

# Don Alroe & Sons

## TERMS OF TRADE

### DEFINITIONS

In these terms of trade –

"Agreed Price" means the purchase price of all or part of the Produce payable to the Supplier by the Business as determined, from time to time, by agreement between the parties either:

- (a) immediately prior to the Product being made available for sale, or
- (b) At such other time and by any other arrangement as agreed to between the parties.

"Business" means the entity described in the Items Schedule or related Persons deemed to be in association with the Business.

"Business Day" means a day that is not a Saturday, Sunday or a designated holiday in the state in which the business is located.

"Expenses" means those amounts and items referred to in clauses 14 and 25(c).

"Inspection Certificate" means a report prepared by an independent authority or third party assessor who is qualified by experience and/or education to declare the Produce unfit for human consumption, unsuitable for sale or not meeting a particular standard.

"Including" or similar expressions are not words of limitation.

"Margin", if applicable, means the amount determined by the Business in its sole discretion from time to time under these Terms to be retained by the Business as its margin on Sales, with such margin to be not less than the Minimum Margin and not more than the Maximum Margin of the Sale Proceeds.

"Maximum Margin" means that percentage of Sale Proceeds:

- (a) identified as the "maximum margin" that the Business may charge in respect of Sales, set out in the Items Schedule; or
- (b) as otherwise notified to the Supplier by the Business from time to time, in respect of Produce delivered to the Supplier after the date of the notification;

"Minimum Margin" means that percentage of Sale Proceeds:

- (a) identified as the "minimum margin" that the Business may charge in respect of Sales, set out in the Items Schedule; or
- (b) as otherwise notified to the Supplier by the Business from time to time, in respect of Produce delivered to the Supplier after the date of the notification;

"Payment Date" means no later than that number of Business Days identified as the "payment date" in the Items Schedule from:

- (a) if there is an Agreed Price – the date that the Agreed Price is determined; or
- (b) otherwise – the end of the Week during which a Sale occurs or if no date is specified, no later than TWENTY (20) Business Days from the date of the Sale.

"Person" shall include an incorporated body or other entity. If a party consists of more than one Person then these terms of trading bind them jointly and each of them severally and includes the party's executors, administrators successors and permitted assigns.

"Produce" means yield, especially of fields or gardens, including yield from plants under cultivation and/or harvested from the wild, for sale as raw horticultural goods.

"Product Characteristics" means details of any issues or characteristics relating to the Produce which may impact upon the shelf life or sale price and includes the Quality Specifications, whether the Produce has been stored prior to delivery, dipped or has been subjected to a level of rain which may be reasonably likely to impact upon the quality or shelf life of the Produce.

"Purchase Price" means the amount calculated under clause 12.

"Quality Specifications" means the specification of the quality (or designated "class") of the Produce in accordance with the criteria set out in Schedule 1 to these Terms of Trade or such other specifications as established by the Business and notified to the Supplier from time to time.

"Sale" means a sale of Produce by the Business to a third party buyer.

"Sale Proceeds" means the gross proceeds of a Sale payable to the Business.

"Supplier" means the grower identified in the Items Schedule and any producer or other Person who delivers Produce or has Produce delivered to the Business in accordance with these Terms.

"Week" means the period from Saturday to Friday inclusive.

Any requirement which must be done on a specified day which is not a Business Day, then such act must be done on the next Business Day.

### TERMS AND CONDITIONS

#### General

1. These Terms of Trade as described are effective from the above date until these Terms are replaced by another document (Term) and shall apply to all Produce delivered or to be delivered to the Business by or on behalf of the Supplier during the Term, despite these Terms not having been executed, unless by specific written agreement to the contrary.
2. The Business will purchase the Produce from the Supplier subject to these Terms and resell, dispose of, or otherwise deal with the Produce at the Business' discretion.
3. These Terms of Trade can be cancelled by either party by the provision of thirty (30) days' notice in writing.

#### Supply of Produce

4. Upon or prior to despatch of the relevant Produce, the Supplier is to notify the Business in writing of the type, quantity, Product Characteristics and expected delivery date of the Produce to be delivered to the Business from time to time (Supply Notice).
5. The costs of delivery of Produce to the Business shall be borne by the Supplier, unless otherwise agreed to in writing by the Business.

