

# Red Rich Fruits (NSW) Pty Ltd Produce Agreement – Agent



<b>Grower</b>	<b>Agent</b>
Grower's Name:	Agent's Name: Red Rich Fruits (NSW) Pty Ltd
ACN (if applicable):	ACN (if applicable): 144 810 364
ABN (if applicable):	ABN (if applicable): 98 144 180 364
Address:	Address: 4 Beach Street, Eastern Creek, NSW 2766
Email:	Email: sales@redrichfruitsnsw.com.au
Phone:	Phone: 02 9675 7365

## Terms and conditions

### 1. Agreement

- 1.1. For the Term of this agreement, the Grower agrees to deliver, and the Agent agrees to arrange, on behalf of the Grower, the sale of Horticulture Produce of the type, quantity, quality and specifications stated in this agreement, for the payment of a commission / fee / extra cost stated or calculated in accordance with this agreement.

### 2. Term

- 2.1. This agreement will commence on the Start Date and will continue for the Term of the agreement unless it is terminated earlier in accordance with clause 18.

<b>Event</b>	<b>Date</b>
Start Date	Date the last party signs
Term	This agreement will commence on the Start Date and will terminate on [the date the agreement is terminated under clause 18 [if there is no end date]

### 3. Agent's reporting obligations

- 3.1. For the purposes of this agreement, the Reporting Period is weekly
- 3.2. For each Reporting Period, the Agent will give the Grower a statement for the Reporting Period, specifying for the Grower's Horticulture Produce received by the Agent during the Reporting Period:

the date on which the Horticulture Produce was delivered to the Agent  
details of each amount deducted by the Agent from the sale price of the Horticulture Produce, and  
details of any amounts of the Horticulture Produce not sold by the Agent during that period, including:

- i. the reasons why the Horticulture Produce was not sold
- ii. details of any amounts of the Horticulture Produce destroyed by the Agent, and the costs incurred in destroying the Horticulture Produce, and
- iii. details of any amounts of the Horticulture Produce held by the Agent at the end of the period.

3.3. The Agent will give the statement referred to in subclause 3.2 to the Grower within the Statement Period, which is 7 business days following the end of the Reporting Period.

## 4. Agent's other obligations

4.1. During the period the Grower's Horticulture Produce is under the Agent's control, the Agent will exercise all reasonable care and skill in handling and storage to ensure that the Horticulture Produce remains of the highest quality possible.

4.2. The care and skill the Agent must exercise under subclause 4.1 must be exercised until the ownership of the Horticulture Produce passes to the Agent.

4.3. The Agent must collect all commonwealth levies applicable to the Grower's Horticulture Produce unless a levy exemption with the Grower's LRS number has been supplied to the Agent.

4.4. The Agent:

- (a) will act in the best interests of the Grower when selling Horticulture Produce under this agreement, and

will not sell the Grower's Horticulture Produce, other than on an arm's length basis, unless the Agent has first obtained the Grower's consent, in writing, to do so.

## 5. Commission and fees

5.1. Subject to subclause 12.2, the Agent will charge the Grower a commission of 15% to be charged on a percentage basis.

## 6. Price

6.1. The Agent will sell Horticulture Produce on behalf of the Grower for no less than the minimum price requirement where a minimum price has been indicated in writing by the Grower.

## 7. Payment

7.1. Subject to clauses 5.2 and 12, the Agent will pay to the Grower the proceeds of a sale of the Grower's delivered Horticulture Produce, less commissions calculated in accordance with subclause 5.1.

7.2. Payment under subclause 7.1 will be made:

(a) Within 35 days of the Agent selling the Horticulture Produce to a person on behalf of the Grower.

(b) by *EFT*, unless otherwise agreed in writing between the Agent and the Grower.

## 8. Delivery of Horticulture Produce

8.1. For the purposes of this agreement, delivery of Horticulture Produce occurs when the Horticulture Produce arrives at the address specified in accordance with subclause 8.4.

8.2. The Grower will bear the costs of delivery of the Horticulture Produce to the Agent, unless agreed otherwise by the parties in writing.

