



Horticulture Produce Agreement - Merchant

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Horticulture Produce Agreement - Merchant

This is a Horticulture Produce Agreement made under the Horticulture Code of Conduct which specifies the terms and conditions under which **All Aussie Avocados Pty Ltd trading as All Aussie Farmers** will purchase horticultural produce as a Merchant from a Grower.

The entirety of this Horticulture Produce Merchant Agreement includes the sections A to I inclusive, the Signing Page, as well as incorporating the Terms and Conditions of Trade set out in clauses 1 through to 28 and the Schedule: Dispute Resolution.

A. Grower Details

Business Name:	
Trading Name:	ABN:
Contact Person:	Position:
Postal Address:	
Farm Address:	
Bus Tel:	Mobile:
Email:	
Levies: Levies will be deducted from all eligible sales. If you have a Levy Exemption Certificate, please supply it so that our records can be updated.	
Bank Account for Payment:	
Name:	
BSB:	Account Number:
Bank:	Branch:

B. Commencement Date

This Agreement will commence on

The Agreement will continue in force between the parties for a period of **12 MONTHS**,

Unless terminated by request within the cooling off period of **7 DAYS** or By Notice per Clause 21.

C. Produce Description

Produce to be supplied by the Grower (if Avocados also complete Schedule E below):

TYPE	SEASON / TIME OF DELIVERY

D. Quality Assurance

In order for us to ensure that we provide produce of the highest quality and safety standard we require all suppliers to have current Quality Assurance programs in place. Please indicate in the table below which program(s) you are currently accredited with and the expiry date of your certification. Please also attach your current certificate when you return this form.

PROGRAM	VERSION	EXPIRY DATE	ATTACHED (Y/N)

E. Avocado Growers

All avocado growers prior to their season commencing need to agree to supply evidence of maturity testing (dry matter results and calcium testing). Please sign below to indicate that you have read this requirement and agree to supplying these results prior to your first shipment.

NAME

SIGNATURE

F. Unordered Produce

I agree and covenant that I will only deliver Produce that has been requested to be supplied to the Merchant. I understand that if I dispatch Produce to the Merchant that has not been requested, it will be treated as Rejected Produce for which, if accepted, different payment terms will apply, Clause 12.

NAME

SIGNATURE

G. Authorised Party Contacts

GROWER CONTACT	
Name:	
Mobile:	
Email:	
Address:	

MERCHANT CONTACT	
Name:	Travis Murphy
Mobile:	0421 020 311
Email:	admin@allaussiefarmers.com.au
Address:	Store 88, Melbourne Markets, 35 Produce Dr, Epping, VIC 3076

H. Additional Services

SERVICE	ACTIVITY	FEE
Warehousing	Storage of Rejected Produce for re-sale	\$ 10.00 per pallet/per day
Conditioning	Ripening of Produce ahead of sale	\$ 1.50 per tray
Delivery Transport	Dispatch of Rejected Produce to Grower	Delivery charge at cost, plus \$100.00 each delivery
Repacking	Repacking of fruit, by piece	\$ 3.00 per tray
Sorting	Resorting of fruit, by piece	\$ 3.00 per tray
Acceptance report	Inspection and report by Aussie Farmers	\$1.00
Inspection Certificate	Inspection and report by an Assessor	Charged at cost

I. Reporting Period

Reporting Period	28 business days
Statement Period	within 7 business days from the end of the relevant Payment Period
Payment Period	28 business days from the date of transfer of Title to the Produce

J. Insurance

Maximum amount of insurance cover provided by the policy in respect of claims that may be made	\$100,000.00
Defined events covered by insurance	Deterioration of Stock while in control of Merchant

Agreement Signing Page

By signing this Agreement, for and on behalf of, and with the authority of the Grower, I agree that:

- 1) I have read and understood this Horticulture Produce Agreement - Merchant, and
- 2) I have been advised to seek independent legal advice, and
- 3) Warrant that the person executing this Agreement or any other documents related to or arising under this Agreement, including any authorised Officer, has capacity to enter into such agreements to bind the Grower, and
- 4) that upon such signing or acceptance of the Horticulture Produce Agreement the Grower will be bound by its terms, including the Sections, Terms and Conditions of trade and the Schedule: Dispute Resolution

a formal contract shall be constituted between the Merchant and the Grower.

