

Horticulture Produce Agreements

Growers and traders are required to use written agreements which specify how produce will be traded. Agreements must outline whether the trader will trade as an agent or a merchant, payment timeframes and reporting timeframes. Growers and traders can use an agreed terms of trade document as the foundation of their Horticulture Produce Agreement (HPA).

The following HPA template has been drafted by Minter Ellison Lawyers to outline the minimum legal contract requirements under the Code.

Horticulture Produce Agreement		
Date:		
Parties		
Trader's Name: ABN: Address: Facsimile: Email: Phone: Mobile: Contact: Capacity: Merchant / Agent <i>(Strike out which is not applicable - see Note 1)</i>	Grower's Name: ABN: Address: Facsimile: Email: Phone: Mobile: Contact:	
Terms of Agreement		
1.	The Grower has agreed to <i>sell</i> and the Trader (merchant) has agreed to <i>buy</i> horticulture produce of the type, quantity, specification and price stated below or as ordered by the Trader and confirmed in writing by the Grower from time to time. / The Trader (agent) has agreed to <i>sell</i> the horticulture produce described below as an agent on <i>behalf</i> of the Grower. <i>(Strike out which sentence is not applicable - see Note 1)</i>	
2.	The Trader's published terms of trade as at the date of agreement, or other written terms of trade agreed between the parties, apply to all sales and purchases of produce under this agreement, except to the extent specified below.	
3.	This agreement may be terminated early by either party giving the period of written notice specified below to the other party.	
4.	This agreement may only be varied by further written agreement signed by both parties.	
Details		
Ref No:	<i>(See Note 2)</i>	
Term:	Start date:	End date:
Produce Details:	Produce Type(s): <i>(See Note 3)</i>	
	Quantity: <i>(See Note 4)</i>	
	Price (merchant) / Commission or fees (agent): <i>(Strike out whichever sentence is not applicable- See Note 5)</i>	
	Consequences of not meeting requirements: <i>(See note 6)</i>	
	Period for giving reasons for rejection: <i>(See note 7)</i>	
Reporting	Reporting period: <i>(See note 8)</i>	Statement period: <i>(See note 8)</i>
Bad debts:	The Grower will / will not have a role in pursuing bad debts. <i>(Strike out entirely if Trader is acting as merchant. Strike out whichever sentence is not applicable if Trader acting as agent - see Note 9)</i>	
Notice Period:	<i>This agreement may be terminated by either party upon _____ working days written notice</i>	
Dispute	<i>(See Note 10)</i>	
Contact:		
Other terms:	<i>(See Note 11)</i>	
Executed as an Agreement		

Signed by/on behalf of Trader by: Name (print):	Signed by/on behalf of Grower: Name (print):
----------------------------------------------------	-------------------------------------------------

The above HPA template will meet the minimum requirements of the Code provided that:

- all of the required details are inserted into the template,
- the relevant trader has published terms of trade which comply with the Code; and
- the parties observe their obligations under the Code.

The HPA template assumes that the trader has published terms of trade as required by the Code and these are incorporated into the agreement. Under the Code, a trader's terms of trade must specify among other things, delivery requirements, quality requirements, circumstances in which produce may be rejected and payment terms. Traders and growers can agree to include additional terms within their Horticulture Produce Agreement to those outlined within the template but they are not required to do so under the code. If there is insufficient space to record details, the parties may refer to and attach another document. This agreement does not set out all of the party's rights and obligations under the Code, which will continue to apply to the parties and will prevail over this agreement if there is any inconsistency.

Notes

Note 1: A Trader can only act as a merchant or an agent for the purposes of a particular agreement. The parties should strike out the sentence that does not apply in clause 1.

Note 2: This field is optional. It may be used if the parties wish to use a reference no. to identify this agreement, for example by referring to this agreement on an individual order form for a consignment of produce. See the attached template Order Form.

Note 3: Specify the produce type or types here. If agreement is for single consignment only, any further produce specifications (e.g. a grade) may be included here. If the agreement is to cover multiple consignments, then parties may include further specifications on individual order form(s).

Note 4: If the agreement is for a single consignment only, then quantity of produce to be supplied should be stated here. If agreement is to cover multiple consignments, then parties may specify quantity required on individual order form(s).

