

Red Rich Fruits (NSW) Pty Ltd Produce Agreement – Merchant



Grower	Merchant
Grower's Name:	Merchant's Name: Red Rich Fruits (NSW) Pty Ltd
ACN (if applicable):	ACN (if applicable): 144 810 364
ABN (if applicable):	ABN (if applicable): 98 144 810 364
Address:	Address: 4 Beach Street, Eastern Creek, NSW 2766
Email:	Email: sales@redrichfruitsnsw.com.au
Phone:	Phone: 02 9675 7395

Terms and conditions

1. Agreement

- 1.1. 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/s stated in, 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 17.

Event	Date
Start Date	Date the last party signs
Term	This agreement will commence on the Start Date until the agreement is terminated under clause 17

3. Merchant's reporting obligations

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

- (a) the quality and quantity of the Horticulture Produce bought by the Merchant
 - (b) the date or dates of the purchases
 - (c) the price paid for the Horticulture Produce
 - (d) the date on which the Horticulture Produce was delivered to the Merchant.
 - (e) the Commonwealth Levy deductions applied to the Horticulture Produce under subclause 4.3
 - (f) the services applicable to the Grower's Horticulture Produce under subclause 7.1
- 3.3. The Merchant will give the statement referred to in subclause 3.2 to the Grower within the Statement Period, which is 7 days following the end of the Reporting Period.

4. Merchant's other obligations

- 4.1. During the period the Grower's Horticulture Produce is under the Merchant's control, the Merchant 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 Merchant must exercise under subclause 4.1 must be exercised until the ownership of the Horticulture Produce passes to the Merchant.
- 4.3. The Merchant must collect all commonwealth levies applicable to the Grower's Horticulture Produce unless a levy exemption with the Growers LRS number has been supplied to the Merchant.

5. Price

- 5.1. The price that the Merchant will pay the Grower for Horticulture Produce delivered by the Grower will be

The amount agreed in writing between the Merchant and the Grower before delivery of the Produce to the Merchant / the amount agreed in writing between the Merchant and the Grower immediately upon delivery of the Produce to the Merchant.

6. Payment

- 6.1. Subject to clause 12, the Merchant will pay the Grower for the purchase of a Grower's delivered Horticulture Produce.
- 6.2. Payment under subclause 6.1 will be made:
- (a) within 35 days of the Grower delivering the Horticulture Produce to the Merchant
 - (b) by *EFT*, unless otherwise agreed in writing between the Merchant and the Grower.

7. Services by Merchant

- 7.1. Where the Grower delivers Horticulture Produce to the Merchant that is not the required delivery address the Merchant will provide a Freight Forwarding Service to the correct address and will deduct a pallet rate freight fee from the Growers weekly report under subclause 3.2 which is subject to change and communicated electronically.

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 Merchant, unless agreed otherwise by the parties in writing.
- 8.3. A Grower will comply with the following requirements when delivering Horticulture Produce to the Merchant:
 - (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 Merchant, 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 Merchant from time to time.
- 8.5. The Merchant 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 Merchant 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 Merchant will accept as proof of delivery of Horticulture Produce by the Grower, any document that acknowledges, reflects or evidences delivery:
 - (b) where delivery is to an address that is the usual place of business of the Merchant, given to the Grower by it, its officers, employees or agents, or
 - (c) where delivery is to an address that is not the usual place of business of the Merchant, given to the Grower by any person who accepts delivery at that address and has the actual or ostensible authority of the Merchant 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 Merchant in accordance with the terms of this agreement:
 - (a) Fruit or Vegetable categories as agreed verbally, or
 - (b) as requested in writing by the Merchant from time to time.

10. Quality of Horticulture Produce

11. 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.

12. Quantity requirements

- 12.1. 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 Merchant from time to time.

13. Rejection of Horticulture Produce

- 13.1. The Merchant 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.
- 13.2. The Merchant may reject Horticulture Produce delivered by the Grower in the following circumstances:
 - (a) 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 Merchant may only reject the part of the Horticulture Produce that does not meet those requirements
 - (b) if the Grower does not have title in the Horticulture Produce delivered by it
- 13.3. The Merchant may only reject Horticulture Produce under subclause 12.2 within 24 hours of delivery of the Produce in accordance with this agreement.
- 13.4. Where the Merchant rejects Horticulture Produce under this clause, the Merchant 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 Merchant fails to comply with this obligation, the Merchant will be deemed to have accepted delivery of the Horticulture Produce.
- 13.5. The Merchant 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.
- 13.6. Where Horticulture Produce is rejected by the Merchant, the Merchant 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.

14. Pooling of produce

- 14.1. No pooling will be required under this agreement

15. Title

- 15.1. The Grower warrants that it has title in the Horticulture Produce that it delivers to the Merchant.
- 15.2. Title in Horticulture Produce supplied by the Grower in accordance with this agreement will pass to the Merchant:
 - (a) where the price of the Horticulture Produce, or a method or formula to calculate the price has been agreed to by the Merchant and Grower before delivery as specified in subclause 5.1 of this agreement - on delivery of the Horticulture Produce to the Merchant
 - (b) where the circumstances in subclauses 14.2(a) do not apply, at the time that the parties agree on a price for the Horticulture Produce.

16. Insurance

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

16.1. 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).

17. Dispute resolution

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

Merchant 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 Merchant 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 17.2, 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 17.1, 17.2(a) or 17.2(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 17.5, 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 17.4 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 Merchant 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–

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.

Merchant means a person who purchases Horticulture Produce from a Grower for the purpose of resale of that Horticulture Produce, but does not include:

- (a) a person who purchases the Produce for export by that person, or
- (b) a person who purchases the Produce for retail sale by that person

and for the purposes of this agreement is the person specified on page 1 of the agreement.

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.

Merchant means a Merchant and for the purposes of this agreement is the person specified on page 1 of the agreement.

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.