grower. The Grower acknowledges and agrees that if the Grower causes any *horticulture produce*

- (a) to be placed, left on or left in the vicinity of FRUITORAMA (SA) P/L's premises at any time while those premises are not open for business;

that will not constitute delivery nor shall it constitute FRUITORAMA (SA) P/L receiving the *horticulture produce* and FRUITORAMA (SA) P/L shall have no liability, of any kind, for that *horticulture produce* and without limitation, no obligation to purchase the *horticulture produce*. The Grower agrees that the fact that the Grower causes any *horticulture produce*

- (b) to be placed or left in the vicinity of, FRUITORAMA (SA) P/L's premises at any time; or

- (c) to be placed or left on FRUITORAMA (SA) P/L's premises at any time while those premises are not open for business;

that will not constitute the *horticulture produce* being under the control of FRUITORAMA (SA) P/L. Any *horticulture produce* shall only be under the control of FRUITORAMA (SA) P/L as and from the time FRUITORAMA (SA) P/L receives physical possession of the *horticulture produce* and acknowledges such receipt in writing. FRUITORAMA (SA) P/L will exercise reasonable care and skill in relation to the *horticulture produce* while the *horticulture produce* is under the control of FRUITORAMA (SA) P/L.

9. **OWNERSHIP**

The ownership of the *horticulture produce* of the Grower passes from the Grower to FRUITORAMA (SA) P/L when the *horticulture produce* is accepted by FRUITORAMA (SA) P/L.

10. **INSURANCE**

FRUITORAMA (SA) P/L maintains such insurance as is disclosed in FRUITORAMA (SA) P/L's Terms of Trade. FRUITORAMA (SA) P/L does not warrant or represent that any insurance is for the benefit of the Grower.

11. **REJECTION**

FRUITORAMA (SA) P/L may reject any *horticulture produce* of the Grower at any time in the period after it is received and prior to the time it is accepted if FRUITORAMA (SA) P/L determines, in FRUITORAMA (SA) P/L's discretion, for any reason, that the *horticulture produce* is not saleable at a reasonable price and must notify the Grower immediately by phone, fax, email or other electronic means of FRUITORAMA (SA) P/L making that determination. Within a reasonable time period after notice of the rejection of the *horticulture produce*, the Grower must remove the *horticulture produce* from FRUITORAMA (SA) P/L's premises in accordance with the directions of FRUITORAMA (SA) P/L. A written notice of the rejection will be provided by FRUITORAMA (SA) P/L within two (2) Business Days of making the determination.

12. **PAYMENT FOR HORTICULTURE PRODUCE**

FRUITORAMA (SA) P/L agrees to make payments to the Grower within the Payment Period. The "Payment Period" is the period of _____ days after the end of the Week in which the *horticulture produce* is accepted. All payments will be made in accordance with FRUITORAMA (SA) P/L's Terms of Trade.

13. **TIME FOR CLAIMS**

FRUITORAMA (SA) P/L shall not be liable in respect of any claim by the Grower if the claim is not made in writing and is not received by FRUITORAMA (SA) P/L within seven (7) days of the end of the *reporting period* in which the transaction giving rise to the claim arose.

14. **REPORTING PERIOD**

The *reporting period* under the Agreement is the period between the *grower* despatching the *horticulture produce* to FRUITORAMA (SA) P/L and acceptance by FRUITORAMA (SA) P/L.

15. **STATEMENT PERIOD**

The *statement period* under the Agreement is the same as the Payment Period. FRUITORAMA (SA) P/L must give the Grower a **Statement** for each *reporting period* within the relevant *statement period*.

16. **PRODUCT SPECIFICATIONS**

Unless it is otherwise agreed in writing, all *horticulture produce* intended by the Grower to be the subject of this Agreement ("**Subject Produce**") must meet the specifications known as the FreshSpecs Produce Specifications available at www.freshmark.com.au/FreshSpec/freshspecs.html. The Grower must ensure that Subject Produce complies with those specifications. The fact that any *horticulture produce* meets those specifications does not create any obligation on the part of FRUITORAMA (SA) P/L to buy that *horticulture produce*. Subject Produce that meets those specifications is "**Complying Produce**".

17. **COMPLYING AND NON-COMPLYING PRODUCE**

Complying Produce and *horticulture produce* that is not Complying Produce will be treated in accordance with FRUITORAMA (SA) P/L's Terms of Trade.

