



# TERMS AND CONDITIONS OF TRADE WITH SUPPLIERS

These terms and conditions come into full effect and operation on 21 March 2004.

## 1. DEFINITIONS

1.1 In these terms and conditions the following words bear the following meanings:

**"Container equipment"** means all returnable wooden or plastic hire containers, pallets and cages officially approved by FRESHMAX,

**"Container equipment supplier"** means the hirer or provider of Container equipment officially approved by FRESHMAX.

**"Daily hire container equipment"** means black plastic crates and red plastic pallets owned by CHEP New Zealand or any other returnable hire equipment for which CHEP New Zealand charges a daily hire charge.

**"Deposit"** means the deposit for Container equipment specified by a Container equipment supplier and officially approved by FRESHMAX.

**"GST"** means goods and services tax pursuant to the Goods and Services Tax Act 1985.

**"Produce"** means fresh fruit and vegetables.

**"Product"** means Produce and/or flowers and/or food items and/or associated items.

**"Supplier"** means the producer/vendor of Product that FRESHMAX purchases.

**"FRESHMAX"** means FRESHMAX NZ Ltd and any person authorised by it to act on its behalf.

1.2 In these terms and conditions the singular shall include the plural.

1.3 FRESHMAX is a fresh fruit and vegetable wholesaler having operations located throughout New Zealand. In the course of its business it:

- (a) Purchases Product from Suppliers and on sells such Product.
- (b) Facilitates the transfer of Deposits for Container equipment

## 2. ACCEPTANCE OF TERMS AND CONDITIONS

2.1 The dealing by a Supplier with FRESHMAX shall be deemed to be acceptance by the Supplier of these terms and conditions.

2.2 FRESHMAX may alter these terms and conditions by giving notice of such alteration to the Supplier and the subsequent dealing by the Supplier with FRESHMAX shall be deemed to be acceptance by the Supplier of the alteration(s).

2.3 These terms and conditions apply to all dealings between the Supplier and FRESHMAX except trades of Product for export to which these terms and conditions shall not apply.

2.4 The Supplier may not impose any other term(s) as a condition of FRESHMAX's purchase of Product unless agreed in writing prior to the delivery of the Product to FRESHMAX.

## 3. PURCHASE PRICE

3.1 Product supplied by the Supplier to FRESHMAX shall be purchased by FRESHMAX at either a price agreed between FRESHMAX and the Supplier or a price determined by FRESHMAX within a range agreed between FRESHMAX and the Supplier.

## 4. DELIVERY

4.1 The Supplier shall at its cost and risk arrange delivery to FRESHMAX's premises, or to such other place as FRESHMAX may direct, all Product that FRESHMAX agrees to purchase.

## 5. PAYMENT

5.1 Payment for all purchases will be by way of "Buyer Created Tax Invoice" unless otherwise agreed in writing.

5.2 FRESHMAX shall pay the purchase price to the Supplier, within not more than 21 days of the close of each 14 day accounting cycle, less statutory levies, charges and any other moneys payable by the Supplier to FRESHMAX or its associates. FRESHMAX may offset against the amount due to the Supplier any amounts due and owing to FRESHMAX or its associates by the Supplier.

## 6. RISK

6.1. Provided always that Product complies in all respects with the terms under which it is sold, the risk in Product purchased by FRESHMAX from a Supplier shall pass to FRESHMAX at the time FRESHMAX takes delivery of the Product.

## 7. TITLE

7.1 Title to Product purchased by FRESHMAX from a Supplier shall pass to FRESHMAX at the time FRESHMAX agrees to purchase the Product.

## 8. REGISTRATION

8.1 Each Supplier shall complete the FRESHMAX Supplier's Registration form current at the time. A FRESHMAX Grower Advice form must accompany all Product delivered to FRESHMAX.

## 9. GST REGISTRATION

9.1 Where the Supplier sells Product to FRESHMAX, the Supplier shall be registered for GST and shall provide proof of registration if requested by FRESHMAX. If the Supplier is not registered for GST FRESHMAX will be under no obligation to deal with the Supplier.

## 10. PACKAGING

10.1 The Supplier shall ensure that all Product it provides to FRESHMAX meets with any packaging requirements for that Product type specified by FRESHMAX from time to time.

10.2 The Supplier will be liable for any costs incurred or charged by FRESHMAX for re-packing the Supplier's products where the Products do not meet the specified packaging requirements.

## 11. CONTAINER EQUIPMENT

11.1 FRESHMAX will accept Product supplied in returnable Container equipment approved by FRESHMAX.

11.2 The Supplier acknowledges and agrees that:

- (a) the Supplier has no property or ownership in the Container equipment and absolute property and ownership in the Container equipment shall at all times remain with the Container equipment supplier; and
- (b) with respect to Container equipment supplied by Container equipment suppliers other than FRESHMAX, FRESHMAX is at all times acting as agent of the Container equipment supplier and is under no liability as principal to the Supplier.

11.3 Upon the Supplier's Product in Container equipment being on sold by FRESHMAX, FRESHMAX reserves the right to notify the Container equipment supplier that the Container equipment has passed to a third party.

11.4 In respect of Daily hire container equipment the Supplier acknowledges and agrees:

- (a) FRESHMAX will not accept transfer of Daily hire container equipment until 3 days after the date on which the equipment is delivered to FRESHMAX's premises or such other place as FRESHMAX directs; and

(b) the Supplier shall be responsible for all charges in respect of the Daily Hire container equipment (including hire charges and Deposit) from the time it hires the equipment until 3 days after the date on which the equipment is delivered to FRESHMAX's premises or such other place as FRESHMAX directs.

## 12. NON-RETURNABLE PACKAGING

12.1 FRESHMAX will not collect on behalf of a Supplier charges on non-returnable containers.

12.2 FRESHMAX will not accept Product in second hand non-returnable containers.

## 13. QUALITY/GRADING STANDARDS

13.1 The Supplier shall ensure that all Product it provides to FRESHMAX meets the prescribed standard for the particular Product type and is graded in accordance with any FRESHMAX grading system for that particular Product type.

13.2 FRESHMAX may reject any Product that it determines does not meet the prescribed standard for the particular Product type or is not graded in accordance with the FRESHMAX grading system and its determination in this regard shall be conclusive.

13.3 Upon receiving notice that FRESHMAX has rejected Product the Supplier shall at its cost uplift the rejected Product immediately. Any rejected Product not uplifted within 24 hours of such notice may be disposed of by FRESHMAX without compensation to the Supplier and the Supplier will be liable for any costs incurred or charged by FRESHMAX for disposing of the Product.

13.4 The Supplier will be liable for any costs incurred or charged by FRESHMAX for re-grading the Supplier's Products where the Products have not met the prescribed standard.

## 14. NON-SALEABLE PRODUCT

14.1 FRESHMAX may at its own discretion and without the need to give reason, reject all or some of any Product which is non-saleable by notification given to the Supplier at any time within 72 hours of delivery of the Product to FRESHMAX.

14.2 FRESHMAX may at its own discretion dispose of non-saleable Product, or deal with the Product for the benefit of the Supplier and FRESHMAX. FRESHMAX will advise the Supplier of any material quantities of Product that FRESHMAX considers non-saleable.

## 15. ADVICE NOTE

15.1 All Produce supplied to FRESHMAX shall be labelled in accordance with FRESHMAX requirements and shall be accompanied by a supplier advice note or pallet card in a form acceptable to FRESHMAX and which shall accurately record the following details:

- (a) The name and physical address of the Supplier;
- (b) FRESHMAX Supplier code;
- (c) The date of supply;
- (d) Produce type, variety and either count size or weight;
- (e) The quantity of each type of Produce;
- (f) The quantity of each type of container and/or pallet;
- (g) Supplier reference number;
- (h) Any special delivery location.

15.2 FRESHMAX shall be under no obligation to accept any Product which does not meet labelling and packaging requirements in accordance with the relevant FRESHMAX prescribed standards, and FRESHMAX at its option may either return the Product to the Supplier at the Supplier's risk and expense or hold the Product for collection by any such Supplier at the Supplier's risk and expense or dispose of the Product without compensation to the Supplier.

## 16. WARRANTY

16.1 The Supplier warrants to FRESHMAX that the Product meets the prescribed standard for the particular Product type and will continue to do so for such period that is reasonable, having regard to the type of Product and the method of storage and transport used by FRESHMAX.

16.2 The Supplier indemnifies FRESHMAX against all claims made against FRESHMAX and all loss or penalties suffered by FRESHMAX resulting from any claim or potential claim by any third party in connection with Product failing to meet the prescribed standard on delivery to the third party together with all costs incurred by FRESHMAX (including legal costs calculated on a solicitor and client basis) in dealing with any claim or potential claim made or action taken against FRESHMAX.

## 17. RIGHT OF REFUSAL TO DEAL

17.1 FRESHMAX shall not be obliged to purchase Product from any Supplier and is entitled to refuse to purchase Product without giving any reason.

## 18. USE OF FORKLIFT OR OTHER EQUIPMENT

18.1 Where the Supplier or the Supplier's employees, agents or contractors use a forklift or other equipment owned by FRESHMAX or in the care of FRESHMAX ("equipment"), the Supplier shall ensure that only qualified operators operate such equipment and the Supplier indemnifies FRESHMAX against all claims made against FRESHMAX and all loss or penalties suffered by FRESHMAX resulting from the Supplier's use of the equipment, together with all costs incurred by FRESHMAX (including legal costs calculated on a solicitor and client basis) in dealing with any claim made or action taken by FRESHMAX with respect to the Supplier's use of the equipment unless the Supplier establishes that the claim/loss/penalty arose by reason of FRESHMAX's failure to maintain the equipment.

## 19. PRIVACY ACT

19.1 FRESHMAX will hold any personal information that it receives from the Supplier for the purposes of its own marketing and product development and account administration. The Supplier agrees that FRESHMAX may ask for

and disclose personal information about the Supplier to any person named by the Supplier and to any person in circumstances reasonably deemed necessary by FRESHMAX in order to protect FRESHMAX interests in respect of its relationship with the Supplier. The Privacy Act 1993 gives private individuals the right to see, and ask for correction of, any personal information about them.

## 20. FORCE MAJEURE

20.1 FRESHMAX will not be liable for any delay or failure to perform its obligations under these terms and conditions if occasioned by any event beyond FRESHMAX's control ("force majeure"). The performance of FRESHMAX obligations under this agreement will be suspended for the period of any delay due to force majeure.

## 21. REPRESENTATIONS AND WARRANTIES

21.1 Any representation, undertaking or warranty made by FRESHMAX or any agent, employee or representative of FRESHMAX unless recorded in writing and signed by an authorised representative of FRESHMAX shall not bind FRESHMAX.

## 22. WAIVER

22.1 Failure or omission by FRESHMAX at any time to enforce or require strict or timely compliance of any provision of these terms and conditions shall not affect or impair that provision in any way or the rights of FRESHMAX to avail itself of the remedies it may have in respect of any breach of that provision whether pursuant to these terms and conditions or at law.

## 23. SEVERANCE

23.1 The illegality, invalidity or unenforceability of a provision of these terms and conditions under any law shall not affect the legality, validity or enforceability of that provision under any other law or the legality, validity or enforceability of any other provision of these terms and conditions.

## 24. VARIATION

24.1 No variation or waiver of these terms and conditions shall be recognised or binding on FRESHMAX unless that variation is in writing and signed by an authorised representative of FRESHMAX.

## 25. INDEMNITY

25.1 The Supplier shall fully and completely indemnify FRESHMAX against any and all claims, action, suits, proceedings, costs, expenses, damages and liability, including legal fees on a solicitor and client basis arising out of or connected with or resulting from a breach by the Supplier of its obligations under these terms and conditions.

## 26. TRADEMARKS

26.1 The use by FRESHMAX of its trade names, trademarks or other marks in connection with the Products shall not confer on the Supplier any right or licence to use such names or marks.