

Horticulture Produce Market Services and Agency Agreement

Commercial Terms

	TBC	Market Agent
Name	The Berry Collective Pty Ltd	
ABN	53 628 416 277	
Address	16 Habib Drive, South Lismore, NSW 2480	
Representative	Joshua McGuiness	
Phone	+61 468 828 489	
Email	jmcguiness@theberrycollective.com.au	

Commercial terms	Details		
Start Date	01-July-2025		
End Date	The date the Agreement is terminated under clause 21.		
Delivery Address	The location for delivery of Produce agreed by the parties from time to time.		
Reporting Period	Monthly		
Statement Period	14 days after the end of each month in which the Produce is sold by the Market Agent on behalf of TBC as agent for any Grower or any Sale Proceeds becomes payable to TBC or any Grower		
Produce	Berry fruit advised to the Market Agent by TBC from time to time and classified by TBC as: 1 st class; Premium; or Retailer rejections/non-retail spec.		
Marketing Fee	For all other sales, No lower than 12% and non higher than 17% x gross Wholesale Return		
Other Costs	Primary Freight Cost at cost plus 0% Return Freight Cost at cost plus 0% Any applicable GST at the rate stipulated by the GST Act Any applicable taxes, duties, charges, levies or fees payable under any law in connection with this Agreement at the statutory rate Any sorting and repacking costs – Negotiated and communicated annually. Costs associated with destruction of Produce, provided such costs are approved in writing by TBC prior to the destruction.		
Payment Period	14 Days End of Week		
TBC's Bank Account	Account name The Berry Collective Pty Ltd	BSB 082 707	Account number 40 899 8556

Market Agent Insurance	Not held (in which case clause 15 does not apply)
Special Conditions	

By signing below the parties acknowledge they have read and accept these Commercial Terms and the attached Legal Terms.

**EXECUTED by THE BERRY COLLECTIVE PTY)
LTD ABN 53 628 416 277 in accordance with)
section 127 of the Corporations Act 2001:)**

Director/Secretary

Director

Name of Director/Secretary
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

Date

Date

**EXECUTED by [Insert Legal name and ABN] in)
accordance with section 127 of the Corporations)
Act 2001:)**

Director/Secretary

Director

Name of Director/Secretary
(BLOCK LETTERS)

Name of Director
(BLOCK LETTERS)

Date

Date

Legal Terms

1. Appointment

1.1. TBC appoints Market Agent as its agent to market, and sell, the Produce on behalf of TBC as agent for any Grower on the terms of this Agreement.

1.2. Market Agent:

- (a) acknowledges that TBC (and not Market Agent) is the Grower's agent to sell the Produce pursuant to a HPA;
- (b) may, subject to the terms of this Agreement, make Customer Sales on TBC's behalf in quantities and at prices determined by Market Agent

1.3. Market Agent must, for TBC's benefit, perform and discharge any obligations which TBC has regarding any Customer Sales, except to any extent directed otherwise by TBC in writing.

1.4. Market Agent must, for TBC's benefit, perform and discharge any obligations relating to Produce which TBC has under any HPA, or the Code, except:

- (a) any amount which would be payable to a Grower under a HPA must be paid to TBC; and
- (b) otherwise, to any extent directed by TBC in writing.

1.5. For the purposes of clause 1.4, the terms of any HPA relating to Produce will be deemed to be TBC's terms of trade for the purposes of the Code at the time Market Agent deals with the Produce, unless TBC has advised the Market Agent otherwise.

2. Term

2.1. This Agreement will commence on the Start Date and finish on the End Date, unless lawfully terminated earlier.

3. Special Conditions

3.1. The parties agree that the Special Conditions form part of this Agreement.

4. Market Agent reporting obligations

4.1. For each Reporting Period, Market Agent will give TBC a statement for the Reporting Period specifying, for each Grower's Produce:

- (a) a breakdown of Produce, including by brand and type of produce, sold into each market segment (including the prevailing sale prices);
- (b) calculations of actual (or expected where actuals are not known) returns;
- (c) anticipated prices for the next 7 days;
- (d) the dates on which the Grower's Produce was delivered to Market Agent;
- (e) the dates of sale of the Grower's Produce by Market Agent;
- (f) the type and quantity of the Grower's Produce sold;
- (g) the price received for the Grower's Produce sold;
- (h) details of each amount deducted by Market Agent from the sale price of the Produce; and
- (i) details of any amounts of the Grower's Produce not sold by Market Agent on behalf of TBC, including:
 - I. the reasons why the Grower's Produce was not sold;
 - II. details of any amount of the Grower's Produce destroyed by Market Agent on behalf of TBC, and the incurred costs of destruction; and
 - III. details of any amounts of the Grower's Produce held by Market Agent on behalf of TBC at the end of the Reporting Period (**Statement**).

4.2. Market Agent will give TBC the Statement within the Statement Period.

4.3. Market Agent will communicate to TBC daily (during any period in which Produce is dealt with under this Agreement) what consignments of Produce in full or part were not sold, as well as the total closing stock of Produce there is daily (excluding non trade days).

4.4. TBC may require Market Agent to use specific inventory and quality assurance software in relation to Produce, at the discretion of TBC. In that event, TBC will supply, and Market Agent will pay such portion of the cost of Market Agent's use of, such software as reasonably determined by TBC, and all data in or generated by the software is the property of TBC.

5. Market Agent's other obligations

5.1. While the Produce is under Market Agent's control, Market Agent will exercise all reasonable care and skill in handling and storage to ensure that the Produce remains of the highest quality possible until title to the Produce passes to a Customer.

5.2. Market Agent:

- (a) will act in the best interests of the Grower, and otherwise the best interests of TBC, when selling Produce under this Agreement;
- (b) will not sell the Produce other than on an arm's length basis, unless Market Agent has first obtained TBC's prior written consent; and
- (c) will not prioritise sale or other supply of its own or any third party's produce above sale of the Produce.

6. Marketing Fee and Other Costs

6.1. Subject to clause 6.4, TBC will pay Market Agent the Marketing Fee if the Produce delivered by TBC is sold by Market Agent and payment is received from the Customers by Market Agent.

6.2. TBC will pay Market Agent the Other Costs in respect of Customer Sales.

6.3. Market Agent will pay TBC the Sale Proceeds in full for Produce sold, regardless of whether the Customer or Customers pay/s for the Produce in whole or part or not at all.

6.4. The Marketing Fee and Other Costs will be deducted by Market Agent from the Gross Wholesale Return and will be paid directly to itself or other third parties prior to paying the Sale Proceeds to TBC.

6.5. If there is no Gross Wholesale Return from which to deduct the Other Costs, TBC will pay Market Agent the Other Costs within 14 days of Market Agent's request for payment.

7. Price

7.1. Market Agent will use its best endeavours to sell Produce for the best possible price.

8. Sale Proceeds

8.1. Market Agent will pay TBC the Sale Proceeds to TBC's Bank Account within the Payment Period.

9. Market Agent general obligations

9.1. Market Agent will:

- (a) actively consult with TBC, and comply with TBC's reasonable directions, as to the marketing and sale of Produce;
- (b) develop marketing and sale programmes to attempt to ensure the optimum marketability of the Produce;
- (c) actively promote the Produce through appropriate media channels in the market using reasonable efforts to maximise returns;
- (d) display any logo, warning and/or instruction as required by law or a Customer's quality assurance programmes except to the extent the Grower or TBC is obligated to display any logo, warning and/or instruction on or in relation to the Produce;
- (e) attend to Customer Sales, including the negotiation of any dispute

relating to the Produce (eg price and/or quality), unless directed otherwise by TBC;

- (f) take all reasonable measures to minimise Customer credit risk; and
- (g) in the ordinary course of business issue invoices to Customers weekly or at such other reasonably practicable times.

10. Delivery of Produce

- 10.1. For the purposes of this Agreement, delivery of Produce occurs when the Produce arrives at the Delivery Address.
- 10.2. TBC will bear the costs of delivery of the Produce by the Grower to the Delivery Address (**Primary Freight Cost**).
- 10.3. TBC will use best endeavours to provide Market Agent with accurate forecasts as to Produce crop yields prior to the beginning of each season as reasonably requested by Market Agent, with weekly updates during harvesting. As soon as TBC becomes aware of any reason to vary forecasts (eg due to food safety, Produce quality, pest infestation, disease or other affliction), TBC will notify Market Agent immediately. TBC will not, however, be liable to Market Agent for any deviation from forecast Produce crop yields.
- 10.4. Prior to dispatching any Produce, TBC will notify Market Agent in writing of the type, quantity, Produce Characteristics and expected delivery date of the Produce to be delivered from time to time.
- 10.5. TBC will email Market Agent a copy of any relevant consignment note or delivery docket on the day TBC dispatches any Produce.
- 10.6. Market Agent will provide secure and suitable off-loading facilities at the Delivery Address so as to facilitate the safe and timely off-loading of the Produce. Subject to clause 6.2, Market Agent will be responsible for the off-loading of the Produce.

- 10.7. Market Agent will be responsible for giving, or taking reasonable steps to ensure that TBC is given, a document evidencing receipt of delivered Produce.

11. Market Agent's workplace obligations

- 11.1. The Market Agent is taking and will continue to take all steps in its business to protect fundamental human rights and values in the workplace, including business policies to ensure:
 - (a) strict compliance with applicable laws;
 - (b) a safe and clean workplace;
 - (c) fair terms of employment with no discrimination or forced labour;
 - (d) no underage workers; and
 - (e) no physical punishment.
- 11.2. Market Agent hereby irrevocably grants TBC, with 24 hours notice, the right to enter and inspect Market Agent's premises and property to undertake an assessment of:
 - (a) Market Agent's compliance with this Agreement; and
 - (b) any matter relevant to a HPA with a Grower.

12. Rejection of Produce

- 12.1. Market Agent will accept all Produce delivered to the Delivery Address unless rejected by Market Agent.
- 12.2. Market Agent may only reject Produce if:
 - (a) neither TBC nor the Grower has title free from any encumbrance in the Produce; or
 - (b) the Produce cannot be lawfully sold;
 - (c) the Produce is not delivered in accordance with this Agreement.
- 12.3. Market Agent must advise TBC of any Produce TBC or a Grower has delivered which Market Agent rejects within 6 hours of the Produce being rejected.

12.4. If Market Agent rejects any Produce TBC or the Grower has delivered, it must notify TBC in writing of the rejection, and the reasons for rejection, within 24 hours of the Produce being rejected.

12.5. If Market Agent rejects any Produce, it must be delivered as directed by TBC (at TBC's cost), and Market Agent must ensure the Produce is kept in optimal storage conditions for the Produce until the rejected Produce is delivered.

13. Produce Pooling

13.1. Market Agent must not pool Produce with other produce unless that has been authorised by TBC in writing. TBC may give or refuse to give such authorisation in its absolute discretion.

14. Title and risk

14.1. Title and risk in the Produce does not pass to Market Agent and remains with the Grower or TBC (as applicable) until Market Agent sells the Produce to a Customer.

15. Insurance

15.1. If Market Agent is specified as holding insurance in the Commercial Terms, Market Agent must insure Produce under Market Agent's control to the extent specified in the Commercial Terms.

16. Bad Debt

16.1. Risk in relation to any Bad Debt rests with the Market Agent and regardless of payment by any Customer, Market Agent will pay TBC an amount equal to the Sale Proceeds in relation to any Produce within 21 days of the Customer's due date for payment.

17. Intellectual Property Rights

17.1. Each party acknowledges it has no claim or interest in respect of any Intellectual Property Rights owned, licensed or used by the other party.

18. Confidentiality

18.1. Each party must:

- (a) keep confidential, and take all steps necessary to safeguard the confidentiality of, the other party's Confidential Information; and
- (b) use the other party's Confidential Information only for the purpose of performing the party's obligations under this Agreement.

18.2. A party will not be in breach of clause 18.1 where the party discloses the other party's Confidential Information to:

- (a) the party's Associates, solicitors, auditors, insurers, accountants or other professional advisers, or financiers, on substantially the same terms as clause 18.1;
- (b) a prospective purchaser of the party, or its assets or shares, on substantially the same terms as clause 18.1; and
- (c) the extent required for a party to give effect to its rights and/or obtain remedies in connection with this Agreement.

18.3. A party will not be in breach of clause 18.1 where the party is legally compelled, or required by the rules of any recognised stock exchange, to disclose any or all of the other party's Confidential Information, provided that:

- (a) before making any such disclosure, to the extent legally possible, the party notifies the other party and provides the other party with a reasonable opportunity to take any steps the other party considers appropriate to protect the confidentiality of the information; and
- (b) any such disclosure is no more than the minimum required for the party to comply with its obligations.

19. Dispute resolution

19.1. If there is a dispute under this Agreement or the Code (**Dispute**), each party should contact the other

party's representative named in the Commercial Terms.

19.2. A party will not commence arbitration or court proceedings (except proceedings seeking interlocutory relief), or any other proceedings in respect of a Dispute, unless that party has used reasonable endeavours to comply with this clause.