18. **DISPUTE RESOLUTION**

In the case of a dispute arising under this Agreement the party asserting the dispute must notify the other party, in writing of:

- (a) the nature of the dispute; and,
- (b) what action(s) the party asserting the dispute considers will resolve the dispute (please refer to dispute resolution document on our website for more detail)

19. **LEGAL ADVICE**

The Grower acknowledges that FRUITORAMA (SA) P/L told the Grower, before this Agreement was entered into, that the Grower should seek independent legal advice about this Agreement and the Grower hereby states the Grower either:

- (a) received independent legal advice about this Agreement prior to entering into it; or,
- (b) decided not to seek that advice. *(the Grower to strike out (a) or (b) as applicable)*

20. **INDEMNITY**

- (a) The Grower agrees to indemnify FRUITORAMA (SA) P/L and its directors, officers, employees, servants and agents in respect of any liability, loss, expense of any kind arising from or in respect of:
 - (i) any breach of any warranty given by the Grower under this Agreement;
 - (ii) the death of, or personal injury to, or disease suffered by, any person and/or any damage to, or destruction of, or loss of the use of, any property arising out of, or as a consequence of any negligent act or omission of the Grower and its directors, officers, employees, servants and agents.
- (b) The Grower agrees to indemnify FRUITORAMA (SA) P/L in respect of any liability, loss, expense or cost incurred by, or suffered by, FRUITORAMA (SA) P/L in complying with any requirements of any Statute pertaining to the *horticulture produce* acquired by FRUITORAMA (SA) P/L from the Grower under this Agreement, where any such liability, loss, expense or cost was incurred as a consequence of the Grower failing to comply with any obligations of the Grower under any Statute; and
- (c) The Grower agrees to indemnify FRUITORAMA (SA) P/L in respect of any liability, loss, expense or cost incurred by, or suffered by, FRUITORAMA (SA) P/L arising out of any product recall, food safety requirement or quarantine requirement (and any other action or occurrence of that kind) relating to the *horticulture produce* acquired from the Grower.

21. **CONFIDENTIALITY CLAUSE**

All details contained in this Agreement or acquired as a result of this Agreement or in any agreement as to price shall remain confidential between the parties except to the extent a party is required by law to disclose its contents. A party may disclose the contents of this Agreement or any agreement as to price to its professional advisers and its directors, officers, employees, servants and agents on a confidential basis.

22. **TERMINATION**

A party may immediately terminate this Agreement by giving a written notice to the other party if:

- (a) the other party breaches this Agreement and fails to remedy such breach within seven (7) days of receiving notice of that breach; or
- (b) the other party has a receiver, or a receiver and manager, or administrator, or controller, or liquidator, or provisional liquidator appointed or if proceedings are commenced in any Court to appoint a liquidator or a provisional liquidator; or
- (c) a meeting of the creditors of the other party is called; or
- (d) the other party is unable to pay its debts as they fall due or compounds with its creditors or assigns any of its assets for the benefit of its creditors.

Any termination of this Agreement will be without prejudice to the rights of either party against the other in respect of:

- (e) anything done or omitted to be done under this Agreement before the date of termination; or
- (f) any claims under this Agreement outstanding at the date of termination.

23. **ASSIGNMENT**

A party must not transfer, assign, negate, dispose of, or encumber this Agreement or any right under this Agreement without the prior written consent of the other party.

24. **SEVERABILITY**

The provisions of this Agreement are deemed to be several and any invalidity of any provision of this Agreement will not affect the validity of the remaining provisions of this Agreement.

25. **SUCCESSORS**

This Agreement binds the parties and their successors or assigns.

26. **NO WAIVER**

Any time or other indulgence that FRUITORAMA (SA) P/L may grant to the Grower under this Agreement shall not affect the rights of FRUITORAMA (SA) P/L or the obligations of the Grower, under this Agreement except to the extent that FRUITORAMA (SA) P/L expressly waives, in writing, any obligations of the Grower.

27. **GOVERNING LAW**

This Agreement is governed by and is to be construed in accordance with the laws in force in the State of South Australia.

