



TERMS AND CONDITIONS

Agreement: This Contract governs the supply of fresh produce by Fruit Master Australia Pty Ltd ("FMA") as defined in the Corporations Law to you ("the Customer"). Unless otherwise specifically agreed in writing by FMA all orders placed by the Customer with FMA for supply of the Goods will be in accordance with the terms and conditions of this Agreement. FMA provides agreed goods in exchange for payment within agreed credit terms (if any). It is understood and agreed that, should FMA approve the credit application, payment by the customer will be tendered according to the assigned credit terms. FMA may refuse to grant credit if any Information is inaccurate or not provided as requested.

Assignment: The Customer must not transfer or assign its rights under this Agreement to anyone without FMA's prior written consent in writing. A change in the Customer's effective control will be deemed an assignment. FMA may assign or transfer any of its rights or obligations under these Terms without the Customer's consent.

Confidentiality: The Customer agrees not to disclose any information relating to price, products or quantities being provided under this Agreement without FMA's consent (which is not to be unreasonably withheld).

Credit Claims: FMA must be notified by email or facsimile of any quality claims and credit claims in accordance with FMA quality control and Customer Credit Claim Procedures that are detailed within this Agreement and which comprise under the Agreement headings: Claim Request, Claim Lodgment, Claim Survey and Claim Decision.

Claim Request: Customer must lodge a written notice of their claim with FMA within 48 hours of pickup of Customer container from vessel terminal at destination port. FMA will then provide the Customer with a Claim Authorisation Number as a formal acknowledgment of the lodged written notice of Customer claim. All claim documents must be lodged with FMA within 14 days from date of pickup of Customer container from vessel terminal at destination port. FMA reserves the right to reject a Customer claim if the claim is received outside of these lodgment dates; or, Customer fails to properly document the claim; or, Customer misrepresents the claim.

Claim Lodgment: Customer claim form must include the following document details.

- (1) Claim Authorization Number
- (2) Booking reference number
- (3) Vessel Name
- (4) Container Number
- (5) Terminal and Destination Port
- (6) Date of Arrival
- (7) FMA commercial invoice
- (8) Packing List / Bill of Lading
- (9) Package Identification Details (Packer / Grower Number)
- (10) Reason for claim
- (11) Photos of damage and claim
- (12) Calculation of claim
- (13) Copy of the mechanical temperature recorder chart
- (14) Copy of the digital recorder temperature file. (Recorders are normally located on the rear left hand side of the container marked by position of bright yellow sticker)
- (15) Conditional upon the nature of the claim, additional documentation may be required to support Customer claim request.

Claim Survey: In the event a survey is required, the survey must be authorised by FMA Sales Consultant and conducted by a FMA nominated licensed surveyor. FMA will advise details of nominated licensed surveyor upon receipt of notification for survey request. Where possible, the survey should take place while the cargo is still in the container, to provide the surveyor with the opportunity to observe the cargo's stowage, bracing and blocking, damage pattern, and other points of interest. In the event of a potential temperature problem, a joint survey MUST be conducted between the shipping line representative and Fruit Master nominated surveyor.

Claim Decision: FMA will notify the Customer as soon as possible following receipt of properly completed customer claim form (and receipt of the surveyor's report, where requested) of its decision and reasons regarding acceptance or rejection of Customer claim.

Counterparts: This Agreement may be executed in any number of counterparts. All such counterparts taken together will be deemed to constitute one instrument

Customer Purchase Order: The Customer agrees that: a) it will place purchase orders in accordance with FMA processes as advised to the Customer from time to time; b) FMA will confirm its acceptance of goods pricing and supply of the Customer Purchase Order by email or facsimile if and subject to FMA decision to accept and proceed with the Customer Purchase Order; c) each Customer Purchase Order placed shall be deemed to be a representation by the Customer made at the time that it is solvent and able to pay all of its debts as and when they fall due; and d) when placing any Purchase Order the Customer shall inform FMA of any facts which might reasonably affect acceptance of the Purchase Order by FMA and/or any grant of credit and any failure to do so by or on behalf of the Customer shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of FMA and to be unconscionable, misleading and deceptive conduct by the Customer.



Default: On default or breach of any part of the terms of this Agreement by the Customer, the full balance of all unpaid monies shall be deemed immediately due and payable (save to the extent that FMA expressly directs otherwise in writing). FMA may terminate any contract, retain all monies paid, cease further deliveries and/or provision of services, recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party. The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against FMA while the Customer is in default under any part of these Terms or in any of its dealings with FMA.

Enforceability: Any clause or part of a clause of this Agreement that is ineffective in any jurisdiction is Ineffective only to that extent in that jurisdiction.

Where any clause or part of that clause is ineffective it may be severed without affecting any other part of this Agreement

Entire Agreement: This Agreement supersedes all previous Agreements in respect of its subject matter and embodies the entire Agreement between the parties.

Force Majeure: FMA shall not be in default or in breach of any contract with the Customer as a result of an event beyond FMA's reasonable control, including any strike or lock-out. Supply and delivery may be totally or partially suspended during any period in which FMA may be prevented or hindered from delivering by any circumstances outside of its reasonable control, including but not limited to, strikes, lockouts, supply shortages, accidents or breakdowns of plant, machinery and/or shipping vessels. The Customer acknowledges that in such an event, FMA will be under no liability or obligation to deliver to the Customer any goods not delivered during the period of suspension.

Indemnity: The Customer agrees to indemnify FMA for all costs, fees, charges and expenses incurred by FMA in connection with the enforcement of its rights under this Agreement. This may include, but is not limited to, use of mercantile agencies and/or attorneys acting on behalf of FMA in respect of anything instituted or being considered against the Customer whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis).

Insolvency: The Customer shall be in default of this Agreement if it commits an act of insolvency, appoints an insolvency practitioner and/or calls a formal meeting of creditors.

Jurisdiction: The Customer agrees that this Agreement and any claim or dispute between FMA and the Customer shall be governed by the laws of Victoria, Australia and the Customer irrevocably agrees to submit to the non-exclusive jurisdiction of the Courts of Victoria, Australia in proceedings regarding this Agreement.

Legal Advice: The Customer acknowledges that prior to signing this Agreement, the Customer has received legal advice or has had the opportunity of obtaining legal advice regarding this Agreement. The Customer warrants to FMA that it has read the Agreement and understands its meaning and obligations. In the event that the Customer has elected not to obtain legal advice regarding this Agreement, the Customer waives any right or recourse that FMA may have regarding this Agreement.

Notices: For the purposes of notice within this Agreement, each party's address is the address specified at the commencement of this Agreement, or as otherwise notified in writing to each other party

Payment: FMA provides agreed goods in exchange for payment within agreed credit terms. It is understood and agreed that, should FMA approve the credit application, payment by the customer will be tendered according to the assigned credit terms. FMA may refuse to grant credit if any Information is inaccurate or not provided as requested. Money telegraphically transferred in settlement of an invoice will be at the expense of the customer. The Customer WARRANTS that they are solvent and has the present and future ability to pay all debts as and when all debts fall due. The Customer irrevocably authorises the payment directly to FMA of any debt due to the Customer by any debtor of the Customer in reduction of any amount due to FMA pursuant to the terms of this Agreement.

Produce Warranty: FMA warrants that the fresh fruit produce delivered to the Customer will be of merchantable quality, fit for its purpose and will meet the specifications for that Produce as set out in the accepted purchase order confirmation forwarded by FMA to the Customer. The Customer has the benefit of conditions and warranties implied by the Competition and Consumer Act 2010 and similar provisions of State and Territory laws of Australia. Nothing herein excludes limits, restricts or modifies any statutory obligation on FMA or any rights, entitlements and remedies conferred upon the Customer if that cannot lawfully be affected. FMA warrants that in compliance with the Competition and Consumer (Industry Codes—Horticulture) Regulations 2017 within Competition and Consumer Act 2010, FMA undertakes a commitment to agricultural industry best practice and procedure standards. FMA compliance audits and industry registrations include HACCP (Hazard Analysis Critical Control Point), GMP certification criteria, SQF Code, Global G.A.P, Freshcare food safety and quality code of practice, Harmonised Australian Retailer Produce Scheme (HARPS), Woolworths Supermarket Quality Assurance (WQA), Woolworths Supermarket Supplier Excellence Program, Coles Supermarkets Supplier Approval Program

Produce Rejection: The Customer will accept and be deemed to have accepted delivery of the goods, unless following inspection of the goods by the Customer or its nominated representative, the Customer elects to reject that proportion of delivered goods in whole or in part, that does not in their opinion meet specifications as to variety, quantity, pack type and box type of goods requirements detailed in the FMA accepted Customer Purchase Order. Where the Customer rejects in whole or in part the goods representing the Customer Purchase Order, the Customer will immediately after the time at which the decision to reject the Customer Purchase Order is made, contact FMA in accordance with the instructions detailed in the Credit Claims clause of this Agreement. The Customer acknowledges and agrees that the goods may contain latent quality defects which do not manifest themselves until after the delivery of the goods by FMA. In the event of manifestation of such



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latent quality defects, the Customer and FMA both agree that the Customer will reserve and exercise its rights and remedies for damages due to the claimed defects of the goods in accordance with the credit claims procedures of FMA.

Security: A binding "Security Agreement" (for the purposes of the *Personal Property Securities Act 2009* (Cth) ["PPSA"]) for this Customer shall be deemed to have been formed between FMA and the Customer on and from the earliest of the following events: (i) written communication of acceptance of this Credit Application by or on behalf of FMA; (ii) registration of the Security Agreement on the Personal Property Securities Register ["PPSR"]; or (iii) provision of credit to the Customer by FMA. The Customer ALSO AGREES that the Security Agreement creates for FMA a security interest in respect of all goods, services and/or any other property of any kind supplied by FMA to the Customer whether present or after acquired for the purposes of the PPSA [the "Security Interest"], and that this Application may be produced by FMA at any time and from time to time as evidence of the Customer's unconditional and irrecoverable consent to the creation of the Security Interest and registration of the Security Interest on the PPSR. The Customer irrevocably and unconditionally agrees and undertakes to abide with the laws and jurisdiction of the Commonwealth of Australia in the governance and enforceability of the security interest that is the Customer debt.

Supply and Delivery: FMA may withhold or cancel supply without ramification where: (i) FMA has insufficient goods to fulfil Customer Purchase Order; (ii) goods ordered by Customer are not available to supply; or (iii) the Customer is in breach of the terms of this Agreement.

Immediately on delivery at the specified place where the goods are to be delivered, the Customer accepts risk in, and liability for the safe custody of, the goods and indemnifies FMA for any related losses until payment in full is received by FMA from the Customer. FMA is not obliged to accept the return of goods, but FMA reserves the right to take possession and dispose of goods as it sees fit at any time until full payment is received.

Survival: The terms of this Agreement survive its termination to the extent permitted by law.

Title: The Customer acknowledges and agrees that title in the relevant goods remains with FMA until full payment by the Customer of the whole of the purchase price of all goods and services supplied by FMA to the Customer and all other moneys the Customer owes FMA under or in connection with these terms are received by FMA, and that this will also include those goods that may have been delivered to the purchaser before the full settlement funds are paid.

Variation: This Agreement may only be varied by further Agreement in writing between the Customer and FMA either by signature by both parties or a written notice of offer and a written notice of acceptance.

PRIVACY ACT: By signing this credit application, the applicant and each signatory acknowledges and gives consent to FMA making enquiries as to the applicant's credit information, credit eligibility information and consents to the use and disclosure of such credit information and credit eligibility information, together with any personal information listed herein or obtained as a result of those enquiries. This includes as FMA reasonably sees fit from time to time, and for the duration of this Agreement, (i) exchanging credit eligibility information with other credit providers, (ii) disclosing credit information and personal information to a credit reporting body, (iii) disclosing credit eligibility information to a debt collection agency, and (iv) obtaining a consumer credit report from an authorized credit reporting body for reasonable use in connection with provision of credit to this credit application or the collection of debt. This Credit Application may be produced as conclusive evidence of the Customer's CONSENT to FMA at any time collecting, holding, using and/or disclosing personal, credit and/or credit eligibility information ["Information"] in accordance with the Privacy Act 1988 (Cth) as amended by the Privacy Amendment (Enhancing Privacy Protection) Act 2012 (Cth) and FMA's Privacy Policy and Credit Reporting Policy which sets out: (i) the purposes for which Information is collected, held, used and/or disclosed; (ii) the kinds of Information and how it is collected and/or held; (iii) how an individual may access and seek the correction of Information; (iv) the credit reporting bodies to which Information may be disclosed; (v) how to make a complaint and have it dealt with; and (vi) whether information is likely to be disclosed to entities which do not have an Australian link.