

# Terms of Trade - Merchant

(Commencement Date - 17<sup>th</sup> April 2024)

## 1. Use of this Document

This Document comprises the Merchant Terms of Trade for the purposes of the Horticulture Code of Conduct contained in the *Competition and Consumer (Industry Codes - Horticulture) Regulations 2017* (Cth) (**Code**).

It sets out the general terms upon which Brimcove Pty Ltd (ACN 080 546 041) as trustee for the GW and LI Unit Trust (ABN 14 976 092 408) trading as Etherington will trade with Growers in respect of horticultural produce. Terms not defined in this document have the meaning ascribed to them in the Horticulture Produce Agreement (**HPA**).

For specific arrangements between Etherington and the Grower only please refer to the HPA. Specific terms may refer to applicable fees and charges for services provided, reporting and payment processes and dispute resolution mechanisms.

## 2. Horticulture Produce Agreement Prevails

Whilst this document sets out Etherington's general terms of trade, the Code requires transactions between a Grower and Etherington to be conducted pursuant to a HPA. In the event of any inconsistency between this document and the HPA, the HPA prevails to the extent of the inconsistency.

## 3. Etherington is a Merchant

Etherington acts as a Merchant and is only prepared to trade as a Merchant for the purposes of the Code.

## 4. Requirements for delivery and quality of Produce

Produce supplied to Etherington must comply with the following requirements:

- (a) prior to delivery, the Grower must provide documentation that is suitable to Etherington that accurately describes the quantity, variety, size and class of the Produce, including packaging;
- (b) the Produce must be fit for human consumption and comply with any statutory regulations or applicable laws including laws or regulations relating to food safety, packaging and/or labelling;
- (c) the Grower must have complied with the *National Measurement Act 1960* (Cth) and *National Trade Measurement Regulations 2009* (Cth) as amended from time to time with respect to the Produce;
- (d) the Produce must be fit for its purpose; and
- (e) the Produce must be packed, presented and comply with the following product specifications including quality and shelf life:
  - (1) the Produce Specification Requirements that Etherington has provided to the Grower or otherwise agreed in writing with the Grower in accordance with the HPA (if any); or

- (2) if there are no requirements agreed pursuant to 4(e)(1), the FreshSpecs Produce Specifications.

The Grower must not dispatch Produce to Etherington that does not comply with the requirements in paragraph 4, has not been solicited by Etherington and where a HPA has not been accepted by the Grower.

## 5. Circumstances where Etherington may reject Produce

Etherington is entitled to reject all or some of the Produce where:

- (a) the Grower does not have all right, title and interest in and to the Produce;
- (b) the Grower cannot pass title to Etherington clear of all encumbrances, claims and other adverse interests;
- (c) the Grower is not the grower of the Produce; or
- (d) the Produce does not comply with paragraphs 4(a) to 4(e) above.

## 6. Etherington may claim a credit for Produce

Etherington is also entitled to claim a credit for Produce that it has purchased whether or not it has been onsold to a third party in accordance with the HPA.

## 7. Requirements where produce is rejected

Etherington may elect to reject Produce before Delivery or no later than two Business Days of "Delivery" occurring for the purposes of the HPA.

Etherington must within 24 hours give notice to the Grower of the decision to reject Produce and give notice of the reasons for such rejection within the set Business Day period, set out in the HPA after the day that Etherington elects to reject the Produce.

Where Produce is rejected, Etherington is deemed not to have accepted that Produce, the Grower will retain title and risk in the Produce and the Grower is not entitled to the Purchase Price.

## 8. Purchase Price and Additional Fees

The Purchase Price for Produce as well as Additional Fees for actions performed by Etherington for the benefit of the Grower will be set out in the HPA which is required to be accepted by the Grower. Any settlement discounts or rebate agreements required by the purchaser will be itemised on the proceeds advice and applied to the gross sales price prior to the calculation of the price payable to the Grower.

## 9. Payment of Purchase Price and Additional Fees

Payment of the Purchase Price, Agreed Price or any other Additional Fees will be made no later than 15 Business Days from the issuance of a Proceeds Advice.

For the avoidance of doubt, Etherington may still elect to charge for the Additional Fees even where the Produce is rejected in accordance with the HPA.

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#### **10. Independent Legal Advice**

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Etherington recommends that Growers seek independent legal advice in relation to the HPA prior to it being entered into between Etherington and the Grower.

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#### **11. Changes to Terms of Trade**

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Etherington may from time to time amend these Terms of Trade in accordance with the requirements of the Code, provided that Etherington provides the Grower with notice of the changes to the Terms of Trade. Such notice can be provided by way of publication on Etherington's website.

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#### **12. Grower Acknowledgement**

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The Grower acknowledges that they must not supply any Produce to Etherington without having accepted the HPA in writing.

Unless a Grower has entered into a HPA with Etherington, Etherington will have no obligations of any kind to the Grower in respect of Produce despatched by the Grower to Etherington.

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#### **13. Insurance (if applicable)**

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Etherington holds the following insurances for Produce:

<b>Insurer</b>	<b>WFI Insurance Limited</b>
<b>Maximum amount of claims covered by insurance</b>	\$300,000
<b>Defined events covered by insurance</b>	Property in physical and legal control including fire and theft