#### Rejection of Produce

6. If:
  - (a) in the opinion of the Business acting reasonably, the Produce delivered does not accord with the type, quantity, Product Characteristics or other description of the Produce set out in the Supply Notice or on the relevant packaging or delivery documentation; or
  - (b) the Produce is certified as unfit for human consumption, unsuitable for sale or not meeting a particular standard under an Inspection Certificate,then the Business is entitled to reject all or part of the Produce delivered by notice in writing to the Supplier within 3 working days of receipt of the delivery (Rejection Notice).
7. If the Business does not give the Rejection Notice, or issues a Rejection Notice over part only of the delivered Produce, then the Business shall be deemed to have accepted delivery of the Produce or part of the Produce (as the case may be).
8. Where a Rejection Notice has been provided, the Supplier may elect at its sole cost by written notice to the Business to have all or part of the Produce destroyed and/or re-delivered to the Supplier at the Supplier's cost (or at its direction) (the Direction).
9. If the Supplier does not give the Direction within 24 hours of provision of the Rejection Notice, the Supplier shall be deemed to have elected to destroy the entire Produce at its sole cost.

#### Produce not sold

10. The Business shall use reasonable endeavours to procure a Sale.
11. In the event that the Business is unable to procure a Sale of some or all of the Produce, then the Business is deemed to have provided a valid Rejection Notice in respect of that Produce and clause 8 and clause 9 shall apply.

#### Business Obligations – Price and Payment

12. The Purchase Price for Produce shall be either:
  - (a) the Agreed Price, if any exists for the specific Produce; or
  - (b) otherwise, equal to the Sale Proceeds less the Margin, less the deductions referred to in clause 14.
13. Unless there is an Agreed Price, the Purchase Price will be calculated pursuant to clause 12(b).
14. The Business shall pay the Purchase Price to the Supplier on the Payment Date after deducting the following amounts:
  - (a) any third party delivery or freight costs, unloading fees and charges actually incurred by the Business with respect to the Produce, including any costs actually incurred by the Business as a consequence of any sorting and repacking of the Produce by the Business or any other third party;
  - (b) any other amount which the Supplier is liable to pay pursuant to these Terms, including under clauses 8 and 9;
  - (c) any other authorized deductions, including levies and fees for service payable under State or Commonwealth legislation or any voluntary arrangement; and
  - (c) Goods and Service Tax in respect of any item for which a Tax Invoice has been issued
15. For the avoidance of doubt, the Supplier and Business acknowledges that the Business shall be entitled to utilise an average Purchase Price referable to the Supplier's Produce, in determining and making payments under clause 14.
16. All payments to the Supplier shall at the discretion of the Business be by cheque or direct bank deposit to the credit of the Supplier as specified in writing by the Supplier.
17. The Business reserves the right to withdraw from making payments on behalf of the Supplier or to charge a fee for service in respect of such payments.
18. At the same time as the Business makes the payment in accordance with clause 14, the Business will provide the following details to the Supplier--
  - (a) Date of purchase of the Produce;
  - (b) Description of the Produce purchased;
  - (c) Details of the quantity purchased;
  - (d) Details of any quantity rejected by the Business including reasons for such rejection;
  - (e) A copy of any relevant Inspection Certificate in respect of the Produce;
  - (f) Details of all charges deducted from the Supplier under Clause 14 of these Terms.

# TERMS OF TRADE

## Title and Risk

19. The Parties acknowledge that despite the delivery of the Produce under these Terms, title and risk in respect of the Produce shall only pass in accordance with clauses 20, 21, 22 and 23.
20. Despite anything else in these Terms, title to the Produce will only pass to the Business:
- (a) Where an Agreed Price exists and clause 12(a) applies, - on the later of:
- (i) The Agreed Price being agreed upon; or
- (ii) the end of the period referred to in clause 6; or
- (b) otherwise, immediately prior to a Sale occurring.
21. The Supplier covenants that title to the Produce will pass to the Business clear of all encumbrances, claims and other adverse interests.
22. For the avoidance of doubt, title to Produce will only pass to the Business in accordance with these terms to the extent that all or part of the Produce has not been rejected by the Business in accordance with these Terms.
23. The Business will assume risk in respect of the Produce once title to the Produce passes to the Business under Clause 20.

## Returns/Renegotiation

24. In the event that, following a Sale, Produce is returned to the Business, the Business shall have a discretion as to whether or not to accept the return of such Produce from the buyer for any reason whatsoever (including without limitation where in the opinion of the Business not to allow the buyer to return the Produce would potentially damage the commercial relations with the buyer), (Return).
25. Following a Return:
- (a) the Business shall provide written notice to the Supplier within TWO (2) business days of the Return;
- (b) the Business shall use its best endeavours to procure a Sale of the Produce;
- (c) any costs associated with the delivery, repacking, reworking or storage of the Produce shall be borne (or reimbursed, as the case may be) by the Supplier; and
- (d) unless the Return is reasonably attributable to an act, omission or representation of the Business, the Supplier is not entitled to the Purchase Price in respect of the Produce the subject of the Return.
- (e) The Business will determine a further Purchase Price, or renegotiate a further Purchase Price in accordance with these terms of trade.
26. If the Business is unable to procure a Sale in respect of all or some of the Produce, then:
- (a) the Business is deemed to have provided a valid Rejection Notice in respect of that Produce and clause 8 and clause 9 shall apply;
- (b) subject to clause 266(d), the Supplier is not entitled to the Purchase Price in respect of that Produce;
- (c) the Business is not entitled to charge the Margin in respect of that Produce; and
- (d) in every case, the Supplier is required to pay to or reimburse the Business for any Expenses with respect to the Produce.

## General

27. The Business will not be liable for loss or damage to the Produce arising from any cause or event outside of the control of the Business.
28. The Business shall not be liable in respect of any claim by the Supplier unless such claim is received in writing within fourteen (14) days from date the Business gives notice under clause 18
29. The Parties agree that any dispute arising out of these Terms or the supply of Produce shall be dealt with under the nominated Dispute Resolution Procedure as agreed between the parties from time to time. In the first instance this shall be through Brismark's Disputes Resolution Procedure.
30. The Business will issue a Tax Invoice to the Supplier in respect of any item for which Goods and Services Tax is chargeable.
31. The Business will not be liable for any consequential loss to the Supplier or any other Person howsoever caused.
32. The Supplier guarantees that the Produce delivered to the Business is fit for human consumption and complies with all statutory regulations concerning food safety, product quality, packaging and/or labelling.
33. The Supplier guarantees that the Produce delivered to the Business is fit for purpose and complies with any written product specification provided by the Business.
34. The Supplier agrees that they will, upon request by the Business, implement and maintain an industry recognised HACCP based food safety and quality system that is subject to an annual third party audit.
35. The Supplier indemnifies the Business against any liability, loss, expense, or demand from or arising from any false, misleading, deceptive or misdescriptive representation or statement, made by the Supplier, in respect of the Produce.
36. The Supplier agrees to supply details of their registered Australian Business Number (ABN) prior to any payment being made by the Business.

## SCHEDULE TO TERMS OF TRADE

EFFECTIVE DATE	6 - 12 - 2006.
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GROWER DETAILS	
Grower	
Address	
Contact Telephone	
Fax	
Contact Person	

BUSINESS DETAILS	
Merchant	JOHN ALROE & SONS.
Address	SHEELWOOD ROAD BRISBANE MARKETS H106
Contact Telephone	01-33793554
Fax	07-33793974
Contact Person	PAUL ALROE.

MERCHANT TERMS	
Maximum Margin	20 %
Minimum Margin	13 %
Payment Date	20 DAYS

SIGNED:

For and on behalf of the Business

Date:

For and on behalf of the Grower

Date:

[Note: these Terms will bind the Grower and Business despite these Terms not having been executed, from the date the Grower communicates their acceptance of these Terms to the Business, by word or conduct. Unless earlier accepted, Growers will be deemed to have accepted these Terms upon dispatch of the first Produce after receipt by the Grower of these Terms