28. **ACTS BEYOND CONTROL**

FRUITORAMA (SA) P/L shall not be liable to the Grower for any delay or failure to perform any obligation under this Agreement if such delay or failure results from or is as a consequence of any act, matter or thing beyond FRUITORAMA (SA) P/L's control.

29. **ENTIRE AGREEMENT**

The Agreement constituted by this document, any agreement in writing as to price and FRUITORAMA (SA) P/L's Terms of Trade (together the "Contract Documents") constitute the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter. Unless prohibited by law all implied provisions, terms and warranties of any kind are expressly excluded. The Grower acknowledges and warrants that it enters into this Agreement voluntarily and it has not been induced to enter into this Agreement by any statement, warranty, representation (verbal or otherwise) made by or on behalf of FRUITORAMA (SA) P/L which is not set out in the Contract Documents or set out in legislation which cannot be excluded.

30. CONTACT DETAILS

- (a) In the event of the Grower wishes to contact FRUITORAMA (SA) P/L in respect of any matter arising under this Agreement or in respect of any dispute under this Agreement or the Code the Grower must contact:
Representative of Merchant – Nicholas Psevdos
Address – Store 30 Adelaide Produce Market, Diagonal Road, Pooraka SA 5095
Telephone No – 08 8349 6055 M: 0407 727 305
Facsimile No – 08 8349 5932
Email Address npsevdos@fruitorama.com.au
- (b) In the event of FRUITORAMA (SA) P/L wishes to contact the Grower in respect of any matter arising under this Agreement or in respect of any dispute under this Agreement or the Code FRUITORAMA (SA) P/L must contact:
Representative of Grower
Address
Telephone No
Facsimile No
Email Address

31. COUNTERPARTS

This document may be executed in any number of counterparts and all of those counterparts taken together constitute on and the same instrument.

32. INTERPRETATION

In this Agreement unless the context otherwise indicates:

- (a) references to any party to this Agreement shall include the legal personal representatives, executors, administrators, successors and permitted assigns of that party;
- (b) words importing the singular shall include the plural and vice versa;
- (c) words importing a gender shall include other genders;
- (d) references to any document (including this document) are references to that document as amended, consolidated or supplemented from time to time;
- (e) references to a recital, a paragraph, a clause, a schedule or other annexure shall be construed as references to a recital, paragraph or clause of, or a schedule or annexure to, this Agreement and references to this Agreement shall include its schedules and any annexures;
- (f) headings included in this Agreement are for convenience only and shall be disregarded in the construction of this Agreement;
- (g) where any word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning;
- (h) "\$" or "dollars" is a reference to the lawful currency of Australia; and
- (i) a provision of or a right created under this Agreement may not be waived or varied except in writing signed by the party or parties to be bound.

33. DICTIONARY

In this Agreement:

- (a) "**Business Day**" means a day which is not a Sunday or Public Holiday in South Australia;
- (b) "**in writing**" means by letter, fax or email;
- (c) "**Statement**" means a statement for the *reporting period*, specifying, for the Grower's *horticulture produce* received by FRUITORAMA (SA) P/L during the *reporting period*:
(i) the quantity and quality of the produce bought by FRUITORAMA (SA) P/L; and
(ii) the date or dates of the purchases; and
(iii) the price paid for the produce; and
(iv) the time at which the produce was delivered to FRUITORAMA (SA) P/L;
- (d) "**Statute**" means any Act of Parliament, and any regulations, orders, by laws, instruments made under or pursuant to any Act of Parliament and any other subordinated legislation of any kind; and
- (e) "**Week**" means the period commencing on a Saturday and ending on a Friday (inclusive).

EXECUTED as an agreement on the _____ day of _____ 20____

Execution by Merchant:

Signed for and on behalf of:

FRUITORAMA (SA) Pty Ltd
(Print full name of Merchant)

by _____
(Print Name) who by signing below warrants that he/she has the authority of FRUITORAMA (SA) P/L to sign this Agreement and to bind FRUITORAMA (SA) P/L to this Agreement.

Signature

In the presence of:

Signature of Witness

(Print Name of Witness)

Execution by Grower:

Signed for and on behalf of:

(Print full name of Grower)

by _____
(Print Name) who by signing below warrants that he/she has the authority of the Grower to sign this Agreement and to bind the Grower to this Agreement.

Signature

In the presence of:

Signature of Witness

(Print Name if Witness)