



ODEUM PRODUCE

PTY LTD

A.C.N. 009 404 031 A.B.N. 56 009 404 031, 34 Catalano Road Canning Vale 6155 P.O. Box 1285 Canning Vale W.A. 6970 Telephone: (08) 9256 8100 Facsimile: (08) 9256 8181 Email: admin@odeum.com.au Web: www.odeum.com.au

HORTICULTURE PRODUCE AGREEMENT – MERCHANT (HPA-M)

A MERCHANT AGREEMENT BETWEEN:

'Odeum'

Odeum Produce Pty Ltd, ACN 009 404 031, ABN 009 404 031.
Of 34 Catalano Road, Canning Vale, Western Australia 6155.

AND

'the Grower'

ABN: _____ ACN: _____
Of: _____

TERM: If this HPA-M is to operate for a fixed Term, the Term shall be specified here as: _____ from the date of execution. Unless specified otherwise, this HPA-M shall prevail indefinitely, until terminated by either party in writing, pursuant to clause 5 hereunder, or until a new HPA-M is signed between Odeum and the Grower.

BOTH PARTIES SPECIFICALLY AGREE THAT:

1. General

- 1.1. This Merchant agreement incorporates all of the Odeum Produce Pty Ltd **Terms of Trade**, that defines certain important concepts used in both this Agreement and the Terms of Trade, and sets out specific requirements, benefits and provisions for both parties in relation to quality assurance, supply, delivery, rejection, payment and reporting, in full compliance with the *Trade Practices (Horticulture Code of Conduct) Regulations 2006 (Cth) (the 'HCC Code')*.
- 1.2. Under this HPA-M, Odeum will be acting as a **Merchant**. For the avoidance of doubt, Merchant means a Person who purchases Horticulture Produce from a Grower for the purpose of reselling that Horticulture Produce, but does not include a Person who purchases the produce for the purpose of export or retail sale.
- 1.3. This HPA-M and the Odeum Terms of Trade as may be amended from time to time, shall be read together as one integrated document. The current Odeum Terms of Trade is publicly available at our office at 34 Catalano Road, Canning Vale; and on our website at www.odeum.com.au.

2. Determination of Price

- 2.1. The Purchase Price must be agreed in writing before Delivery, or immediately upon Delivery, pursuant to clause 25 of the HCC Code.
- 2.2. Before Delivery or immediately upon Delivery, Odeum will provide a written purchase order to the Grower stating the proposed Purchase Price.
- 2.3. The Grower must sign the Purchase order to indicate acceptance of the Purchase Price and return the Purchase Order to Odeum.
- 2.4. Upon supply of the Produce to Odeum, Odeum or its authorised representative may inspect any or all of the Produce in order to ascertain that the agreed Purchase Price is appropriate for the quality/quantity of Produce supplied. If, in the sole opinion of Odeum it is determined that the Produce does not meet the prescribed quality/quantity requirements Odeum will Reject Delivery of the Produce pursuant to Part 8 of the Odeum Terms of Trade.
 - 2.4.1. In the event of a Delivery Rejection Event:

Produce Marketing Solutions



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2.4.1.1. Odeum will notify the Grower of a Rejected Delivery Event immediately by phone, fax, email or other electronic means.

2.4.1.2. Upon notification of Rejection the Grower must respond within 24 hours subject to clause 8.3.2 of the Terms, and may elect to either:

- (a.) renegotiate the Purchase Price with Odeum and agree to a new Purchase price before Delivery can occur; or
- (b.) cancel this HPA-M and Deliver the Produce to Odeum under a signed and valid HPA-A.

2.5. The Grower acknowledges and agrees that the Produce may contain latent quality defects which do not manifest themselves until after Delivery.

2.5.1. Odeum reserves its right to exercise its rights and remedies under this clause with respect to Produce that manifests such latent quality defects and after transfer of title to the Produce.

2.5.2. Odeum will confirm in writing the Delivery Rejection Event according to clause 8.3 of the Terms.

2.5.3. Odeum shall be entitled to offset and deduct the cost to it of any latent quality defect from any monies payable by it to the Grower.

3. Dispute Resolution Process

3.1. The procedure for Dispute resolution for horticulture disputes is as set out in Part 5 and 6 of the HCC Code.

3.2. Both parties to this Agreement shall appoint an independent Person to act as an expert and not an arbitrator in determining any disputes which may arise under this Agreement.

3.3. The person nominated by Odeum to be contacted by Odeum in the event of a dispute is:
The General Manager, P.O. Box 1285, Canning Vale, Western Australia 6155. Tel: +61 (0)8 9256 8100, Fax: +61 (0)8 9256 8181.

3.4. The person nominated by the Grower to be contacted in the event of a dispute is the person who has below signed this Agreement.

4. Variation Process

4.1. The Agreement may only be varied by the signed agreement of both parties.

5. Termination

5.1. This Agreement may be terminated by either party at any time within 14 days from the day that this Agreement was entered into:

- (a.) by either party giving written notice of intention to terminate to the other; or
- (b.) at any other time by either party giving not less than 48 hours written notice of intention to terminate to the other.

5.2. This Agreement may be terminated by the Grower with 24 hours written notice, such termination being conditional upon the fulfilment of the requirements contained within subclause 3.2 – 3.5 of the Odeum Terms of Trade 2008.

5.3. For the avoidance of doubt, if this Agreement is cancelled during the period mentioned within clause 5.1 of the HPA-M, any trade that has occurred under the Agreement before the termination is governed by the Terms of the Agreement.

5.4. Any payment, of money or other valuable consideration, that was made for the purposes of, and directly related to, trade that would have occurred after the termination of the Agreement, must be returned to the party who made the payment, within 14 days of the termination.

5.5. A party to the Agreement may deduct from the amount to be returned under subclause 5.4 reasonable expenses incurred under the Agreement for the purposes of, and directly related to, trade that would have occurred after the termination of the Agreement.



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6. Legal Declaration

For the purposes of Clause 8 of the Horticulture Code of Conduct as contained within the *Trade Practices (Horticulture Code of Conduct) Regulations 2006 (Cth)*:

- The Grower obtained legal advice.

The Grower declares that it retained its own legal advisor (Advisor) to act for the Grower in relation to this HPA-M and the integrated Odeum Terms of Trade to be entered into between Odeum and the Grower and has received independent legal advice from the Advisor in relation to the HPA-M before entering into the HPA-M;

OR

- The Grower did not obtain legal advice.

The Grower acknowledges that Odeum has recommended that the Grower seeks independent legal advice in relation to this HPA-M and the integrated Odeum Terms of Trade to be entered into between Odeum and the Grower. The Grower warrants to Odeum that it has read the HPA-M and the integrated Odeum Terms of Trade and understands its meaning and effect and in particular, has a full understanding of the liabilities and obligations of, and implications for, the Grower's affairs and assets. Accordingly, the Grower has elected not to obtain legal advice and waives any right or recourse the Grower may have otherwise had against Odeum for not having obtained such advice.

GROWER TO SIGN AS APPLICABLE:

Where the Grower is an Individual:

Where the Grower is a Company:

Signed Sealed and Delivered by the Grower:

Executed by the Grower in accordance with section 127 of the Corporations Act 2001:

Signature of Grower

Signature of Witness

Signature of Director/Secretary

Signature of Director

Print Name of Grower

Print Name of Witness

Print Name of Director/Secretary

Print Name Director

Date

Date

Signed by Odeum Produce Pty Ltd

Signature of Odeum Produce
Authorised Officer

Date