

# TERMS OF TRADE

1. **About these terms**
  - 1.1 In these terms:
    - a) "Produce" means fresh fruit and vegetables;
    - b) "we", "us" or "our" means Fresh Produce Group New Zealand Limited, which carries on a business of purchasing Produce from suppliers and on-selling such Produce to international customers; and
    - c) "you" or "your" means the supplier of Produce that we purchase from.
  - 1.2 Unless otherwise agreed in writing between us, these terms apply to the purchase of Produce by us from you. By receiving a copy of these terms, you are deemed to have accepted these terms. We may vary these terms from time to time by notice in writing to you, and the varied terms will apply from the next purchase of Produce by us from you.
2. **Purchase of Produce**

At any time, you may make an offer to sell us Produce, or we may make an offer to buy Produce from you. In either case, we will specify the price that we are prepared to pay for the Produce. A contract for the sale and purchase of Produce at that price (subject to clause 5.2) will be formed when we confirm in writing (email or text message) to you.
3. **Produce Quality**
  - 3.1 You must ensure that the Produce you supply to us meets the "Market Specifications", meaning the Produce:
    - a) is fit for human consumption and export;
    - b) meets our standards for the type of produce (as set out in our Produce Specification Sheet available on our website and/or from us upon request (which includes standards on appearance, quality, residue, chemicals, biosecurity, packaging, labelling, transportation, food safety and shelf life);
    - c) meets any industry standards for the type of produce;
    - d) complies with all applicable laws and regulations; and
    - e) will continue to meet the Market Specifications for a reasonable period of time after delivery to us, having regard to the type of produce and our storage and handling of the Produce after delivery to us.
  - 3.2 You must immediately notify us if you become aware of any reason why the Produce may not meet the Market Specifications.
  - 3.3 If requested by us, you will provide to us a copy of relevant certifications held by you (for example, but not limited to, Good Agricultural Practices Certification or Organic Certification) and test results for the Produce (for example, but not limited to, Maximum Residue Level test results).
4. **Delivery of Produce**
  - 4.1 You will, at your cost and risk:
    - a) package the Produce in boxes and on pallets, with identification labels on all boxes and pallets (the "Packaging Requirements"); and
    - b) arrange delivery of the Produce to our nominated cool storage facility by the date agreed between us. Each delivery must be accompanied by a completed Delivery Docket, (Grower Advice) which is available from us at the start of the season.
  - 4.2 The identification label referred to in clause 4.1a) must accurately record your name, Fresh Produce Group Number, Grower Number, the produce type and variety, and either count size or weight.
5. **Inspection of Produce**
  - 5.1 Upon receipt of the Produce at our cool storage facility, we (or someone appointed by us) may inspect the Produce to satisfy ourselves that it meets the Market Specifications and Packaging Requirements.
  - 5.2 If we determine the Produce does not meet the Market Specifications and/or Packaging Requirements or is otherwise non-saleable (determined by us in our absolute discretion), we may by notice in writing to you within 72 hours of delivery of the Produce to us:
    - a) reject the Produce (in whole or in part), in which case you will not be entitled to payment for that Produce and you must arrange collection of the Produce, and if not done so within 24 hours of our notice, we may charge you storage fees and/or dispose of the Produce at your cost;
    - b) accept the Produce (in whole or in part) for a reduced price (to be agreed with you); and/or
    - c) work with you to save the Produce (in whole or in part) so that we can on-sell it to our international customers and/or find local buyers for it, in which case you will be responsible for any additional cost or loss of profit suffered by us. There is no obligation on us to work with you to save the Produce, but if we do, we will use reasonable commercial endeavours to obtain the best possible return for the Produce that the market will allow.
6. **Price and Terms of Payment**
  - 6.1 The price for the Produce will be determined by us at the time the contract for the sale and purchase of Produce is formed under clause 2. The price will be based on the market for the Produce and is therefore subject to change from one contract to the next.
  - 6.2 Notwithstanding clause 6.1, we may reduce the price after delivery of the Produce to us in accordance with clause 5.2.
  - 6.3 Airfreight Shipments; We will pay the price, less any statutory or industry levies or charges, to you by way of direct transfer into your nominated bank account on the first Friday that is between 21 to 28 days from the date of delivery. We will then issue our buyer created tax invoice to you.
  - 6.4 Payment terms for Sea freight shipments will be negotiated each season.
  - 6.5 We may offset against the amount due to you any amounts due and owing to us, for example, the price for any boxes or pallets purchased by you from us. Any packaging material supplied and unused in the current season, must be retained by the Grower for use the next season.
7. **Risk and Title**

Risk and Title in the Produce will only pass to us once we have satisfied ourselves that the Produce meets the Market Specifications and Packaging Requirements. From this time, the Produce will be covered under our insurance policies.
8. **Indemnity**

You shall indemnify us against any loss, damage, cost or expense incurred or suffered by us in connection with a breach of these terms by you.
9. **Limitation of Liability**

Except for our liability to pay you the price under clause 6, we shall not be liable to you (to the maximum extent permitted by law) for any loss, damage, cost or expense of any kind whatsoever in connection with these terms and their subject matter.
10. **General Terms**
  - 10.1 **Force Majeure:** Neither of us shall be liable to the other for of any delay in performance, or non-performance, of any obligations under these terms (other than a lack of resources (including money) for any reason), to the extent that the delay or non-performance is due to any circumstances not caused by or contributed to the party seeking to rely on this clause and which has been notified by that party to the other in writing.
  - 10.2 **Disputes:** If a dispute arises out of or relates to these terms, a contract or the supply of Produce by you to us, we will both endeavor to resolve the dispute by good faith negotiations between us. If we are unable to resolve the dispute during negotiations, either one of us may refer the dispute to mediation by notice in writing by a mediator to be agreed between the both of us within five working days of that notice or failing agreement by the President of the New Zealand Law Society or his or her nominee. We will share the costs of the mediator equally.
  - 10.3 **Confidentiality:** Each of us agree to hold in confidence all information concerning the other or the other's affairs that is acquired while working together, including information relating to the other's finances and commercial dealings. Each of us will only disclose confidential information of the other party if it is necessary or desirable to enable us to carry out the other's instructions, comply with our obligations under these terms or to the extent it is required by law.
  - 10.4 **Amendments:** Any amendments to these terms must be in writing.
  - 10.5 **Assignment:** You are not entitled to assign or transfer any right or benefit you have under these terms without our prior written consent.
  - 10.6 **Entire Agreement:** These terms constitute the entire agreement between us relating to their subject matter.
  - 10.7 **Waiver:** No failure or delay by us in exercising our rights under these terms shall be deemed to be a waiver of that right or any subsequent breach of the same or any other provisions in these terms.
  - 10.8 **Severability:** Any unlawful or voidable provision or part provision in these Terms shall be read down so as to be valid and enforceable or, if it cannot be read down, will be severed from these Terms without affecting the validity, legality or enforceability of the remaining provisions or part provisions.
  - 10.9 **Governing Law:** Our relationship with you is governed by New Zealand law and the courts of New Zealand have exclusive jurisdiction.