8.3. A Grower will comply with the following requirements when delivering Horticulture Produce to the Agent:

(a) the Grower will include with each delivery, documentation listing the quantity and type of all Horticulture Produce in the delivery

8.4. Where the Grower delivers Horticulture Produce to the Agent, the Grower is to deliver the Horticulture Produce to either “Stands 285-288 ‘C’ Building Sydney Markets NSW or 4 Beach Street Eastern Creek NSW” or as otherwise instructed in writing by the Agent from time to time.

8.5. The Agent will provide secure and suitable off-loading facilities at the premises referred to in subclause 8.4 so as to facilitate the safe and timely off-loading of the Horticulture Produce.

8.6. The Agent will be responsible for giving, or taking reasonable steps to ensure that the Grower is given, a document evidencing receipt of delivered Horticulture Produce.

8.7. The Agent will accept as proof of delivery of Horticulture Produce by the Grower, any document that acknowledges, reflects or evidences delivery:

(a) where delivery is to an address that is the usual place of business of the Agent, given to the Grower by it, its officers, employees or agents, or

where delivery is to an address that is not the usual place of business of the Agent, given to the Grower by any person who accepts delivery at that address and has the actual or ostensible authority of the Agent or is a person who is apparently an adult and appears to be engaged in the service of the business at that address.

## 9. Type of Horticulture Produce

9.1. The Grower will deliver the following types of Horticulture Produce to the Agent in accordance with the terms of this agreement:

(b) Fruit or Vegetable categories as agreed verbally, or

(c) as requested in writing by the Agent from time to time.

## 10. Quality of Horticulture Produce

10.1. Horticulture Produce delivered by the Grower must meet *Fresh Markets Australia’s FreshSpecs Produce Specifications* for each type of Horticulture Produce delivered by the Grower.

## 11. Quantity requirements

- 11.1. Horticulture Produce delivered by the Grower must meet the following quantity requirements:
- a) as agreed verbally prior to consignment, or
  - b) as requested in writing by the Agent from time to time.

## 12. Rejection of Horticulture Produce

- 12.1. The Agent will accept and be deemed to have accepted delivery of all Horticulture Produce delivered in accordance with this agreement, unless the circumstances set out in this clause apply.
- 12.2. The Agent may reject Horticulture Produce delivered by the Grower in the following circumstances:
- (d) if the Horticulture Produce delivered does not satisfy the type, quality or quantity requirements specified in clauses 9 to 11, above. However, if part of the delivered Horticulture Produce does not satisfy the requirements in clauses 9 to 11 and part of the delivered Horticulture Produce does satisfy those requirements, the Agent may only reject the part of the Horticulture Produce that does not meet those requirements
  - (e) if the Grower does not have title in the Horticulture Produce delivered by it
- 12.3. The Agent may only reject Horticulture Produce under subclause 12.2 within 24 hours of delivery of the Produce in accordance with this agreement.
- 12.4. Where the Agent rejects Horticulture Produce under this clause, the Agent will within 24 hours after the time at which the Produce is rejected, notify the Grower of the rejection by telephone, fax, email or other electronic means. Where a Agent fails to comply with this obligation, the Agent will be deemed to have accepted delivery of the Horticulture Produce.
- 12.5. The Agent will notify the Grower verbally and in writing of the rejection and the reasons for the rejection within 24-72 hours of taking delivery of the Produce.
- 12.6. Where Horticulture Produce is rejected by the Agent, the Agent may return the Produce to the Grower at the Grower's expense / hold the Produce at the locations set out in subclause 8.5 for collection by the Grower.

## 13. Pooling of produce

- 13.1. No pooling will be required under this agreement

## 14. Title

- 14.1. The Grower warrants that it has title in the Horticulture Produce that it delivers to the Agent.
- 14.2. Title in the Horticulture Produce will not pass to the Agent and remains with the Grower until the Agent sells the Horticulture Produce.

## 15. Insurance

The Agent has insurance for Horticulture Produce under the Agent's control.