Executed by the GROWER	
Where the Grower is an individual	Where the Grower is a Company
Note: Where the Grower is a partnership or other form of joint operation, all of the individuals or entities should sign.	
	Signature/s:
Individual Grower Name/s	Director /Company Secretary
	Date:

Executed by the MERCHANT	
	Signature:
All Aussie Avocados Pty Ltd trading as All Aussie Farmers	Director
	Date:

TERMS & CONDITIONS

1. AGREEMENT

For the Term of this Agreement, the Grower agrees to deliver, and the Merchant agrees to buy, Horticulture Produce of the type, quantity, quality and specifications set out in this Agreement or as ordered by the Merchant and confirmed in writing by the Grower from time to time, for the price calculated in accordance with the method set out in the Agreement.

2. TERM

This Agreement commences on the Commencement Date set out in Section B, and continues for a fixed period of **12 MONTHS**, unless it is terminated earlier:

- 1) within the cooling off period of **7 DAYS**, or
- 2) by either the Grower or Merchant in accordance with Clause 21.

3. PRODUCT SPECIFICATION

Produce supplied by the Grower under this Agreement must comply in all respects with the **Freshspecs** published by the Fresh Markets Australia.

4. DELIVERY PROGRAMME

The Grower agrees to comply with the Merchant's Delivery programme:

- 1) Prior to Delivery to the Merchant, the Grower will email the documentation (pack out notes) to the Merchant, to report the quantity, variety, size, class, description and characteristics of the Produce, including packed on date.
- 2) The Grower will advise the Merchant of the date of delivery of the Produce to the location specified by the Merchant.
- 3) On receipt of the Produce, the Merchant will conduct an Acceptance check of the Produce;
 - (a) examining the Produce to confirm that it is within Specification
 - (b) checking that trays and Produce are clean and undamaged
 - (c) (for Avocados) testing Produce for ripening and breakdown after 3-5 days
- 4) Immediately on completion of the Acceptance check, the Merchant will provide a report of the results of its inspection and testing including photos to the Grower, by email.

5. PRICE DETERMINATION

The amount to be paid by the Merchant for Produce delivered by the Grower pursuant to this Agreement, is determined using the following formula:

- 1) the weekly sale prices for Produce of that quality as published in the All Aussie Farmers mobile phone APP "estimated sales prices" for the week in which the sale occurs;
- 2) multiplied by the volume of each type of Produce delivered;
- 3) less a sales commission of 15% (or 18% for Produce supplied on mixed pallets) of the gross price;
- 4) less the cost of the Acceptance report.

6. TRANSFER OF TITLE

Title and risk in respect of the Grower's Produce shall only pass to the Merchant at the time when the Merchant and the Grower agree on a price for the Produce.

7. PAYMENT

- 7.1 The Merchant agrees to make payment to the Grower for Produce it has purchased within the Payment Period, by electronic funds transfer to the Grower's bank account specified in Section A, unless otherwise agreed in writing between the Merchant and the Grower.
- 7.2 The Merchant is authorised to deduct from any payment owing to the Grower, amounts with respect to:
- 1) any indemnity, reimbursement obligation or Return of Produce;
 - 2) any payments made on behalf of the Grower where the Merchant has agreed to make such payments (e.g. transport/ unloading/ packaging);
 - 3) any levies and fees for services payable under State or Commonwealth legislation or any voluntary arrangement;
 - 4) any fees for Additional Services carried out by the Merchant at the request of the Grower that are specified in this Agreement in Section H.
- 7.3 Goods and Service Tax is payable in respect of any charge made by the Merchant for its services.

8. REPORT TO GROWER

- 8.1 Within the Reporting Period, the Merchant will send the Grower a statement for the Produce purchased by the Merchant, specifying the:
- 1) Grower's reference or consignment note number,
 - 2) date on which the Produce was physically received by the Merchant,
 - 3) type, quality and quantity of the Produce bought by the Merchant,
 - 4) date or dates on which the Merchant bought the Produce,
 - 5) price or prices paid for the Produce by the Merchant, and
 - 6) fees for any Additional Services supplied by the Merchant
- 8.2 The Merchant will issue a tax invoice to the Grower in respect of any item for which Goods and Services Tax is chargeable.

9. ADDITIONAL SERVICES BY MERCHANT

- 9.1 As well as the purchase of Produce from the Grower, the Merchant may supply the following Additional Services to the Grower if requested and/or agreed to by the Grower (Section H):
- 1) Warehousing,
 - 2) Conditioning/Ripening,
 - 3) Delivery Transport - delivery within the Victorian wholesale market,
 - 4) Repacking/Sorting,
 - 5) Acceptance report prepared by Aussie Farmers,
 - 6) Inspection Certificate, the provision of a report by an authorised horticulture produce Assessor appointed under Clause 49 of the Code (e.g. Rudge Produce Systems).
- 9.2 The Grower agrees to pay the fee for these Additional Services provided by the Merchant as set out in Section H.
- 9.3 The amount to be paid shall be calculated upon the Service being completed.

10. MERCHANT OBLIGATIONS

- 10.1 During the period the Produce is under the Merchant's control, the Merchant or their nominated parties, will exercise all reasonable care and skill in handling and storage to ensure that the Produce remains of the highest quality possible having regard to the quality and state of the Produce upon receipt by the Merchant.
- 10.2 The Merchant will not be liable for any loss or damage to the Produce arising from any cause or event outside of the control of the Merchant beyond the extent of the cover provided by its insurance.

11. GROWER OBLIGATIONS

11.1 The Grower covenants and warrants that:

- 1) The Grower is the grower of the Produce,
- 2) The Produce is fit for human consumption and complies with any statutory regulations including food safety, packaging and/or labelling,
- 3) The Grower has all right, title and interest in and to the Produce and will pass title to the Merchant clear of all encumbrances, claims and other adverse interests.

11.2 The Grower agrees that the Produce which it supplies to the Merchant:

- 1) complies with the Product Specifications in Clause 3 and Subclause 11.2 as to quality;
- 2) conforms to the description as to date/variety/grade/class as stamped on the packaging in which the Produce is contained;
- 3) is certified under the Australian Freshcare Code of Practice “Food Safety and Quality” version 4 and the Grower agrees to provide the Certificate of compliance to the Merchant.

11.3 The Grower will be responsible for all transport and other costs incurred in shipping the Produce to the Merchant and will not be reimbursed by the Merchant for such costs unless specifically agreed in writing by the Merchant and the Grower, before the Produce is delivered.

12. REJECTED PRODUCE

12.1 If the Grower sends Produce to the Merchant that has not been requested (Section F) or that does not comply with the Product Specification (clause 23) it will be treated as **Rejected Produce**.

12.2 For Produce that had not been requested:

- 1) If not accepted by the Merchant, it will incur a \$10 storage fee (per pallet per day) until the Produce is re-consigned to a new destination, with the Grower to pay the freight costs.
- 2) If accepted by the Merchant, the Grower agrees to an uplift to 25% commission and payment for the Produce to be made within 60 Business days.

12.3 Where the Merchant rejects all or part of the Produce, the Merchant will within 24 hours of the day on which the Produce was delivered (the **Non-Compliance Day**) advise the Grower by telephone, e-mail or other electronic means, of the rejection of the Produce.

12.4 Within 2 Business Days of the Non-compliance Day, the Merchant will advise the Grower in writing of the rejection and the reasons for such rejection and request that the Grower advise whether the Grower will:

- 1) retake possession of the Rejected Produce; or
- 2) make arrangements for the storage or warehousing of the Rejected Produce, or
- 3) make other arrangements for the sale the Rejected Produce, or
- 4) arrange for its removal from the Merchant’s premises.

12.5 The parties agree that the Merchant may determine the sale price to a third party of the Rejected Produce in accordance with prevailing market conditions at the time as well as any other additional Services that the Merchant reasonably considers may need to be provided.

12.6 If the Grower:

- 1) does not respond within 3 Business Days of the Non-compliance Day, or
- 2) fails to retake possession of the Produce within 4 Business Days of the Grower indicating an intention to do so under Subclause 12.4; or
- 3) does not reach an agreement on a Purchase Price within 5 Business Days of the Non-compliance Day, where the Merchant has made reasonable endeavours to contact the Grower to negotiate a Purchase Price;

then the Merchant may elect to dispose of the Rejected Produce, or return the Rejected Produce to the Grower. Any disposal or re-delivery of the Produce, is at the Grower's expense.

