



## AGENCY TRADING TERMS

**These Agency Trading Terms are the preferred terms of trade of Tomato Exchange Pty Ltd when acting as agent in the trade of horticulture produce.**

**When accepted in writing, these Agency Trading Terms constitute a horticulture produce agreement for the purposes of the Horticulture Code between the Costa Company set out in item 1 of the Schedule and the Grower set out in Item 2 of the Schedule, appointing that Costa Company to act as agent for the Grower in respect of the Produce in item 3 of the Schedule, with effect from the Commencement Date set out in item 4 of the Schedule.**

1. In this document, "**Terms**" means these Agency Trading Terms, unless the Schedule has been accepted in which case "Terms" will mean the Horticulture Produce Agreement that consists of these Agency Trading Terms and the Schedule.
2. Nothing in these Terms obliges the Costa Company to accept any unsolicited Produce from the Grower.
3. The Grower warrants (at the time of accepting these Terms and each time that it provides Produce to the Costa Company) that it is the owner of the Produce, it has authority to appoint the Costa Company as agent pursuant to these terms and that the Produce is of merchantable quality, fit for its purpose and strictly meets the specifications for that Produce set out in item 5 of the Schedule ("**Specifications**").
4. Unless otherwise agreed between the parties in writing, the Produce will be delivered to the Costa Company (at the address specified by the Costa Company from time to time) at the Grower's risk, cost and expense.
5. The Grower will pay the Costa Company a commission (plus GST) for all Produce sold by the Costa Company pursuant to these Terms, as set out in item 6 of the Schedule ("**Commission**"), or as otherwise varied by agreement in writing by the parties from time to time.
6. The Costa Company has the right to charge, and the Grower will pay, for any additional expenses arising from the receipt of the Produce by the Costa Company in accordance with these Terms, including without limitation freight, packing, packaging, ripening, storage or any other expenses, as set out in item 8 of the Schedule, or as permitted under any other agreement between the parties ("**Expenses**"). The Costa Company's right to charge any Expenses is not contingent on the sale of the Produce.
7. Subject to clause 9, the Costa Company will pay the Grower any proceeds that the Costa Company receives for the sale of the Produce, after deducting the Commission and Expenses applicable to the Produce sold (and, if elected by the Costa Company, after deducting any amounts owing to the Costa Company by the Grower under any other agreement) ("**Proceeds**"). The Costa Company acknowledges that the deduction of Commission or Expenses under this clause constitutes payment of those amounts by the Grower.
8. The Costa Company may pool the Produce it receives from the Grower with produce of the same variety and quality which is received from other growers.
9. If the Costa Company pools the Produce, the Proceeds for a week will be calculated based on the average price the Costa Company receives for the sale of pooled Produce (per count, grade and variety) packed during the relevant pool week ("**Pooled Produce**"), after then deducting (a) Commission, based on that average price and (b) Expenses, which for each Expense can be the actual Expense for that Grower's produce in that pool week or the average Expense incurred by the Costa Company for the sale of Pooled Produce. The Costa Company acknowledges that the deduction of Commission and/or Expenses under this clause constitutes payment of those amounts by the Grower.
10. Unless otherwise agreed, payment of the Proceeds will be made to the Grower in accordance with the payment terms set out in item 7 of the Schedule. If any Proceeds that are paid to the Grower are subsequently discovered to relate to a bad debt, the Costa Company may elect to deduct the amount of such Proceeds from any future amounts payable to the Grower, provided that the Costa Company repays any Commission charged for the sale that relates to the bad debt.
11. The Grower consents to the Costa Company selling the Produce to any third party that the Costa Company thinks fit, including any related body corporate of the Costa Company. The Grower also consents to the Costa Company selling the Produce in any location that the Costa Company thinks fit, including a state or territory other than that in which the Produce was originally delivered to the Costa Company.
12. The Costa Company will pursue customers for payment of bad debts, but is not required to take legal action against customers in respect of bad debts. The Costa Company will give details of bad debts, including the relevant buyer's name and contact details, to the Grower on request.
13. The Grower will indemnify the Costa Company for any amounts that the Costa Company pays to a liquidator, receiver, trustee in bankruptcy or any other insolvency practitioner in respect of any monies previously received by the Costa Company on account of the Proceeds.
14. The Costa Company will provide a statement ("**Statement**") to the Grower which, in respect of each successive month, will detail the following:
  - a. the date or dates of the sale of the Produce during the period;
  - b. the type and quantity of the Produce sold during the period;
  - c. the price received for the Produce sold during the period;

- d. details of the Commission and any Expenses deducted from the Proceeds during the period;
- e. the dates at which Produce was delivered to the Costa Company during the period;
- f. details of any Produce delivered to the Costa Company during the period that remains unsold at the end of the period, and the reasons why the Produce was not sold;
- g. details of any unsold Produce that was destroyed during the period (and the costs of destruction);
- h. details of any unsold Produce that is held by the Costa Company at the end of the period.

The Statement will be delivered by the end of the following month after the reporting period and is prima facie evidence of the accuracy of the matters set out in (a) to (h) above, in the absence of manifest error. Unless otherwise requested by the Grower, the Statement will be taken to have been delivered to the Grower if it is made available for collection at the Costa Company's premises.

15. The Grower, at its own expense, will punctually make the Produce available for inspection by the Costa Company at the time and location as instructed by the Costa Company from time to time. The Produce must be made available by the Grower to the Costa Company strictly in accordance with the Costa Company's instructions, which may be varied from time to time at the absolute discretion of the Costa Company. The Produce is made available at the sole cost of and risk of the Grower.
16. In addition to the Costa Company's rights under clause 2, the Costa Company or its nominated representative will inspect the Produce and may reject all or some of the Produce for the following reasons:
  - a. where all or some of the Produce does not meet the Specifications;
  - b. where the Costa Company determines that all or some of the Produce is unfit for sale by the Costa Company; or
  - c. where all or some of the Produce is not made available for inspection strictly as directed by the Costa Company.
17. If the Costa Company rejects all or some of the Produce it will:
  - a. immediately contact the Grower to advise what amount of the Produce is rejected;
  - b. confirm that rejection, and the reasons for rejection, in writing within 5 business days; and
  - c. at the risk and cost of the Grower, return the rejected Produce to the Grower (or make it available for collection by the Grower's nominated representative), or destroy the Produce if requested by the Grower.
18. The Grower acknowledges and agrees that the Produce may contain latent quality defects which do not manifest until after the Produce has been made available to the Costa Company. The Costa Company reserves its right to exercise its rights and remedies under this clause with respect to Produce that manifests such latent quality defects after the Produce has been inspected and accepted by the Costa Company in accordance with clause 17. A written statement by the Costa Company asserting a latent quality defect in Produce, together with reasonable evidence of the defect, the cost and damages to the Costa Company of the defect and when the defect became apparent to the Costa Company will be prima facie evidence of such matters. The cost and damages suffered by the Costa Company as a result of a latent quality defect will be payable by the Grower, or (in the Costa Company's sole discretion) may be set off and deducted from any monies payable by the Costa Company to the Grower.
19. The Grower acknowledges that it has received a copy of Costa's 'Supplier Code' ("Supplier Code"). The Grower confirms that it has read and understood the Supplier Code and that it will act in accordance with the Supplier Code (as amended from time to time), including that it will comply with all applicable workplace and employment laws, at all times while supplying Produce to the Costa Company.
20. The Grower indemnifies the Costa Company for all loss, damage, costs or expenses arising from any breach by the Grower of these Terms including without limitation the warranties in clause 3.
21. Where these Terms constitute a Horticulture Produce Agreement, then the Terms may:
  - a. be terminated by either party on no less than 90 days' notice, subject to the Grower's cooling-off rights in the Horticulture Code; and
  - b. only be varied as agreed in writing between the parties.
22. If a dispute arises between the parties, a party may deliver a notice to the contact person specified in items 1 or 2 of the Schedule (as appropriate) setting out the terms of the dispute. Each party must use its reasonable endeavours to resolve the dispute by negotiations with the other. If either party gives notice that it wishes the dispute to be determined in accordance with the procedure in Division 5.2 of the Horticulture Code, the other party must participate in that procedure.
23. All dollar amounts expressed in or pursuant to these Terms are exclusive of GST. The Grower is responsible for payment of all GST arising from any supply made by the Costa Company under this agreement.
24. Where the Costa Company is trustee of a trust, it acts as trustee of that trust when entering into any Horticulture Produce Agreement with the Grower.
25. All rights subsisting to the parties at termination shall survive termination.
26. Each Costa Group Company has the benefit of a group stock throughput insurance policy that covers produce under the Costa Group Company's control, subject to the insurance policy terms and conditions, against loss or damage including but not limited to fire, theft or accidental damage (other than deterioration of quality or any other inherent losses). The Insurer is Berkshire Hathaway Specialty Insurance and the claim limit is \$5 million.
27. The Costa Company's liability for any loss arising pursuant to these Terms is limited to the amount recovered by the Costa Company from its insurers for such loss.
28. These Terms are governed by the law of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the state of Victoria.
29. These Terms may be executed in counterparts. All counterparts when taken together are taken to constitute the one agreement.
30. By accepting these Agency Trading Terms, the Grower acknowledges that, before accepting this agreement, Tomato Exchange Pty Ltd asked the Grower to provide:
  - a. a signed statement by the Grower that the Grower has received independent legal advice about the agreement; or
  - b. a signed statement by the Grower that the Grower has been told by Tomato Exchange Pty Ltd that independent legal advice should be sought about the proposed agreement but has decided not to seek that advice.

**SCHEDULE - HORTICULTURE PRODUCE AGREEMENT DETAILS**

**1. Costa Company:**

Company name: TomatoExchange Pty Ltd  
 ABN: 23 870 133 940  
 Postal Address: Locked Bad 38004, Docklands VIC 8012  
 Telephone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Email: \_\_\_\_\_ (and, in the case of a dispute notice or termination notice, copy to contractnotices@costagroup.com.au)  
 Contact person: \_\_\_\_\_

**2. Grower:**

Company name: \_\_\_\_\_  
 ABN: \_\_\_\_\_  
 Postal Address: \_\_\_\_\_  
 Telephone: \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Contact person: \_\_\_\_\_

**3. Produce:**

**4. Commencement Date:** The date on which these agency trading terms are signed or otherwise accepted in writing by the Grower.

**5. Produce quality specifications:**

**6. Commission:** \_\_\_\_\_% multiplied by the price at which Produce is sold by the Costa Company, excluding GST but before deducting rebates or any other amounts

**7. Payment terms:** Proceeds will be paid to the Grower:

- 15.2.1 within 23 days after the end of week (ending Sunday) during which the Produce is received; or
- 15.2.2 by the next Tuesday after the day on which the Produce is sold;

whichever is later.

**8. Expenses:**

Expense	Price (inc. GST)
Freight	At commercial rates charged to the Costa Company
Packaging	\$ (per package)
Storage	\$ (per Pallet / per day)
Fumigation	\$ (per pallet)

Expense	Price (inc. GST)
Packing	\$ (per package)
Ripening	\$ (per pallet)
Retail promotion funds	

**EXECUTED** for and on behalf of the **COSTA COMPANY:**

**EXECUTED** for and on behalf of the **GROWER:**

\_\_\_\_\_  
 Print name

\_\_\_\_\_  
 Print name

Date / /

Date: / /