

HORTICULTURE PRODUCE AGREEMENT

This Agreement is made between:

Seven Fields Operations Pty Ltd ACN 106 499 656 Walnut Street, Richmond, Victoria ("**SFO**")

AND

The person specified in Item 2 of the Schedule ("**Grower**")

RECITALS

- A. The Grower is a grower of Produce on the Orchard.
- B. SFO carries on the business of sorting and packing fresh Produce and also selling Produce which it has packed on behalf of itself and other growers, and transporting that Produce to Customers.
- C. The Grower and SFO agree that SFO will sell on behalf of the Grower the Grower's Produce on the terms of this Agreement
- D. This Agreement complies with the Horticulture Produce Agreement for the purposes of the Horticulture Code, and for the purposes of this Agreement SFO is acting as an agent.

1. OPERATIVE PART

1.1 Introductory clauses

(a) Definitions

In this Agreement:

“Agreement” means this Horticulture Produce Agreement and any variation that is made in writing.

“Commencement Date” means the date specified in Item 1 of the Schedule.

“Customer” means a third party that is receiving the Produce at the direction of SFO.

“Delivery” has the meaning set out in clause 4(a).

“Force Majeure” means:

- (i) Act of God, explosion, earthquake, landslide, washout, flood, lightning, storm or tempest
- (ii) strikes, lockouts, stoppages or restraints of labour or other industrial disturbances
- (iii) war, acts of public enemies, riot or civil commotion or sabotage
- (iv) breakdown of or accident to plant, machinery or equipment, or
- (v) restraints, embargoes or other unforeseeable actions of the government.

“GST” means goods and services tax.

“Horticulture Code” means the Horticulture Code of Conduct set out in the Competition and Consumer (Industry Codes – Horticulture) Regulations 2017.

“Orchard” means the orchard from which the Grower’s Produce is sourced, as specified in Item 4 of the Schedule.

“Packing Shed” means the packing shed specified in Item 5 of the Schedule.

“Produce” means the fruit delivered to SFO from time to time by or on behalf of Grower for packing and sale.

“PPSA” means the Personal Property Securities Act 2009 (Cth).

“Reporting Period” means the period specified in Item 10 of the Schedule.

“Schedule” means the schedule which forms part of and is found at the end of this Agreement.

“Security Interest” has the same meaning as given to that term in the PPSA.

“Services” means any packing and other services provided by SFO to the Grower pursuant to the Services Agreement.

“Services Agreement” means the agreement between SFO and the Grower for the provision of Services.

“Statement Period” means the period specified in Item 12 of the Schedule.

“Term” means the period specified in clause 3.

(b) Interpretation

In this Agreement, headings do not affect interpretation and unless the context otherwise requires:

- (i) the singular includes the plural and vice versa;
- (ii) reference to a gender includes other genders;
- (iii) “person” includes firm, an unincorporated association or an authority
- (iv) a reference to any instrument includes a reference to that instrument as varied from time to time;
- (v) a reference to a person includes his executors, administrators, successors and permitted assigns;
- (vi) where two or more persons are a party they are bound jointly and severally; and
- (vii) a reference to any legislation includes all amendments to it and any legislation enacted in substitution for it and all statutory instruments issued under it to and in force.

2. AGREEMENT

For the Term of this agreement, the Grower agrees to deliver, and SFO agrees to arrange, on behalf of the Grower, the sale of Produce of the type, quantity, quality and specifications stated in this agreement, for the payment of a commission calculated in accordance with this agreement.

3. TERM

- (a) This Agreement will commence on the Commencement Date.
- (b) The term of this Agreement is 12 months from the Commencement Date unless terminated earlier in accordance with this Agreement.
- (c) This Agreement will automatically renew for a further period of 12 months unless either party provides written notice to the other party that the Agreement is not renewed. This notice must be provided before the date specified in Item 3 of the Schedule.

4. DELIVERY

- (a) For the purpose of this Agreement, delivery of the Produce occurs on the later of:
 - (i) the Produce arriving at the address specified in Item 5 of the Schedule; and
 - (ii) completion of all Services by SFO pursuant to the Services Agreement.
- (b) The Grower will bear the costs of delivery of the Produce to SFO, unless agreed otherwise by the parties in writing.
- (c) The Grower must provide at least 72 hours notice to SFO of its intention to deliver Produce and otherwise deliver Produce to the Packing Shed at times agreed with SFO.
- (d) The Grower must not dispatch Produce to SFO that:
 - (i) does not comply with the requirements of this Agreement;
 - (ii) has not been solicited by SFO.

5. SFO COVENANTS AND LIABILITY

- (a) To the maximum extent permitted by the Horticulture Code and at law, SFO shall not be liable to the Grower as to:
 - (i) the accuracy, description, relevance, completeness, merchantable quality, fitness for any purpose or any other matter relating to the agency services under this Agreement;
 - (ii) loss of, or damage to, the Produce by any cause (including lawful confiscation) except to the extent such loss or damage is caused by an act or omission of SFO;
 - (iii) any death of, or injury to, any person caused directly or indirectly by the Produce;
 - (iv) any claim in relation to the consumption of the Produce;
- (b) Notwithstanding any other clauses in this Agreement, if any liability is found to attach to SFO then SFO's liability is limited to:
 - (i) the supplying of the agency services again, or
 - (ii) the cost of supplying the agency services.
- (c) SFO shall not be liable whatsoever to the Grower for:
 - (i) any loss of profit, loss of goodwill, loss of production, loss of business, loss of opportunity, business interruption, loss of revenue, loss of contract, loss of anticipated savings or anticipated revenue;
 - (ii) any consequential, special, indirect, exemplary or punitive damages of any nature.

6. GROWER'S COVENANTS AND ACKNOWLEDGEMENTS

- (a) The Grower covenants that it:
 - (i) will implement and maintain an industry recognised HACCP based food safety and quality system that is subject to annual third party audit, and

- (ii) will, by 1 January 2019, be certified to:
 - Freshcare Code of Practice Food Safety and Quality; or
 - GLOBALG.A.P. Integrated Farm Assurance; or
 - Safe Quality Food (SQF).
 - (iii) will provide copies of any current certification with respect to HACCP or any of the certifications obtained under subclause 6(a)(ii) above to SFO upon request.
 - (iv) maintains spray diaries for all applications of sprays on the Orchard and this will be made available for inspection by SFO on request;
 - (v) will grow and harvest the Produce to a high standard of husbandry and in accordance with any recommendations provided by SFO;
 - (vi) will comply with all applicable laws and industry standards relevant to the growing, harvesting and handling of Produce up to and including delivery of the Produce to SFO; and
 - (vii) will provide to SFO on request samples of Produce for the purpose of testing residues and maturity.
- (b) The Grower warrants to SFO that the Produce delivered to SFO:
- (i) is fit for human consumption;
 - (ii) complies with all applicable laws and statutory regulations including without limitation food safety, packaging and or labelling; and
 - (iii) is fit for purpose and complies with any specifications notified by SFO to the Grower.
- (c) If the Grower has agreed to deliver fruit for sale to export markets, then the Grower must comply with all directions provided by SFO in relation to Produce supplied for export markets which have protocol requirements that must be fulfilled and provide SFO with the information and evidence required to ensure the protocol can be met. If the Grower cannot satisfy SFO that it has complied with the requirements, then SFO will not sell the Produce to the export markets concerned.
- (d) The Grower acknowledges and agrees that SFO may store the Produce in bins for a period of time before it is sold to a customer, and in which case the Produce will be inspected again to ensure it meets specifications required by SFO and as a result some Produce may be downgraded.

7. AGENT'S REPORTING OBLIGATIONS

- (a) For each Reporting Period, SFO will give the Grower a statement for the Reporting Period, specifying for the Grower's Horticulture Produce received by SFO during the Reporting Period:
 - (i) the date on which the Produce was delivered to SFO;

- (ii) the date or dates of the sale of the Produce by SFO;
 - (iii) the type and quantity of the Produce sold;
 - (iv) the price received for the Produce sold;
 - (v) details of each amount deducted by SFO from the sale price of the Produce; and
 - (vi) details of any amounts of the Horticulture Produce not sold by SFO during that period, including:
 - the reasons why the Produce was not sold;
 - details of any amounts of the Produce destroyed by SFO, and the costs incurred in destroying the Produce; and
 - details of any amounts of the Produce held by SFO at the end of the period.
- (b) SFO will give the statement referred to in subclause 7(a) to the Grower within the Statement Period.

8. AGENT'S OTHER OBLIGATIONS

- (a) During the period the Grower's Horticulture Produce is under SFO's control, SFO will exercise all reasonable care and skill in handling and storage to ensure that the Horticulture Produce remains of the highest quality possible.
- (b) The care and skill SFO must exercise under subclause 8(a) must be exercised until the ownership of the Horticulture Produce passes to a purchaser of the Horticulture Produce.
- (c) SFO:
 - (i) will act in the best interests of the Grower when selling Produce under this agreement, and
 - (ii) will not sell the Grower's Horticulture Produce, other than on an arm's length basis, unless SFO has first obtained the Grower's consent, in writing, to do so.
- (d) SFO will have complete discretion in relation to:
 - (i) which customers it will sell the Produce;
 - (ii) the price for which it sells the Produce to customers; and
 - (iii) whether the Produce will be sold domestically or exported, unless otherwise agreed in writing with the Grower.

9. COMMISSION AND PAYMENT

- (a) Commission will be charged as follows:
 - (i) SFO will charge a rate of commission (plus GST) on the sale price of Produce sold by SFO according to the Customer to whom SFO sells the Produce in the amounts specified in Item 6 of the Schedule ("Commission Rates").

- (ii) Subject to subclause 9(a)(v), SFO will pay to the Grower the proceeds of a sale of the Grower's delivered Produce, less:
 - commissions calculated in accordance with this Agreement; and
 - any applicable rebates for sales of Produce to retailers.SFO is entitled to deduct the amount of commission and any applicable retailer rebates from payments to the Grower.
- (iii) The amount of commission is calculated by multiplying the Commission Rates by the amount of the sale price received from the Customer for the Produce.
- (iv) Commission is only payable in the event, and to the extent that, the Produce is sold by SFO.
- (v) Payment under this Agreement will be made in accordance with Item 7 of the Schedule.
- (vi) Payments will be made to a bank account nominated by the Grower in Item 9 of the Schedule.

10. TYPE OF HORTICULTURE PRODUCE

The Grower will deliver the following types of Produce to SFO in accordance with the terms of this agreement:

- (a) Citrus fruit, or
- (b) as requested in writing by SFO from time to time.

11. REJECTIONS OF PRODUCE DELIVERED

- (a) SFO reserves the right to reject any Produce if:
 - (i) the Produce does not satisfy the requirements of this Agreement;
 - (ii) SFO is not satisfied in its complete discretion as to the accuracy of certifications, spray diaries or other steps taken (or not taken) by the Grower in relation to the Produce.
- (b) If SFO rejects any Produce (the "Rejected Produce") delivered by the Grower, then SFO must notify the Grower in writing with reasons for the rejection as soon as possible and in any event within 24 hours of Delivery.
- (c) SFO will provide the Grower an opportunity to inspect the Rejected Produce. Such inspection must occur within 48 hours of being notified in writing of the reasons for the rejections. The Grower must advise as to whether the Grower:
 - (i) wishes to retake possession of the Rejected Produce; or
 - (ii) requires an independent inspection and assessment of the condition of the Rejected Produce at the Grower's cost; or

- (iii) wishes to make other arrangements for the storage or warehousing of the Rejected Produce, sale or resale of the Rejected Produce or its removal from SFO's premises.
- (d) In the event the parties cannot agree on how the Rejected Produce will be handled, within 3 Business Days of subclause 11(b), the Grower shall be deemed to have instructed SFO the Grower wishes to retake possession of the Rejected Produce.
- (e) The right of SFO to reject Produce under this Agreement cannot be deemed to be waived by past acceptance of Produce of a similar quality.
- (f) Despite anything else in this Agreement, SFO may elect, and the Grower authorises SFO to destroy and dispose of the Rejected Produce, or deliver the Rejected Produce to the Grower if:
 - (i) the Grower does not respond within 24 hours of notification in accordance with clause 11(c); or
 - (ii) the Grower fails to retake possession of the Produce within 5 Business Days of the Grower indicating an intention to do so under subclause 11(c).
- (g) The Grower must pay all costs associated with a rejection under this clause.

12. POOLING OF PRODUCE

- (a) SFO may pool the produce it receives from a number of growers if:
 - (i) The other produce is of the same grade as the Produce delivered by the Grower as determined by SFO;
 - (ii) The Grower's Produce and the other produce meet the quality requirements set out in this Agreement,and the Grower's share of the pool will be determined by calculating the Grower's proportion of produce in each grade and count size in that pool as compared to the total volume of each grade and count size of produce in the pool.
- (b) A pool must only consist of one of the main types of produce as determined by SFO (for example each of the following is a type of produce for pooling purposes: navel oranges, imperial mandarins, Afourer mandarins, grapefruit, lemons and tangelos). SFO will determine the allocation of produce to the pool, the time for which the pool is open and any other features of the pool in its complete discretion.
- (c) Where SFO pools Produce in accordance with this clause, the amount payable to the Grower will be a proportion of the total proceeds received by SFO for the pooled Produce that is equal to the proportion of the pooled Produce that was contributed by the Grower, less any commission.

13. TITLE

- (a) The Grower warrants that it has title in the Produce that it delivers to SFO.
- (b) Title in the Produce will not pass to SFO and remains with the Grower until SFO sells the Produce.

14. GROWER TO INSURE

- (a) The Grower must insure (for defined events including fire, theft and accidental damage and other than deterioration of quality or any other inherent losses) the Produce and SFO shall not be liable for any loss or damage to the Produce by the Grower's failure to do so.
- (b) The Grower shall be liable to compensate SFO for all direct or indirect losses, damages, costs, claims and expenses which SFO may incur as a result of any act or omission of the Grower.

15. COLLECTION OF DEBTS FOR PRODUCE SALES

- (a) SFO will be responsible for collecting debts to the exclusion of the Grower. Any unpaid debts will be a cost allocated as a cost to the relevant pool.
- (b) SFO is not liable to make good any debt owing from a customer that is not collected.

16. DISPUTES

In the event of a dispute, the parties must make a genuine attempt to mediate the dispute by contacting the person named in Item 8 of the Schedule as the person to whom notices are to be sent pursuant to this Agreement. If the parties are not able to resolve the dispute between themselves, then either party may give notice to the other that it wishes to use the dispute resolution procedures under Part 5 of the Horticulture Code to resolve the dispute.

17. VARIATION OF THIS AGREEMENT

This Agreement may only be varied by written agreement of the parties.

18. AGREEMENT NOT ASSIGNABLE

This Agreement may not be assigned by either party without the consent in writing first being obtained from the other party which consent may not be unreasonably withheld.

19. FORCE MAJEURE

Neither party will be liable for any damage or loss suffered by either party due to an event of Force Majeure or the consequences of an event of Force Majeure.

20. LIEN

- (a) The Grower grants to SFO a lien over the Produce and all proceeds from the sale of the Produce as security for all amounts outstanding and due to SFO on any account whether in respect of packing, consumables or any other additional service.
- (b) The Grower agrees and acknowledges that the lien granted pursuant to clause 20(a) is a Security Interest for the purposes of the PPSA and may be reinterested pursuant to the PPSA at SFO's absolute discretion.
- (c) The Grower will not create or permit to create any Security Interest over the Produce or the proceeds from the sale of the Produce, except with the prior consent of SFO.
- (d) The Grower hereby acknowledges receipt of a copy of this Agreement, and, to the extent permitted by the PPSA, waives any right it may have to receive a copy of the financing

statement, a financing change statement or a verification statement, as those terms are defined in the PPSA, relating to it.

- (e) Sections 95, 96, 117, 118, 121(4), 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA do not apply to the obligations owed between the parties under this Agreement and the Grower agrees it has no rights under those sections.
- (f) This right is additional to any right or rights conferred upon SFO by statute.

21. DEDUCTION AND SET-OFF

SFO may deduct or set-off against moneys the Grower owes to SFO under this or any other agreement including the Services Agreement, any debts or monies (including under an indemnity or reimbursement obligation) SFO may owe to the Grower pursuant to this or any other agreement including the Services Agreement.

22. CONFIDENTIALITY

- (a) All details contained in this Agreement or acquired as a result of this Agreement must be kept confidential by the parties except to the extent a party is required by law to disclose its contents. A party may disclose the contents of this Agreement or any agreement as to price to its professional advisers and its directors, officers, employees, servants and agents on a confidential basis.
- (b) The parties will treat all bin return and pricing information relating to the Produce as confidential and will not, without the prior written consent of the other party disclose or permit the bin return and pricing information to be disclosed to any third party.
- (c) The obligations on the parties pursuant to this clause will not be taken to have been breached to the extent that bin return and pricing information is disclosed by a party:
 - (i) to its representatives who are bound to keep the information confidential;
 - (ii) is required or compelled by an order of a court or by any law to be disclosed;
 - (iii) is necessary for the conduct of any legal proceedings arising in relation to this agreement.

23. COUNTERPARTS

- (a) This Agreement may be executed in several counterparts.
- (b) Each executed counterpart is deemed an original of this Agreement.

24. COSTS

Each party must pay its own costs of negotiation, preparation and execution of this Agreement and any document required by this Agreement.

25. TERMINATION

- (a) Either party may terminate this Agreement by written notice to the other party if a Default Event occurs in respect of that other party. A Default Event occurs in respect of a party if that party:

- (i) breaches this Agreement and fails to remedy such breach within 7 days of notice from the other party requiring the alleged breach to be remedied, such notice setting out the alleged breach and the intention of the party giving notice to terminate the obligations to sell and purchase, forthwith upon expiry of the required remedy period, or
 - (ii) being a body corporate becomes an externally administered body corporate within the meaning of the Corporations Act and the other party sends a notice to the externally administered party that this Agreement is terminated.
- (b) Termination under this clause does not prejudice the rights of a party against the other party which accrue up to and including the date of termination.
- (c) 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:
- (i) 14 days after the day on which this agreement was entered into, or
 - (ii) 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.
- (d) Where this agreement is terminated pursuant to this clause 27, any trade that has occurred under the Agreement before the termination is governed by the terms of this agreement.
- (e) Subject to clause 27(f), 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.
- (f) A party required to return a payment under clause 27(e) 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.
- (g) The Grower agrees that it will reimburse SFO for any Grower-branded Consumables SFO has on hand upon termination of this agreement by either party. "Consumables" includes all packaging material, straps, labels, stickers, inserts and anything else related to the packaging of the Grower's Produce.

26. COOLING OFF PERIOD

Despite clause 25, the Grower may terminate this Agreement within 14 days of the date of signing this Agreement.

27. NOTICES

- (a) A notice or other communication given under this Agreement must be in writing signed by the party sending it and delivered personally, sent by prepaid post or sent by email to

the recipient's contact details shown in Item 8, unless updated by the recipient during the term of this Agreement. Any such notice sent by email or facsimile is deemed duly delivered at the time of receipt provided the email or fax is received in office hours (8am to 5pm), failing which it will be deemed to have been received on the next business day. Any notice sent by mail is deemed delivered five business days after it is sent.

(b) Either party can update their details in Item 8 by giving notice to the other party.

28. GOVERNING LAW

Victorian law applies to this Agreement. The parties submit to the jurisdiction of courts of that State.

29. SEVERANCE

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is, as to that jurisdiction, ineffective to the extent only of the prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

30. ENTIRE AGREEMENT

This Agreement represents the entire agreement and understanding between the Grower and SFO and supersedes all prior agreements between the parties.

31. NO WAIVER

Any time or other indulgence that SFO may grant to the Grower shall not affect the rights of SFO except to the extent that SFO expressly waives such term, or part thereof in writing.

32. INDEMNITY

Without limitation, the Grower hereby indemnifies SFO against:

- (a) all claims, losses or expenses that may be brought against or incurred or suffered by SFO and which arise as a result of the Produce not complying with any provision of this Agreement; and
- (b) any liability, loss or expense of any kind arising from or in respect of the death of, or personal injury to, or disease suffered by, any person and/or any damage to or loss of any property (or the use of that property), arising out of any:
 - (i) breach of this agreement; or
 - (ii) negligent act or omission of the Grower.

EXECUTED by the parties

SIGNED FOR AND ON BEHALF OF SEVEN FIELDS OPERATIONS PTY LTD

Signature: _____

Name: _____

Date: _____

SIGNED FOR AND ON BEHALF OF THE GROWER

Signature: _____

Name: _____

Date: _____

Schedule

Item 1	Commencement Date		
Item 2	Grower	Names: ABN: Address: Email: Mobile: Attention:	
Item 3	Date for notice for non-renewal	30 days before the anniversary of the Commencement Date.	
Item 4	Orchard particulars	Approximately: _____ bins of _____ from (Orchard) _____	
Item 5	Packing Shed	Abbotsleigh Packing Facility, 251 Grahams Road, GIN GIN QLD 4671.	
Item 6	Rates of Commission	For domestic sales to supermarkets* <i>*Charged on gross sales price before deducting applicable rebates</i>	%
		For domestic sales to wholesale markets and export sales through third party businesses	%
		For direct export sales	\$ per carton
Item 7	Payment Period	Within 7 days of receiving the proceeds of sale of the Grower's Produce.	
Item 8	Notices	To the Grower: refer Item 2 To SFO: Address: 251 Grahams Road GIN GIN QLD 4671 Attention: Phone:	
Item 9	Bank account details	Bank: _____ Branch: _____	

		BSB: _____ A/C No: _____
Item 10	Reporting Period	Monthly.
Item 11	Statement Period	Within 28 business days from the end of the relevant Reporting Period.