



The N&A Fruit Distributors  
ABN 31 000 050 448  
Store 35 - 37, First Avenue, Building 'A', Sydney Markets, 2129 | PO Box 77, Sydney Markets, NSW, 2129  
Phone: (02) 9764 3622 | Fax: (02) 9746 2273 | Email: [sales@nafruit.com.au](mailto:sales@nafruit.com.au)

\_\_\_\_\_ **The N&A Fruit Distributors** \_\_\_\_\_ **(Company Name)**

\_\_\_\_\_ **31 000 050 448** \_\_\_\_\_ **(ABN)**

**Trading as** \_\_\_\_\_ **N&A Fruit Distributors** \_\_\_\_\_ **(the "Merchant")**

## **Terms of Trade** Effective from 10 October 2007 ("**Effective Date**")

This document contains the Merchant's Terms of Trade as defined by the Horticulture Code of Conduct ("**Code**") under the Trade Practices (Horticultural Code of Conduct) Regulations 2006.

The Merchant is only prepared to trade as Merchant under the Code.

### **DEFINITIONS**

In these Terms of Trade certain defined terms are used which have the meanings set out in the Dictionary in clause 20.

Words used in these Terms of Trade, which are defined in the Code, have the meanings set out in the Code.

### **TERMS AND CONDITIONS**

#### **General**

1. These Terms of Trade (Terms) have effect from the Effective Date and shall apply to all transactions between the Merchant and a Grower unless these Terms are replaced by another set of Terms at a later date.
2. These Terms only apply to Produce that is ready and available for resale to a third party. Any Produce that requires any additional services by the Merchant to ensure that the Produce is ready and available for resale to a third party, such as ripening, storing, repacking or sorting, will be subject to a service agreement that is separate to these Terms.
3. The Merchant may sell, dispose of, or otherwise deal with Produce purchased from any Grower at the discretion of the Merchant.

#### **Specific Code Requirements**

4. The Merchant specifies that:
  - a. Acceptance:  
The Produce is accepted by the Merchant at the **later** of:
    - (i) the time at which any Produce in the possession of the Merchant, in the opinion of the Merchant, is ready and available for sale;  
and
    - (ii) the time at which the Merchant and the Grower agree upon the price, in writing.
  - b. Quality:  
Unless it is otherwise agreed in writing, all Produce intended by the Grower to be the subject of a horticulture produce agreement ("**Subject Produce**") must meet the specifications known as the FreshSpecs Produce Specifications available at [www.freshmarkets.com.au/FreshSpec/freshspecs.html](http://www.freshmarkets.com.au/FreshSpec/freshspecs.html). A Grower must ensure that Subject Produce complies with those specifications. The fact that any Produce meets those specifications does not create any obligation on the part of the Merchant to buy any Produce. Subject Produce that meets those specifications is "**Complying Produce**".
  - c. Rejection:  
The Merchant may reject any Produce of the Grower at any time in the period after it is received and prior to the time it is accepted if the Merchant determines, in the Merchant's discretion, for any reason, that the Produce is not saleable at a reasonable price and must immediately notify the Grower of the rejection, by phone, fax, email or other electronic means of the Merchant making that determination. Within a reasonable time period after notice of the rejection of the Produce, the Grower must remove the Produce from the Merchant's premises in accordance with the directions of the Merchant. A written notice of the rejection will be provided by the Merchant within two (2) Business Days of making the determination.
  - d. Time for Payment:  
The Merchant agrees to make payment to the Grower of the agreed prices for Produce within the payment period detailed in the horticulture produce agreement between the parties. All payments must be made in accordance with these Terms of Trade.
  - e. Insurance:  
Details of insurance (if any) for Produce held by the Merchant is set out in the **Schedule** to this document.

#### **Merchant Payments and Obligations**

5. Payments to a Grower for Produce will be made by cheque or direct bank deposit to the credit of the Grower as specified in writing by the Grower.
6. The Merchant is authorised to deduct from the payment of any monies from time to time due to the Grower:
  - a. Any payments made by the Merchant, to a third party, at the request of the Grower where the Merchant has agreed to make such payments (eg. transport/unloading/packaging);
  - b. Levies and fees for services payable to a third party under Statute or any voluntary arrangement; and
  - c. Any monies due by the Grower to the Merchant on any other account.



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7. In addition to information to be provided under the horticulture produce agreement between the Merchant and any Grower the Merchant will provide the following details in respect of payments made to the Grower –
  - a. Grower's reference or shipping note number;
  - b. Description of the Produce purchased;
  - c. Details of any non-complying Produce that is disposed of, or otherwise dealt with, in accordance with these Terms;
  - d. A copy of any relevant Inspection Certificate;
  - e. Details of all levies, fees and taxes deducted from the Grower.
8. The Merchant will issue a Tax Invoice to the Grower in respect of any item for which Goods and Services Tax is chargeable.
9. The Merchant agrees to implement and maintain an industry recognised HACCP based food safety and quality system that is subject to an annual third party audit.

### Grower Obligations

10. The Grower agrees to provide documentation, that is suitable to the Merchant, that accurately describes the quantity, variety, size, class, description and characteristics of the Produce, including containers, prior to despatch to the Merchant.
11. The Grower warrants that Produce despatched to the Merchant will be fit for human consumption and comply with all requirements of any relevant Statute including requirements with respect to food safety, packaging and/or labelling.
12. The Grower warrants that all Produce despatched to the Merchant complies with any written product specification, including quality and shelf life, issued by the Merchant. Unless advised to the contrary, the product specifications issued by the Merchant include the FreshSpecs Produce Specifications available at [www.freshmarkets.com.au/FreshSpec/freshspecs.html](http://www.freshmarkets.com.au/FreshSpec/freshspecs.html)
13. The Grower must implement and maintain an industry recognised HACCP based food safety and quality system that is subject to an annual third party audit. Copies of any current certification must be sent to the Merchant upon request.
14. The Grower must supply details of its registered Australian Business Number (ABN) prior to, or at the time of, the despatch of Produce to the Merchant.

### Complying and Non-Complying Produce

15. Produce which does not comply with clauses 10, 11 and 12 of these Terms of Trade is non-complying Produce.
16. Where Produce is non-complying Produce the Merchant may deal with that Produce in the manner, and on the terms, agreed with the Grower.
17. The Grower authorises the Merchant to destroy or dispose of any non-complying Produce and any Produce which is rejected by the Merchant and is not removed by the Grower, within a reasonable time period, in accordance with paragraph 4(c) hereof in such a way as the Merchant determines is appropriate.
18. Where clause 17 applies any destruction and/or disposal of Produce is at the Grower's expense and may be deducted from any amounts payable by the Merchant to the Grower.
19. The Grower agrees that any claims for credit which result following the sale of the Produce by the Merchant to a third party, in respect of non-complying Produce may be deducted from the amounts payable by the Merchant to the Grower subject to the Merchant notifying the Grower.

### Dictionary

20. In this Agreement:
  - a. "**Business Day**" means a day which is not a Saturday, Sunday, public holiday, or Markets holiday, in the Relevant State;
  - b. "**Grower**" means a person who grows his or her own horticulture Produce for sale and who is subject to the Code.
  - c. "**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 Produce unfit for human consumption, unsuitable for sale or not meeting a particular specification or standard.
  - d. "**in writing**" means by letter, fax or email;
  - e. "**Produce**" means horticulture produce;
  - f. "**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
  - g. "**Week**" means the period commencing on a Saturday and ending on a Friday (inclusive).

### SCHEDULE:

#### Particulars of Insurances:

<b>Name of Insurer</b>	QBE Commercial
<b>Extent of Coverage</b>	\$250,000.00
<b>Maximum Amount of Claims</b>	\$250,000.00