19.3. A party complaining about a Dispute (**Complainant**) must notify the other party (**Respondent**) of:

- (a) the nature of the Dispute;
- (b) what outcome the Complainant wants; and
- (c) what action the Complainant thinks will settle the Dispute (**Notice of Dispute**).

19.4. Once a Notice of Dispute has been given, the parties will use their reasonable endeavours to agree about how to resolve the Dispute

19.5. If the parties cannot agree about how to resolve the Dispute within 14 Business Days of the Notice of Dispute being given, either party may refer the Dispute to a mediator agreed by the parties or, if the parties cannot agree about who should be the mediator within 21 Business Days of the Notice of Dispute being given, either party may ask the President of the Law Society of New South Wales (**Appointor**) to appoint a mediator.

19.6. If any fee is payable to the Appointor for appointing the mediator, it is payable by the party requesting the mediator's appointment.

19.7. Unless agreed otherwise, the mediator's fees and charges are payable by the party requesting the mediator's appointment.

19.8. The role of any mediator is to assist the parties in negotiating a resolution of the Dispute. A decision of a mediator is not binding on the parties.

19.9. The mediator may decide the time and place for mediation, provided that the place for mediation is within New South Wales.

19.10. The parties will attend the mediation and use their reasonable endeavours to resolve the Dispute.

19.11. A party is taken to attend mediation if that party is represented at the mediation by a person who has the authority to enter into an agreement to settle the Dispute on behalf of that party.

19.12. If at least one Business Day has elapsed since mediation commenced and the Dispute has not been finally resolved, either party may ask the mediator to terminate the mediation and the mediator will do so.

20. Force Majeure

20.1. Subject to the provisions of clause 20.4, no party will have any obligation to observe or comply with the terms of this Agreement to the extent that the observance of, or compliance with, those terms is prevented by Force Majeure.

20.2. A party claiming the benefit or protection of clause 20.1 must at its own cost:

- (a) promptly give notice to the other party, as soon as it becomes aware of the Force Majeure, of the occurrence and circumstances in respect of which the claim arises;
- (b) take all reasonable steps to ameliorate and remedy the consequences of that occurrence without delay and give the other party on request details of the steps that have been taken or are to be taken; and
- (c) resume performance in full of its obligations under this Agreement as soon as reasonably practicable and give the other party notice as soon as it is able to resume performance of its obligations.

20.3. If a party is unable to observe or comply with the terms of this Agreement due to Force Majeure and it does not resume performance of its obligations within 90 days after that Force

Majeure arose, then the other party may terminate this Agreement by notice in writing to the other party.

- 20.4. Force Majeure in no way impacts the obligation of a party to pay any monies owing to another party in accordance with the terms of this Agreement.

21. Termination

- 21.1. This Agreement can be terminated by either party giving four (4) weeks' written notice of termination to the other party.
- 21.2. Either party may terminate this Agreement with immediate effect by giving notice in writing to the other party, if:
- (a) the other party is in serious breach of a material term of this Agreement such that the breach cannot be remedied;
 - (b) the other party is in breach of this Agreement and fails to remedy the breach within 30 days of receiving written notice of the breach; or
 - (c) an Insolvency Event happens to the other party (to the extent such termination is permitted by law).
- 21.3. TBC may terminate this Agreement with immediate effect by giving notice in writing to Market Agent, if Market Agent is in breach of clause 11.1 or 11.2.
- 21.4. Expiration or termination of this Agreement does not affect:
- (a) any rights of the parties which may have accrued before the date of termination; or
 - (b) the rights and obligations of the parties which survive termination or expiry of this Agreement.
- 21.5. The provisions of this Agreement which are capable of having effect after expiration or termination of this Agreement will remain in full force and effect following its expiration or termination.
- 21.6. Upon termination or expiry of this Agreement for any reason, each party

must return to the other party all Confidential Information and any intellectual property of the other party, or if not capable of return, destroy it and certify its destruction to the other party.

- 21.7. If Market Agent possesses or controls any Produce delivered under this Agreement at the time of expiry or termination of this Agreement, Market Agent will deliver the Produce to TBC (at the Market Agent's expense), unless TBC instructs Market Agent to destroy the Produce before Market Agent delivers the Produce.

22. Goods and Services Tax

22.1. Interpretation

In this clause 22, a word or expression defined in the GST Act has the meaning given to it in the GST Act.

22.2. GST Gross Up

If a party makes a taxable supply under or in connection with this Agreement, then the amount payable by the recipient of the supply to the supplier of the supply is equal to the consideration for the supply (less any GST payable on the supply) (the GST exclusive consideration) increased by an amount calculated by multiplying the GST exclusive consideration by the rate of GST prevailing at the time the supply is made.

22.3. Reimbursement

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then is increased in accordance with clause 22.2.

22.4. Tax Invoice

A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

23. Variation and Changes in Arrangements

The Agreement may only be varied by written agreement between the parties.

24. Miscellaneous

24.1. Interpretation

In this Agreement (unless the context otherwise requires):

- (a) the terms in the Commercial Terms have the meaning as set out in the Commercial Terms;
- (b) “including” (and its related forms, such as “includes”) will be understood as meaning “including without limitation”;
- (c) reference to legislation or to any legislative provision includes any amendments, modifications or re-enactments of that legislation, and any legislation substituted for or replacing, and any statutory instrument issued under, that legislation;
- (d) reference to a person includes a natural person, a body (whether corporate or otherwise), a partnership, a government, and a governmental or local authority or agency;
- (e) where a party comprises two or more persons, an agreement or obligation to be performed or observed by that party binds those persons jointly and severally and a reference to that party includes a reference to any one or more of those persons;
- (f) reference to a year, month or day is a reference to a calendar year, month or day; and
- (g) a provision of this Agreement will not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.

24.2. Legal Advice

Each of the parties acknowledge that they have had the opportunity to seek legal advice in respect of this Agreement and

they have read and understood the terms of this Agreement.

24.3. Notices

- (a) A notice under this Agreement may be given by hand delivery, prepaid post or any electronic means, including by email, but must be given to the address details stated in the Grower's or TBC's details (as applicable) in the Commercial Terms.
- (b) Notice given in accordance with 24.3(a) takes effect when received (or at a later time specified in it), and is taken to be received:
 - I. if hand delivered, on delivery;
 - II. if sent by prepaid post, 3 Business Days after the date of posting (or seven Business Days after the date of posting if posted to or from outside Australia);
 - III. if sent by email, when transmitted, provided that the sender did not receive any automated message advising that the email had not been successfully transmitted,

but if the delivery or receipt is not on a Business Day or is after 5pm on a Business Day, the notice is taken to be received at 9am on the Business Day after that delivery or receipt.

24.4. Assignment

No party can assign, charge or encumber any rights or obligations under this Agreement, or attempt or purport to do so, without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

24.5. Costs

Each party must pay its own costs of negotiating, preparing and executing this Agreement.

24.6. Counterparts

This Agreement may be executed in counterparts. All executed counterparts constitute one document.

24.7. No Merger

The rights and obligations of the parties under this Agreement do not merge on completion of any transaction or matter contemplated by this Agreement and are additional to any right, power or remedy which they may have under general law or otherwise.

24.8. Entire Agreement

This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any previous arrangements between the parties in relation to that subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter of this Agreement are those expressed in this Agreement.

24.9. Further Action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Agreement and the transactions or matters contemplated by it. If the deletion of any clause of this Agreement under this clause would materially alter the economic effect of this Agreement (taking the Agreement as a whole) from the perspective of any party, that part of the Agreement is to be amended so as to achieve as nearly as possible the same economic effect as the original provision.

24.10. Severability

A clause or part of a clause of this Agreement that is void, illegal or unenforceable may be severed from this Agreement and the remaining clauses or parts of the clause of this Agreement continue in force.

24.11. Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

24.12. Cooperation

Each party will sign all documents and do all things necessary or desirable to give full effect to this Agreement, and will procure its directors, officers, employees, agents, contractors, clients, customers, licensees and Related Bodies Corporate to declare, make or sign all documents and do all things necessary or desirable to give full effect to this Agreement.

24.13. Relationship of parties

This Agreement does not create a relationship of employment or partnership between the parties. Except as expressly provided in this Agreement, no party may act, or has any authority to act, under this Agreement as agent of or trustee for any other party, or in any way bind or commit any other party to any obligation.

24.14. Cumulative Rights

The rights, powers and remedies of the parties under this Agreement are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this Agreement.

24.15. Governing Law and Jurisdiction

This Agreement is governed by the laws of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales to hear and decide any claim, suit, action or dispute arising out of or in connection with this Agreement (including as to its formation or validity).

25. Definitions

25.1. Definitions

In this Agreement:

Agreement means this horticulture produce agreement comprising the Commercial Terms and Legal Terms;

Appointor has the meaning given to that term in clause 19.5;

Associate means:

- (a) in respect of a body corporate, a director, secretary, shareholder or a Related Body Corporate;
- (b) a director, secretary or shareholder of a Related Body Corporate;
- (c) a trustee of any trust under which any of the persons described in clause(a) above and/or clause (b) above may benefit; and
- (d) a person with whom the body corporate is acting, or proposes to act, in concert or is, or proposes to become, associated, whether formally or informally, in any other way.

Australian Consumer Law means the *Australian Consumer Law* under the *Competition and Consumer Act 2010 (Cth)*;

Bad Debt means an amount owed by a Customer where the Customer does not pay Market Agent for some or all of the Produce in accordance with the applicable Customer Sale;

Business Day means a day on which banks are open for general banking business in the place where an act is to be performed or a notice is received, other than a Saturday, Sunday or public holiday;

Code means the Horticulture Code of Conduct prescribed as a mandatory industry code for the purpose of section 51AE of the *Competition and Consumer Act 2010 (Cth)* by the *Competition and Consumer (Industry Codes–Horticulture) Regulations 2017 (Cth)*, as amended from time to time;

Complainant has the meaning given to that term in clause 19.3;

Confidential Information means all information of a party, whether or not in a material form, disclosed to the other party, but excluding information to the extent it has become common knowledge, or come to the other party's knowledge, other than through disclosure in breach of this Agreement;

Consumer Guarantee means any guarantee, warranty, condition, obligation, right or liability, or anything of a similar nature, contained in, or imposed or implied by, the Australian Consumer Law or any similar legislation;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Customer means a purchaser of Produce;

Customer Sale means a sale of Produce by Market Agent to a Customer;

Dispute has the meaning given to that term in clause 19.1;

Force Majeure means a circumstance beyond the reasonable control of a party which results in the party being unable to observe or perform on time an obligation under this Agreement, including:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires, any natural disaster or weather event;
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution; and
- (c) strikes;

Gross Wholesale Return means the actual gross amount invoiced to Customers for Produce before the deduction of any Marketing Fee and Other Costs;

Grower means the grower of Produce;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

HPA means a horticultural produce agreement for the purposes of the Code;

Insolvency Event includes:

- (a) the party becoming insolvent within the meaning of section 95A of the Corporations Act;
- (b) the party ceasing to carry on its business, ceasing to be able to pay its debts as they become due or suspending payment generally, or threatening to cease to carry on its business or to pay its debts;
- (c) a meeting being convened, resolution proposed, petition presented or order made for the winding up of the party;
- (d) any step being taken to appoint a receiver, receiver and manager, provisional liquidator, liquidator, administrator or other like person in relation to all or any material asset of the party;
- (e) the party disposing of the whole or a substantial part of its assets,

operations or business, other than in the ordinary course of business;

- (f) a mortgagee or chargee taking, attempting, or indicating an intention to exercise its rights under any security of which the party is the mortgagor or chargor; or
- (g) any step being taken by the party to enter into any arrangement with, or assignment for the benefit of, its creditors other than for the purposes of a bona fide scheme of solvent reconstruction or amalgamation;

Intellectual Property Rights includes all copyright, trade mark, design, patent, circuit layout and plant breeders' rights; trade, business, company and domain names; rights to have information kept confidential; other similar proprietary rights however described; and rights to registration of such rights existing anywhere in the world, whether created before, on and/or after the date of this Agreement;

Notice of Dispute has the meaning given to that term in clause 19.3;

Primary Freight Cost has the meaning given to that term in clause 10.2;

Produce means the produce described in the Commercial Terms;

Produce Characteristics means details of any issues or characteristics relating to the Produce which may impact upon the shelf life or sale price, including a statement as to the quality (or designated "class") of the Produce and whether the Produce has been stored prior to delivery, dipped or subjected to a level of rain or excessively dry conditions which may be reasonably likely to impact upon the quality or shelf life of the Produce;

Related Body Corporate has the meaning given to that term in the Corporations Act;

Respondent has the meaning given to that term in clause 19.3;

Return Freight Cost means the cost of loading any rejected Produce, transporting any rejected Produce from the Delivery Address to the Grower and unloading the rejected Produce;

Sale Proceeds mean the Gross Wholesale Return less Marketing Fee and Other Costs; and

Statement has the meaning given to that term in clause 4.1.