



A Division of the Simonetta Group

Grower	Merchant
Grower's Name:	Merchant's Name: SIMFRESH PTY LTD
ACN (if applicable):	ACN (if applicable): 075 879 728
ABN (if applicable):	ABN (if applicable): 28 075 879 728
Address:	Address: 39 Gol Gol North Road GOL GOL NSW 2738
Email:	Email: larry@simonettagroup.com.au
Phone:	Phone: (03) 5024 8461

Terms and conditions

1. Agreement

- 1.1. For the term of this agreement, the Grower offers to sell, and the Merchant agrees to buy;-
 - (a) Horticulture Produce of the variety, quality and quantity ordered by the Merchant verbally or in writing from time to time;
 - (b) for the Price agreed pursuant to this agreement; and
 - (c) on the terms and conditions set out in this agreement as varied from time to time.
- 1.2. The Merchant will not supply any services to the Grower.
- 1.3. Nothing in this agreement shall be interpreted by the parties as creating any form of legal relationship save for that of a willing buyer and willing seller transacting at arms' length and acting in good faith.
- 1.4. Nothing in this agreement shall be interpreted by the parties as creating an exclusive contractual right for the Grower to sell Horticulture Produce to the Merchant and the Grower is at liberty to sell their Horticulture Produce to any trader as the Grower deems fit.
- 1.5. The Grower acknowledges that the terms and conditions of this agreement that are required to be included by the Code apply only to Horticulture Produce that is sold

within Australia and does not apply to Horticulture Produce that is sold by the Merchant for export or goods the result of processing the Horticulture Produce.

- 1.6. Nothing in this agreement shall be interpreted as obliging the Merchant to sell Horticulture Produce within Australia and the Merchant shall be at liberty to sell Horticulture Produce to the Merchants' buyers, whether located within and outside of Australia, as the Merchant deems fit.

2. Term

- 2.1. This agreement commences the date that the last party signs or notifies acceptance of this agreement and continues until the agreement is terminated in accordance with clause 14.

3. Merchant's reporting obligations

- 3.1. The Merchant will report to the Grower quarterly.
- 3.2. Reporting will be a written statement addressed to the Grower that sets out for the relevant period those matters prescribed by the Code as amended from time to time.
- 3.3. The written statement referred to in the clause above will be sent to the Grower within 25 days from the end of the period to which the statement relates.

4. Varieties of Horticulture Produce

- 4.1. The Grower will deliver to the Merchant the following varieties* of Horticulture Produce:-
 - (a) Citron – Buddah's Hand;
 - (b) Fig;
 - (c) Grapefruit - Marsh;
 - (d) Grapefruit – Ruby;
 - (e) Kumquat;
 - (f) Lemons;
 - (g) Lemonades;
 - (h) Mandarin – Imperial;
 - (i) Mandarin – Afourer;
 - (j) Mandarin – Tangelo;
 - (k) Mandarin – Honey Murcott;
 - (l) Mandarin – Clementine;
 - (m) Mandarin – Amigo;
 - (n) Mandarin - Mandalate;

- (o) Mandarin – Amour;
- (p) Orange – Navel;
- (q) Orange – Valencia;
- (r) Orange – Blood Orange;
- (s) Orange – Cara Cara;
- (t) Orange - M7 Navel;
- (u) Pomelo; or
- (v) As requested in writing by the Merchant from time to time.

(delete those varieties that are not relevant to the particular Grower)*

5. Delivery of Horticulture Produce

- 5.1. The Merchant will collect the Growers' Horticulture Produce from the Growers' premises on the dates and times as agreed verbally or in writing between the parties and deliver the same to the Merchants' packing facility at the Merchants' sole cost and expense.
- 5.2. The Grower is responsible for, and solely liable for the costs and expenses of, the picking, packing into collection bins, proper storage of Horticulture Produce at the Growers' premises until the Merchant collects the Horticulture Produce and the clear marking and identification of the Horticulture Produce for collection by the Merchant.
- 5.3. The parties agree that the risk of the Horticulture Produce passes to the Merchant upon delivery and the Horticulture Produce is deemed delivered when the Horticulture Produce arrives at the Merchant's packing facility.
- 5.4. From the time the Merchant collects the Horticulture Produce the Merchant will exercise all reasonable care and skill in handling, carting and storing of the Horticulture Produce so that the Horticulture Produce remains the highest quality possible (given the quality of the Horticulture Produce at the time of collection) and will continue to exercise that care and skill until ownership of the Horticulture Produce passes to the Merchant in accordance with this agreement.