12.7 Where the Merchant rejects Produce, it does not take ownership of the Rejected Produce and the Grower will retain title to and risk in and to the Rejected Produce.

12.8 At its cost, the Grower can require that an independent inspection and assessment of the condition of the Rejected Produce be made to determine whether an Inspection Certificate should be issued.

12.9 The Grower acknowledges that any amount deducted under Subclause 7.2, represents a genuine estimate of the Merchant's loss as a result of the Produce being Rejected Produce.

13. LIABILITY OF MERCHANT

Provided always that the Merchant has exercised reasonable care and skill (and otherwise acted in good faith) in providing its Service (to the maximum extent permitted by the Code and at law) the Merchant shall not be liable to the Grower as to:

- 1) the accuracy, description, relevance, completeness, merchantable quality, fitness for any purpose or any other matter relating to the Service under this Agreement;
- 2) loss of, or damage to, the Produce by any cause (including lawful confiscation);
- 3) any damage to property or death of, or injury to, any person caused directly or indirectly by the Produce and/or the Service;
- 4) any claim against the Merchant in relation to the Service, the Produce or the consumption of the Produce; and
- 5) any other thing in relation to which the Merchant has assumed the risk or liability under this Agreement.

14. LIABILITY OF GROWER

14.1 The Grower shall be liable to insure for defined events including fire, theft and accidental damage (other than deterioration of quality or any other inherent losses) of the Produce until title to the Produce passes to the Merchant.

14.2 The Merchant shall not be liable for any loss or damage to the Produce by the Grower's failure to insure its Produce.

14.3 The Grower shall be liable to compensate the Merchant for all direct losses, damages, costs, claims and expenses which the Merchant may incur as a result of any act or omission of the Grower.

15. MUTUAL INDEMNITY

15.1 The Grower agrees to indemnify the Merchant for any liability, loss or expense of any kind arising from or in respect of the death of, or personal injury to, or disease suffered by, any person and/or any damage to or loss of any property (or the use of that property), arising out of any negligent act or omission of the Grower.

15.2 The Merchant agrees to indemnify the Grower for any liability, loss or expense of any kind arising from or in respect of the death of, or personal injury to, or disease suffered by, any person and/or any damage to or loss of any property (or the use of that property), arising out of any negligent act or omission of the Merchant.

16. NOTICES

16.1 Any Notice or other communication to, or by the Grower or the Merchant must be:

- 1) in writing (including by Electronic Communication);
- 2) addressed to the representative identified in Section G; or
- 3) to any other address that the recipient may have notified the sender; and
- 4) by the party or by an Authorised Officer of the sender.

16.2 In addition to any other method of service authorised by law, the notice may be:

- 1) personally served on a party;
- 2) left at the party's current address for service;
- 3) sent to the party's current address for service by prepaid ordinary mail;
- 4) sent by electronic transmission to the party's electronic mail address.

17. DISPUTE RESOLUTION

17.1 The Code provides that the Grower and the Merchant may use any dispute resolution procedures they choose to resolve horticulture disputes that arise between them.

17.2 The Merchant and the Grower agree that any dispute arising under, and notified in connection with this Agreement will be dealt with:

- 1) In first instance, under the Agreement's internal dispute handling procedure, and
- 2) If the dispute is not resolved, then in accordance with its external dispute handling procedure set out in **Schedule: Dispute Resolution**.

17.3 Notice of Dispute

- 1) Either party may send to the other party, a Notice setting out a dispute.
- 2) The Notice should specify:
 - (a) the nature of the dispute; and
 - (b) what action the party raising the dispute thinks will settle the dispute; and
 - (c) what outcome that party wants.
- 3) The Grower should send the Notice to the Merchant's Contact, and the Merchant should send the Notice to the Grower's Contact, set out in Section G.

17.4 Internal dispute resolution - Negotiation

- 1) On receipt of a Notice of a dispute, the Merchant and the Grower must engage in discussions in good faith to try to agree how to resolve the dispute.
- 2) The Parties can agree to the appointment of a horticulture produce assessor, to investigate and report on any matter arising under the Agreement.

17.5 External dispute resolution – Conciliation & Adjudication

If the parties fail to resolve the dispute within 21 days of receipt of the Notice of a dispute, or such longer period as agreed by the Parties in writing, then either party may request that the dispute be referred to the external dispute handling procedure set out in Schedule: Dispute Resolution.

18. NO WAIVER

The Merchant shall not be held to have waived any rights of the Merchant existing under this Agreement except to the extent that the Merchant expressly waives such term, or part thereof in writing. For example, the right of the Merchant to reject Produce under this Agreement cannot be deemed to be waived by past acceptance of Produce of a similar quality.

19. ELECTRONIC SIGNATURES

19.1 The parties acknowledge and agree that for the purposes of the Code and acceptance of this Agreement including the Sections and Terms of Trade, the Grower may acknowledge receipt of and accept the terms of the Agreement by sending a text message to the number nominated by the Merchant in Section G.

19.2 The parties jointly consent to:

- 1) information in connection with this Agreement being given by Electronic Communication; and
- 2) an electronic signature being used to execute the agreement and indicate that person's (including an intention to be bound by this Agreement).

20. VARYING THIS AGREEMENT

This Agreement can only be varied by agreement in writing between the Merchant and the Grower.

21. TERMINATING THIS AGREEMENT

21.1 This Agreement may be terminated by either the Merchant or the Grower providing a notice (**Termination Notice**) in writing to the other party.

21.2 Any such Termination Notice:

- 1) shall apply to prevent any despatch of Produce by the Grower under this Agreement after service of the Termination Notice but shall not apply to any Produce despatched by the Grower (whether delivered to the Merchant or not) before the service of the Termination Notice;
- 2) shall apply to prevent any purchase of Produce by the Merchant under this Agreement after the service of the Termination Notice but shall not apply to any Produce purchased by the Merchant before the service of the Termination Notice; and
- 3) will not affect any accrued rights or obligations of the Merchant or the Grower prior to the service of the Termination Notice.

21.3 If a party terminates this Agreement within the **Cooling-off Period**, then 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 Merchant that would have occurred after the service of the Termination Notice, must be returned to the party who made the payment within 14 days of the service of the Termination Notice (less reasonable expenses incurred under this Agreement) for the purposes of, and directly relating to, trade that would have occurred after the termination of the Agreement.

21.4 Following termination, the Grower or the Merchant shall be entitled to pursue any other claim they may have against the other which has accrued or arisen up to the date of termination.

22. SEVERANCE

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.

23. CONFIDENTIALITY

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.

24. ASSIGNMENT

Neither the Grower nor the Merchant must transfer, assign, novate, dispose of or encumber this Agreement or any right under this Agreement, without the prior written consent of the other party.

25. GOOD FAITH

The Grower must perform its obligations under this Agreement in good faith and use all reasonable but commercially prudent endeavours in accordance with the Code.

26. GOVERNING LAW

This Agreement is governed by and is to be construed in accordance with the laws in force in the State of Victoria. Each party agrees to submit to the exclusive jurisdiction of the courts of that State.

27. DEFINITIONS

In this Agreement:

Additional Fees means additional fees to be charged by the Merchant to the Grower for Services provided.

Agreed Price shall mean the Purchase Price of all or part of the Produce payable to the Grower by the Merchant as agreed in writing by the parties pursuant to this Agreement.

Agreement means this agreement incorporating the Sections “A” to “J”, Clauses 1 to 28 and the Schedule: Dispute Resolution.

Authorised Officer means, a person appointed by the party to act as an Authorised Officer for the purposes of this agreement and notified to the others.

Business Day means a day that is not a Saturday, Sunday, public holiday, or Markets Holiday, in the State of Victoria.

Code means the Horticulture Code of Conduct contained in the *Competition and Consumer (Industry Codes and Horticulture) Regulations 2017* (Cth) as amended from time to time.

Commencement Date means the date when the agreement begins entered in Section B.

Cooling Off Period means a period of 7 days to be calculated from the Commencement date.

Delivery occurs when Produce is received by the Merchant from the Grower and accepted for the purpose of re-sale by the Merchant and, where applicable, once any Services provided by the Merchant have been completed.

Electronic Communication is as defined in the *Electronic Transactions Act 1999* (Cth) or the *Electronic Transactions (Victoria) Act 2000*.

Freshcare Code of Practice Environmental is an industry owned standard, describing the practices required on farm to provide assurance that produce has been grown and packed with care for the environment.

FreshSpecs Produce Specifications means produce specifications published by Fresh Markets Australia which are available from www.freshmarkets.com.au.

Fresh Markets Australia means the national organisation representing each of the six market chambers across Brisbane, Sydney, Melbourne, Adelaide, Perth and Newcastle.

Grower means a person or entity that grows Horticulture Produce for sale and for the purposes of this Agreement being the person or entity specified in Section A of the Agreement.

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 as not meeting a particular specification or standard.

Markets Holiday is a day on which the market, in the State of Victoria is closed for business.

Merchant means **All Aussie Avocados Pty Ltd trading as All Aussie Farmers** or related Persons deemed to be in association with the merchant.

National Measurement Act means the *National Measurement Act 1960* (Cth) and *National Trade Measurement Regulations 2009* (Cth) as amended from time to time.

Payment Period means 28 business days from the date of transfer of Title to the Produce.

Produce means “horticulture produce” as defined in the Horticulture Code and unless otherwise indicated by context a reference in this Agreement to produce means the produce of a Grower.

Produce Specification Requirements means the product specifications in Clause 3 that the Merchant requires the Grower to meet in order for it to accept the Produce.

Purchase Price means the amount determined under Clause 5.

Reporting Period means within 28 business days from the date of transfer of Title to the Produce.

Safe Quality Food (SQF) 2000 is a voluntary quality management system that uses the systematic application of Hazard Analysis and Critical Control Point (HACCP) guidelines to improve food safety and quality.

Section means the sections to this Agreement identified as “A” through to “J”.

Service or **Services** means the service or services provided by the Merchant as described in Section H and Clause 9 that may be arranged between the Merchant and Grower as required.

Statement means the statement to be provided by the Merchant under Clause 8.

Statement Period means within 21 business days from the date of transfer of Title to the Produce.

Terms of Trade means the Merchant terms of trade for the purposes of the Code setting out the general terms on which the Merchant will trade with growers in respect of Produce, as amended from time to time.

Week means the period Saturday to Friday inclusive.

28. INTERPRETATION

The following rules of interpretation apply unless the context requires otherwise:

- 1) If a term of this Agreement conflicts with the Code, the Code prevails;
- 2) Headings are for convenience only and do not affect interpretation;
- 3) The singular includes the plural and the plural includes the singular;
- 4) Including or similar expressions are not words of limitation;
- 5) A gender includes all genders;
- 6) Where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- 7) A reference to a person includes a person, partnership, corporation, trust, association, joint venture, unincorporated body, government body, the party's executors, administrators, successors and permitted assigns or other entity includes any other of them;
- 8) A reference to a clause or section is to a clause or section of this Agreement and a reference to this Agreement includes a schedule to this Agreement;
- 9) A reference to any party to this Agreement or any other agreement or document includes the party's successors and assigns;
- 10) A reference to a right or obligation of any two or more persons confers that right or imposes that obligation, as the case may be, jointly and severally;
- 11) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaces from time to time, where applicable, in accordance with this Agreement or that other agreement or document;
- 12) A reference to any legislation or to any provision of any legislation any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it; and
- 13) A reference to conduct includes, without limitation any omissions, statement or undertaking, whether or not in writing.

SCHEDULE: DISPUTE RESOLUTION

Conciliation & Adjudication Procedure

1. REFERRAL

- 1.1 Where a dispute has been notified by a party to a Horticulture Produce Agreement by sending a Notice of dispute; and the Dispute has not been resolved by the Negotiation process within 21 Days, or such longer period agreed by the Parties in writing, the Parties may refer the dispute to a combined Conciliation and Adjudication process.
- 1.2 When a request for Conciliation & Arbitration is notified, Dispute Resolution Associates Pty Ltd (**DRA**) will be requested by the Merchant to recommend the appointment of an independent and qualified Resolver, preferably with knowledge of the horticulture industry who will be required to commence a combined Conciliation & Adjudication process within 14 Days of the request. Where DRA is unavailable or elects not to engage with the dispute, then the referral will be to another dispute resolution body which will be similarly engaged.

2. PARTY RESPONSIBILITY

- 2.1 Each Party must attend the Conciliation & Adjudication, in person, by telephone, by video conference or by other electronic means as arranged by the Resolver. The Parties, if they agree, can request that the Resolver conduct the Conciliation & Adjudication in a particular manner, location or timeframe.
- 2.2 Each Party must participate in the Conciliation & Adjudication in good faith with the Resolver, and genuinely attempt to resolve the dispute.
- 2.3 Each Party shall comply with the reasonable requests and directions of the Resolver in the Conciliation & Adjudication of the Dispute.
- 2.4 Each Party will bear their own costs of attendance at the Conciliation & Adjudication and jointly share the costs of the Resolver.

3. CONCILIATION

- 3.1 The Resolver will conduct the Conciliation, in such manner as the Resolver considers necessary for the efficient and expeditious resolution of the Dispute, having due regard to the nature and circumstances of the Dispute and the parties involved.
- 3.2 In conducting the Conciliation, the Resolver will only meet or communicate with the parties (or their advisers) when together at the same time, and as frequently as the Resolver considers appropriate.
- 3.3 The Resolver shall facilitate the Parties discussions by identifying the issues in the Dispute, developing options, considering alternatives and working with the Parties to reach an agreement.
- 3.4 The Resolver will not give legal advice. However, the Resolver, when acting as Conciliator, may provide an opinion. A Party will not be bound by any recommendations, comments, suggestions, advice, statements or opinions of the Resolver in relation to the Dispute.
- 3.5 The Conciliation is terminated if the Parties reach a satisfactory settlement of the Dispute and jointly request that the Resolver terminate the resolution process.

4. ADJUDICATION

- 4.1 If at the expiration of the time allotted for Conciliation, an agreement has not been concluded in respect of all of the matters in dispute, and the parties do not jointly agree for the Resolver to spend further time in the continuation of the Conciliation process, the Resolver may terminate the Conciliation.
- 4.2 If the Dispute is not entirely resolved at the Conciliation, then the Resolver will proceed to conduct an Adjudication and make a binding determination of the Dispute, in the manner of an Expert Determination, in accordance with the terms of this Agreement but not as an Arbitrator.
- 4.3 The parties agree that no objection will be taken to the Resolver, who has acted as the Conciliator, proceeding to undertake the role of Adjudicator.
- 4.4 Subject to the terms of this Agreement, the Resolver is free to adopt any appropriate procedure for the Adjudication and shall determine the manner in which the procedural steps shall be conducted, having due regard to the nature and circumstances of the Dispute and the Parties involved.
- 4.5 The Resolver shall give directions as to the times, dates, places and methods for holding the Adjudication and any preliminary conferences or processes.
- 4.6 In conducting the Adjudication, the Resolver will only meet or communicate with the parties (or their advisers) together at the same time, as frequently as the Resolver considers appropriate.
- 4.7 The Parties will submit to the Resolver and to each other, written submissions setting out their respective positions in relation to the Dispute, together with any supporting documents and will have the right to submit further written submissions with any supporting documents to the Resolver and each other setting out their replies.
- 4.8 All written submissions and documents will be submitted by the Parties as directed by the Resolver, after consultation with the Parties.
- 4.9 The Resolver may separately ask for further written submissions from the parties and may also ask for oral submissions from either party, which will only be made when the other party is present and to able to make its own oral submissions. There will be no examination or cross-examination of Parties or their representatives.

5. DETERMINATION

- 5.1 The Resolver will make a determination, as expeditiously as possible after receiving the parties' submissions, which will be final and binding on the Parties and record the determination in writing and give brief reasons for making the determination.
- 5.2 The Parties agree to implement the Determination within 28 days of receiving the written determination (or any amended determination) or otherwise as agreed between the parties.
- 5.3 The parties agree that they will not challenge the Determination in any subsequent litigation or arbitration proceedings or otherwise.
- 5.4 If a settlement is reached at the Conciliation or a Determination is made after Adjudication of the Dispute, any Party may enforce the terms of any settlement agreement or Determination made, by judicial proceedings.