Note 5: Strike out whichever is not applicable. If the Trader is acting as a merchant then complete as follows:

- If the agreement is for a single consignment and price has been agreed in advance, specify price here. If price is to be agreed upon delivery, write 'Price to be agreed upon delivery'. Note the price must then be agreed in writing immediately upon delivery. OR
- If the agreement is to cover multiple consignments and the price is not agreed in advance, write 'Price/quantity as ordered/confirmed in writing'. Individual orders should then be made/confirmed in writing and should refer to this agreement and state any product specifications, quantities required and the agreed price. The attached template Order Form may be used to make/confirm individual orders under the agreement.

Alternatively, if the Trader is acting as an agent, then if a commission, fee or other charge is payable, state the amount of the commission, fee or other charge here and how it is to be calculated.

Note 6: The Trader must state any quality requirements in respect of produce in its terms of trade. The Trader's terms of trade should also state circumstances in which produce may be rejected by the Trader. The Trader's quantity requirements will be specified in the agreement. The Trader and Grower should state here how the Trader will otherwise deal with produce which does not meet any specified quality or quantity requirements. This may include rejecting the produce in accordance with the terms of trade, but may also specify other consequences.

Note 7: State here the agreed time during which the Trader must inform the Grower of the reasons for it having rejected any produce (e.g. 'Within 7 days of rejection').

Note 8: State here the agreed 'reporting period' (e.g. 'monthly', 'quarterly') for the purposes of providing the statement required by clause 28 of the Code (which applies where a Trader is acting as a merchant) or clause 20 (which applies where the Trader is acting as an agent). Also specify the 'statement period' which is the time period in which the statement for a reporting period must be provided (e.g. 'within one week of the end of the reporting period'). The contents of these statements are set out in clause 20 of the Code for agents and clause 28 of the Code for merchants.

Note 9: If the Trader is acting as a merchant, strike out the entire clause. If the Trader is acting as an agent, strike out whichever text is not applicable in relation to the Grower's role in pursuing bad debts. Note that a Trader acting as an agent must specify in its terms of trade the role that it is prepared to undertake in pursuing bad debts of the Grower. If the

Grower has a role in pursuing bad debts, then clause 23 of the Code provides that certain information about the buyer must be given by the agent to the Grower

Note 10: If the party to be contacted in the event of a dispute is the same as the contact as noted above, state 'as above'. If a different contact is to be used in a dispute (e.g. a more senior person within the relevant organisation than the usual contact), include name and contact details for that person.

Note 11: This field is optional. It may be used if parties wish to specify any variation or addition to the Trader's published terms of trade. If there are no other terms then please write 'Not applicable'. Any terms of trade agreed on by the parties must not be inconsistent with the Code

Note that there is a requirement to obtain legal advice for horticultural produce agreements of greater than 90 days' duration. This is not reflected in the Agreement. It will remain the responsibility of each grower and trader to comply with these requirements. Growers and traders are also encouraged to ensure that they agree to the delivery requirements set out in the Trader's published terms of trade document.

If a Horticulture Produce Agreement is in place between a grower and trader, individual consignments within that contract period can be documented by using an 'order form' or other written confirmation. e.g.: A grower has a seasonal contract with a trader (as agreed through a signed Horticulture Produce Agreement). Individual consignments during this period could be documented using the template 'order form' outlined below. This 'order form' template has been designed using independent legal advice from Minter Ellison Lawyers and when used in conjunction with the template Horticulture Produce Agreements will meet the minimum legal requirements under the Horticulture Code of Conduct.

Horticulture Produce Agreement – Order Form			
Date:		HPA Reference No:	
Product Specification	Quantity	Price/ Commission	Delivery Date
This constitutes an order for horticulture produce under the terms and conditions of the agreement referred to above.			
Signed by/on behalf of Grower by:		Signed by/on behalf of Trader by:	
Name (print):		Name (print):	

Disclaimer

The information is for general information only. It is not intended as legal or professional advice. NFF and HAC recommend that people seek their own legal and professional advice. NFF and HAC expressly disclaim all liability for any loss or damage arising from reliance upon the information contained in this article.