- 15.1. The details of the insurance policy are as follows:
- (a) the insurance policy is with Lloyds of London
  - (b) the maximum amount of insurance cover provided by the policy in respect of claims that may be made in relation to the Horticulture Produce is \$800000.00
  - (c) the policy covers fire, theft and accidental damage (other than deterioration of quality or any other inherent losses).

## 16. Bad debts

- 16.1. The Agent will pursue payment for Bad Debts of the Grower arising under this agreement.

## 17. Dispute resolution

- 17.1. In the event that there is a dispute with the Agent under this agreement or the Code, the Grower should contact the person specified below:

### Agent contact

Name:	Matthew Palise
Phone:	0488 197 837
Email:	matt@redrichfruitsnsw.com.au

- 17.2. In the event that there is a dispute with the Grower under this agreement or the Code, the Agent should contact the person specified below:

### Grower contact

Name:	
Phone:	
Email:	

- 17.3. The parties agree that if a dispute arises between them in relation to any matter covered by this agreement, they will follow the dispute resolution procedure set out in Part 5 of the Code.

## 18. Termination

- 18.1. Subject to subclause 18.2, this agreement can be terminated by either party giving four (4) weeks' written notice of termination to the other party.
- 18.2. Despite anything else in this agreement, where the term of this agreement is 90 days or more, or is not specified, either party may terminate this agreement at any time within the cooling-off period being:
- (a) 14 days after the day on which this agreement was entered into, or

(b) such shorter or longer period as is agreed by the parties, provided the initial cooling-off period is not reduced by more than 7 days.

- 18.3. Where this agreement is terminated pursuant to subclauses 18.1, 18.2(a) or 18.2(b), any trade that has occurred under the agreement before the termination is governed by the terms of this agreement.
- 18.4. Subject to subclause 18.5, a party to this agreement who receives a payment (of money or other valuable consideration) for the purposes of, and directly related to, trade that would have occurred after the termination of the agreement, must return the payment to the party who made the payment within 14 days after the day on which the agreement is terminated.
- 18.5. A party required to return a payment under subclause 18.4 may deduct, from the amount to be returned, reasonable expenses incurred under the agreement for the purposes of, and directly related to, trade that would have occurred after the termination of the agreement.

## 19. Variation

- 19.1. This agreement may only be varied by further agreement in writing between the Agent and the Grower and be accepted by the parties to it either by signature by both parties or a written notice of offer and a written notice of acceptance.

# Annexure 1 - Definitions and interpretation

## 1. Definitions In this agreement-

**Agent** means a person who sells Horticulture Produce on behalf of a Grower to a person for a commission or fee and for the purposes of this agreement is the person specified on page 1 of the agreement.

**Bad Debt** means a bad debt of the Grower and is an amount owed by a person where:

- (a) an Agent arranges for the person to buy the Horticulture Produce of the Grower, and
- (b) the person does not pay the Agent for some or all of the Produce by the time that payment is required for the Produce.

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

**Grower** means a person who grows Horticulture Produce for sale and for the purposes of this agreement is the person specified on page 1 of the agreement.

**Horticulture Produce** means unprocessed fruit, unprocessed vegetables (including mushrooms and other edible fungi), unprocessed nuts, unprocessed herbs, other unprocessed edible plants, but does not include Nursery Products.

**Nursery Products** include: trees, shrubs, plants, seeds, bulbs, corns and tubers (other than edible tubers); propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers or foliage; and cut flowers or foliage.

**Reporting Period** means the period specified in subclause 3.1.

**Start Date** means the period specified in subclause 2.1.

**Statement Period** means the period specified in subclause 3.3.

**Term** means the period specified in subclause 2.1.

## 2. Interpretation

In this agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular
- (b) the word "includes" in any form is not a word of limitation
- (c) a reference to "\$" or dollars is a reference to Australian dollars
- (d) a reference to any legislation or legislative provision includes a statutory modification, substitution or re-enactment of that legislation or legislative provision
- (e) if any word or phrase is given a defined meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning.