

9.3 Terms of trade

Important:

The following template terms of trade document contains the **minimum** information which a trader must include in their terms of trade in order to comply with the Horticulture Code of Conduct. The template does not include the additional matters that must be included in a horticulture produce agreement.

Please note: a trader's terms of trade may include any other matters that are not inconsistent with the Code. In addition to the minimum requirements outlined below, you may want to include additional clauses, such as clauses dealing with warranties, risk, etc.

This template is a guide only and should be adapted to suit your particular circumstances. You should seek legal advice if you have any questions in relation to the preparation of your terms of trade.

Terms of trade

[Insert company name & ABN]

[Date]

Our terms of trade are set out below. They govern our business relationship with a Grower and should be read carefully.

1. Application of terms of trade

1.1 These terms apply to all trade in horticulture produce between
 [insert name of trader] (the **Trader**)
 and a Grower. These terms are effective from the above date until these Terms of trade are replaced by another document.

1.2 Definitions

[Note: delete and include additional definitions as required.]

In these terms of trade –

Agent means a person who sells horticulture produce on behalf of a grower to a person for a commission or fee.

Bad debt has the following meaning:

If an agent arranges for a person to buy the horticulture produce of a grower and the person does not pay the agent for any or all of the produce within the required time, the amount owed by the other person is a bad debt of the grower.

Grower means a person who grows their own horticulture produce for sale.

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.

Horticulture produce means unprocessed fruits, vegetables (including mushrooms and edible fungi), nuts, herbs and other edible plants, but not nursery products.

Trader means an agent or a merchant.

2. Basis on which Trader is prepared to trade

- 2.1 The Trader is prepared to trade in horticulture produce as
[a merchant/an agent/a merchant or an agent] under these terms. **[Note:** include the applicable description and delete the other alternatives.]

3. Payment

- 3.1 Payment will be[insert form of payment (e.g. by cheque, in cash, etc.)], unless otherwise agreed in writing.
[Note: choose whichever of the following alternatives is applicable]
- 3.2 The Trader will pay to a Grower the proceeds of a sale of a Grower's produce within
[insert number of] days.
[Note: only include if trading as an agent; delete if trading as a merchant.]
- 3.2 The Trader will pay a Grower for the purchase of a Grower's produce within
[insert number of] days.
[Note: only include if trading as a merchant; delete if trading as an agent.]
- 3.2 If the Trader is trading as an agent, the Trader will pay to a Grower the proceeds of a sale of a Grower's produce within[insert number of] days.
If the Trader is trading as a merchant, the Trader will pay a Grower for the purchase of a Grower's produce within[insert number of] days.

4. Delivery of produce

[Note: you must specify any specific requirements that you have relating to delivery of horticulture produce. The following subclauses are an example of some delivery requirements that you might want to include. They should be adapted to suit your own circumstances and may reflect your usual delivery requirements.]

- 4.1 A Grower will bear the costs of delivery of the horticulture produce to the Trader, unless agreed otherwise. **[Note:** amend if grower is not to bear the costs or if the produce is to be collected by the trader.]
- 4.2 A Grower can deliver horticulture produce to the Trader in the following circumstances:
(a)
.....
.....
[Insert any specific requirements relating to delivery of horticulture produce—e.g. whether delivery is upon request, etc.]
- 4.3 A Grower must comply with the following requirements when delivering produce to the Trader:
(a)
.....
.....
[Insert any other specific requirements relating to delivery—e.g. timing.]
- 4.4 The Trader will provide secure and suitable off-loading facilities at the premises so as to facilitate the safe and timely off-loading of the horticulture produce. **[Note:** delete if not applicable.]

5. Quality of produce

5.1 Horticulture produce delivered by a Grower must meet the following quality requirements:

- (a)
-
-

[Insert any specific quality requirements that you have in relation to horticulture produce.]

6. Rejection of produce

6.1 The Trader may reject a delivery of horticulture produce from a Grower in the following circumstances:

- (a) If the horticulture produce delivered does not satisfy the quality requirements outlined in clause 5 above. **[Note: delete if not applicable.]**

- (b)
-
-

[Insert any other specific circumstances (if any) in which you will reject a grower's produce.]

6.3 The Trader will notify the Grower in writing of the rejection, and the consequences of the rejection, within[insert time period] of taking delivery of the produce.

[Note: the Trader must also immediately advise the Grower by telephone, fax, email or other electronic means that the produce has been rejected.]

7. Insurance

[Note: if you do not have insurance, you may simply include the following clause:]

7.1 The Trader does not hold any insurance policies in relation to horticulture produce under the Trader's control.

[Note: if you have insurance, you must include a clause in your terms of trade along the following lines:]

7.2 The Trader has insurance for horticulture produce under the Trader's control.

7.3 The details of the insurance policy are as follows:

- (a) The insurance policy is with [insert name of insurer].
- (b) The maximum value of claims covered by the policy is [insert amount].
- (c) The policy covers/does not cover [delete whichever does not apply] fire, theft and accidental damage (other than deterioration of quality or any other inherent losses).

[Note: the following information is only applicable and should only be included if you are trading, or are prepared to trade, as an agent.]