6. Quantity Requirements

- 6.1. The Merchant may, without being obliged to, accept all the Growers' Horticulture Produce and hereby expressly reserves discretion and shall be at liberty to:-
 - (a) Purchase Horticulture Produce from the Grower in any amount(s) the Merchant deems meet and provide a reasonable period of notice prior to delivery of the amounts that will be purchased and wherever practical provide the notification in writing; and
 - (b) reject Horticulture Produce in accordance with this agreement.

- 6.2. Nothing in this agreement shall be interpreted by the parties as setting quotas, maximum / minimum amounts or limiting the amounts purchased however described.

7. Quality of Horticulture Produce

- 7.1. The Grower acknowledges and accepts that after collection of the Horticulture Produce from the Growers' premises:-
- (a) The Horticulture Produce will be weighed and categorised by the Merchant at the Merchants' premises to determine the quality of Horticulture Produce for packing, juice processing and rejection.
 - (b) The categorisation of the Horticulture Produce will be in accordance with the Merchants' specifications for each category of Horticulture Produce suitable for packing that are publicly available on the Merchants' website or from the offices of the Merchant, free-of-charge.
 - (c) The Merchant will accept the Horticulture Produce (whether all or in part delivered) that satisfies the Merchants' specifications for packing and, subject to clause 7.2, reject the Horticulture Produce (whether all in part delivered) that does not satisfy the Merchants' specifications.
- 7.2. Where the Horticulture Produce does not satisfy the Merchants' specifications for packing then the Merchant may consider whether the Horticulture Produce is suitable for juice processing before being rejected.
- 7.3. The Merchant will provide the Grower with a written Packout Statement setting out:-
- (a) The categories of the Grower Horticulture Produce delivered;
 - (b) The size and number of cartons in each category;
 - (c) Total Bins from the Grower;
 - (d) Total cartons delivered and average carton per Bin;
 - (e) Total weight of Horticulture Produce and average weight per Bin;
 - (f) The Price per Bin;
 - (g) The Total Price payable for that delivery;
 - (h) Industry fees, levies and taxes the Grower is liable for that the Merchant is to deduct and remit to the relevant authorities.
- 7.4. The categorisation, size, weight and carton & bin numbers of the Horticulture Produce as set out in the Packout Statement shall be final and binding on both parties and shall be deemed to be the quality and quantity of the Horticulture Produce as at the date of delivery.
- 7.5. The Merchant will endeavour to issue a Packout Statement to the Grower within four weeks of delivery dependent upon the timing of the delivery of the Horticulture Produce during the harvest season and the varieties delivered.

8. Price

- 8.1. The Price that the Merchant will pay the Grower for the Horticulture Produce will be the price 'per bin' set by the Merchant applying as at the date of delivery of the Horticulture Produce during the term of this agreement.
- 8.2. The Merchant shall, in good faith to the Grower, take all reasonable care and skill, to set a fair price for the Growers' Horticulture Produce.
- 8.3. For the purposes the clause above, the considerations the Merchant may have regard in setting the Price may include:-
 - (a) The timing of the Growers' delivery of Horticulture Produce during the harvest season;
 - (b) The number of cartons of Horticulture Produce delivered by the Grower;
 - (c) The categorisation of Horticulture Produce suitable for packing, juice processing and rejection;
 - (d) Prices the Merchant has sold Horticulture Produce that is of the same variety and category for within the past 12 months dependent upon the time of the harvest season and whether the Horticulture Produce was sold in or outside of Australia;
 - (e) Prices the Merchant has sold Horticulture Produce that is of the same variety and category within the past 30 days dependent upon the time of the harvest season and whether the Horticulture Produce sold in or outside of Australia;
 - (f) Any indicative prices the Merchants' buyers, whether in or outside of Australia, are willing to provide the Merchant to purchase Horticulture Produce of the same or similar variety and category as that delivered by the Grower;
 - (g) Fluctuations in the Australian Dollar on the foreign exchange market;
 - (h) The volume of Horticulture Produce the Merchant has 'on-hand';
 - (i) The number of the Merchants' buyers whether in or outside Australia and the quantities demanded for the Horticulture Produce or their processed derivatives or their substitutes; and
 - (j) Any other consideration the Merchant may, acting reasonably, deem relevant to set the Price.
- 8.4. None of the considerations set out in the clause above shall be determinative of the Price or binding on the Merchant.
- 8.5. The Grower may accept the Price by either:-
 - (a) Confirming acceptance of the Price in writing to the Merchant; or
 - (b) Receiving payment of the Price from the Merchant on the payment terms set out in this agreement.
- 8.6. If the Price is accepted then the parties agree that the is Price deemed to have been agreed between the parties as at the date of delivery of the Horticulture Produce.

- 8.7. If the Grower does not accept the Price then the Grower, must within 24 hours of receiving the Packout Statement, confirm in writing to the Merchant that they do not accept the Price and state, whether with or without reasons, what Price the Grower will accept for the Horticulture Produce.
- 8.8. The parties will then have 24 hours after receiving the Growers written notice pursuant to the clause above to agree on a Price.
- 8.9. In considering whether or not to accept the Price set by the Merchant for the Growers' Horticulture produce delivered, the Grower acknowledges that:-
 - (a) Horticulture Produce is a perishable product and that time is of the essence in this agreement.
 - (b) The Merchant assumes the risk of selling all or part of the Horticulture Produce after ownership in the Horticulture Produce is transferred to the Merchant in accordance with this agreement. The risks assumed by the Merchant includes variations in market prices domestically and internationally, deterioration in quality, variations in quantities demanded for unprocessed Horticulture Produce and processed derivatives, between the date that the Horticulture Produce was delivered to the Merchant and the date that the Horticulture Produce was delivered to the Merchants' buyers.
- 8.10. For the purposes of the Code, this agreement and the avoidance of doubt, nothing in this agreement shall be interpreted by the parties as the price being set by formula.

9. Payment

- 9.1. Payment of the Price will be made to the Grower:-
 - (a) within 30 days from the end of the month that the Grower delivers the Horticulture Produce to the Merchant; and
 - (b) by electronic funds transfer to the Growers' nominated bank account, unless otherwise agreed in writing between the Merchant and the Grower.

10. Title

- 10.1. The Grower warrants that they have title in the Horticulture Produce that is delivered to the Merchant.
- 10.2. Title in Horticulture Produce supplied by the Grower in accordance with this agreement passes to the Merchant at the time that the Price for the Horticulture Produce is agreed between the parties in accordance with this agreement.
- 10.3. Until title in the Horticulture Produce passes to the Merchant, the Merchant holds the Horticulture Produce as bailee for the Grower.
- 10.4. The parties agree that this agreement shall not be interpreted or construed as a security agreement as defined under the *Personal Property Securities Act 2009* (Cth) and the parties agree that nothing in this agreement gives rise to a registrable security interest under that Act. For the avoidance of doubt the Merchant does not give its' consent to any security interest being registered or remaining registered on the personal property securities register against it.

11. Rejection of Horticulture Produce

- 11.1. The Merchant may reject Horticulture Produce delivered by the Grower in the following circumstances:-
- (a) If the Horticulture Produce delivered contains pests, diseases, mildew, mould or rot.
 - (b) If the Horticulture Produce delivered does not satisfy the Merchants' requirements pursuant to clauses 4 and 7 of this agreement.
 - (c) If the Grower does not have title in the Horticulture Produce delivered to the Merchant.
 - (d) If the parties cannot reach an agreement as to the Price for the Growers Horticulture Produce within the time frames set out at clauses 8.7 and 8.8 above.
- 11.2. The Merchant will notify the Grower in writing of the rejection and the reasons for rejection:-
- (a) if rejected pursuant to clause 11.1(a) and (b): Immediately upon but no later than 24 hours after issuing the Packout Statement.
 - (b) if rejected pursuant to clauses 11.1(b), (c) or (d): immediately but no later than 24 hours upon that event occurring or being notified of that event having occurred.
- 11.3. Where Horticulture Produce is rejected by the Merchant, the Merchant may:-
- (a) If rejected pursuant to clause 11.1(a): Dispose of the Horticulture Produce.
 - (b) If rejected pursuant to clause 11.1(b): Return the Horticulture Produce to the Grower at the Merchants' cost and expense.
 - (c) If rejected pursuant to clauses 11.1(c) or (d): Return the Horticulture Produce to the Grower at the Growers' cost and expense with payment of those costs and expenses due and payable upon written demand by the Merchant to the Grower.

12. Insurance

- 12.1. The details of the insurance policies the Merchant has are as follows:-

In Transit Insurance

- (a) the insurance policy is with QBE Insurance (Australia) Limited.
- (b) the maximum amount of insurance cover provided by the policy in respect of claims that may be made in relation to the Horticulture Produce is \$45,000.00 per event;
- (c) the policy covers fire, theft and accidental damage (other than deterioration of quality or any other inherent losses) within 250kms of the Merchants' business premises; and
- (d) The policy does not cover storage.

Public Liability Insurance

- (a) The insurance policy is with QBE Insurance (Australia) Limited.

- (b) The maximum amount of insurance cover provided by the policy in respect of claims that may be made is:-
 - (i) \$250,000.00 per event for property in the physical and legal control of the Merchant; and
 - (ii) \$20,000,000.00 per event for property damage.
- (c) The policy covers property damage that the Merchant is legally liable to pay.

Industrial Special Risk Insurance

- (a) The insurance is with QBE Insurance (Australia) Limited.
- (b) The policy covers, amongst other things, fire, accidental damage, burglary/theft and theft in the open air at the Merchants' premises.
- (c) The maximum amounts of insurance cover provided by the policy in respect of claims that may be made is:-
 - (i) Customers goods: \$1,500,000.00 per event;
 With the following sub-limits:-
 - (ii) Accidental damage: \$250,000.00 per event;
 - (iii) Burglary / theft at the Merchants' premises: \$10,000.00 per event;
 - (iv) Theft of property in the open air: \$50,000.00 per event;
 Deductibles: Fire claims: \$50,000.00 per event; and
 All other claims: \$5,000.00 per event.

13. Dispute Resolution

- 13.1. The parties agree that if a dispute arises between them in relation to any matter covered by this agreement, they will follow the dispute resolution procedure set out in the Code.
- 13.2. In the event that there is a dispute with the Merchant under this agreement or the Code, the Grower should contact the person specified below:

Merchant contact

Name:	Larry Simonetta
Phone:	(03) 5024 8461
Email:	larry@simonettagroup.com.au

- 13.3. In the event that there is a dispute with the Grower under this agreement or the Code, the Merchant should contact the person specified below:

Grower contact

Name:	
Phone:	
Email:	

14. Termination

- 14.1. Subject to subclause 14.2, this agreement can be terminated by either party giving four weeks written notice of termination to the other party.
- 14.2. 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 seven days after the day on which this agreement was entered into pursuant to clause 20 of the Code.
- 14.3. Where this agreement is terminated pursuant to clauses 14.1 or 14.2, any trade that has occurred under the agreement before the termination is governed by the terms of this agreement.

15. Variation

- 15.1. This agreement may only be varied by further agreement in writing between the Merchant and the Grower and be accepted by the parties to it either by both parties or a written notice of offer and a written notice of acceptance.

16. Severance

- 16.1. Where the terms and conditions of this agreement are conflict with are contrary to or is inconsistent with the Code, then the provisions shall be interpreted and read down by the parties to the extent that the terms and conditions comply with the Code.
- 16.2. If any term or condition is vague, ambiguous or arbitrary then the parties agree that a term or this agreement generally shall not be construed or interpreted against a party by reason that that party drafted the terms of the agreement.
- 16.3. If the terms and conditions cannot be reasonably read down so that the terms and conditions comply with the Code, then the Code shall prevail and that provision shall be severed from the agreement without affecting the balance of the terms provided.

Agreement Signing Page

The parties agree that by signing this agreement, they enter into an agreement comprising:

- (a) the terms and conditions set out in clauses 1 to 16 above
- (b) Annexure 1 – Definitions and Interpretation

Executed by or on behalf of SIMFRESH PTY LTD ACN 075 859 728

.....)
Signature of director)	Signature of director/company secretary
.....)
Name of director (print))	Name of director/company secretary (print)
Date)	Date

Executed by or on behalf of [Print Grower's name and, if relevant, ACN/ABN]

.....

[If Grower is an individual]

.....
Signature of Grower
Date

[If Grower is a company]

.....)
Signature of director)	Signature of director/company secretary
.....)
Name of director (print))	Name of director/company secretary (print)
Date)	Date

Annexure 1 - Definitions and interpretation

1. Definitions

In this agreement–

Code means the Horticulture Code of Conduct prescribed by the *Competition and Consumer (Industry Codes–Horticulture) Regulations 2017*, as amended from time to time.

Horticulture Produce means unprocessed fruit, unprocessed vegetables (including mushrooms and other edible fungi), unprocessed nuts, unprocessed herbs, other unprocessed edible plants, but does not include Nursery Products or goods the result of processing of Horticulture Produce.

Merchant means a person who purchases Horticulture Produce from a Grower for the purpose of resale of that Horticulture Produce, but does not include:

- (a) a person who purchases the Produce for export by that person, or
- (b) a person who purchases the Produce for retail sale by that person

and for the purposes of this agreement is the person specified on page 1 of the agreement.

Nursery Products includes:-

- (a) trees, shrubs, plants, seeds, bulbs, corns and tubers (other than edible tubers);
- (b) propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers or foliage; and
- (c) cut flowers or foliage.

2. Interpretation

In this agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular;
- (b) the word 'includes' in any form is not a word of limitation;
- (c) a reference to '\$' or dollars is a reference to Australian dollars;
- (d) a reference to any legislation or legislative provision includes a statutory modification, substitution or re-enactment of that legislation or legislative provision;
- (e) if any word or phrase is given a defined meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning.