



Australian  
Competition &  
Consumer  
Commission

# Example Horticulture Produce Agreement – Agent

**[Note:** The ACCC has prepared this template Horticulture Produce Agreement for use by growers and agents under the Horticulture Code. This agreement sets out a best practice approach and covers the matters that are required to be included in a Horticulture Produce Agreement under the Horticulture Code.

It also contains additional clauses (in the highlighted boxes) that clarify the relationship and obligations of the parties. The Horticulture Code does not require these clauses to be included in an agreement. However, many of them relate to obligations that are imposed by the Horticulture Code and are things that the parties must do. Those that do not relate to express obligations under the Horticulture Code are included to give clarity to the agreement and cover circumstances where it is important to specify what the parties' rights and obligations are. Parties do not have to include the highlighted terms. However, we recommend that they are included.

This template agreement does not cover all the matters that may be relevant to the parties' commercial relationship. Growers and agents can agree to add additional terms and conditions to this template agreement, as needed. However, additional terms and conditions must not be inconsistent with the Horticulture Code.]

April 2017

# Example Horticulture Produce Agreement - Agent

Grower	Agent
Grower's Name:	Agent's Name:
ACN (if applicable):	ACN (if applicable):
ABN (if applicable):	ABN (if applicable):
Address:	Address:
Email:	Email:
Phone:	Phone:

## Terms and conditions

### 1. Agreement

- 1.1. For the Term of this agreement, the Grower agrees to deliver, and the Agent agrees to arrange, on behalf of the Grower, the sale of Horticulture Produce of the type, quantity, quality and specifications stated in this agreement, for the payment of a commission / fee / extra cost [*delete whichever does not apply*] stated or calculated in accordance with this agreement.

### 2. Term

- 2.1. This agreement will commence on the Start Date and will continue for the Term of the agreement unless it is terminated earlier in accordance with clause 18.

Event	Date
Start Date	[ <i>insert date</i> ] or date the last party signs (whichever is the latter)
Term	This agreement will commence on the Start Date and will terminate on [ <i>insert end date</i> ] / the date the agreement is terminated under clause 18 [if there is no end date] – [ <b>Note: Delete as appropriate</b> ].

### 3. Agent's reporting obligations

- 3.1. For the purposes of this agreement, the Reporting Period is [**Note: Insert period: monthly/quarterly**]
- 3.2. For each Reporting Period, the Agent will give the Grower a statement for the Reporting Period, specifying for the Grower's Horticulture Produce received by the Agent during the Reporting Period:

- (a) the date on which the Horticulture Produce was delivered to the Agent
- (b) the date or dates of the sale of the Horticulture Produce by the Agent
- (c) the type and quantity of the Horticulture Produce sold
- (d) the price received for the Horticulture Produce sold
- (e) details of each amount deducted by the Agent from the sale price of the Horticulture Produce, and
- (f) details of any amounts of the Horticulture Produce not sold by the Agent during that period, including:
  - i. the reasons why the Horticulture Produce was not sold
  - ii. details of any amounts of the Horticulture Produce destroyed by the Agent, and the costs incurred in destroying the Horticulture Produce, and
  - iii. details of any amounts of the Horticulture Produce held by the Agent at the end of the period.

3.3. The Agent will give the statement referred to in subclause 3.2 to the Grower within the Statement Period, which is **[insert time period]** business days following the end of the Reporting Period.

## 4. Agent's other obligations

- 4.1. During the period the Grower's Horticulture Produce is under the Agent's control, the Agent will exercise all reasonable care and skill in handling and storage to ensure that the Horticulture Produce remains of the highest quality possible.
- 4.2. The care and skill the Agent must exercise under subclause 4.1 must be exercised until the ownership of the Horticulture Produce passes to a purchaser of the Horticulture Produce.
- 4.3. The Agent:
  - (a) will act in the best interests of the Grower when selling Horticulture Produce under this agreement, and
  - (b) will not sell the Grower's Horticulture Produce, other than on an arm's length basis, unless the Agent has first obtained the Grower's consent, in writing, to do so.

## 5. Commission and fees

- 5.1. Subject to subclause 12.2, the Agent will charge the Grower a commission / fee / specified extra cost **[delete whichever does not apply]** of **[insert amounts or rates of the commission / fee / extra cost]** to be charged on a percentage basis / fixed fee basis / any other basis **[delete whichever does not apply]**.

**[Note: include the following subclause if commissions, etc., are contingent on sale of a Grower's Horticulture Produce or any other event or kind of event.]**

- 5.2. The payment of any commissions/fees/extra costs **[include whichever are relevant]** by the Grower is/are contingent on **[insert the event(s) or kind(s) of event(s) e.g. sale of the Grower's Horticulture Produce]**.

## 6. Price

6.1. The Agent will sell Horticulture Produce on behalf of the Grower for the [insert conditions around price]

**[Note:** If the Grower has any requirements around price, such as minimum prices, a method for calculating the suitable price or approval by the Grower, insert them here.]

## 7. Payment

7.1. Subject to clauses 5.2 and 12, the Agent will pay to the Grower the proceeds of a sale of the Grower's delivered Horticulture Produce, less commissions / fees / extra costs [delete as appropriate] calculated in accordance with subclause 5.1.

7.2. Payment under subclause 7.1 will be made:

- (a) Within [insert number of] days of the Agent selling the Horticulture Produce to a person on behalf of the Grower.
- (b) by [insert form of payment (e.g. by electronic transfer, in cash, etc.)], unless otherwise agreed in writing between the Agent and the Grower.

## 8. Delivery of Horticulture 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.]

8.1. For the purposes of this agreement, delivery of Horticulture Produce occurs when the Horticulture Produce arrives at the address specified in accordance with subclause 8.5.

**[Note:** Where delivery is to occur at a different point in time, this must be specified. For example, if Horticulture Produce is stored by the Agent while it ripens (as a service supplied to the Grower) then delivery will not be when the Horticulture Produce arrives, but at a later point.]

8.2. The Grower will bear the costs of delivery of the Horticulture Produce to the Agent, unless agreed otherwise by the parties in writing. **[Note:** amend if Grower is not to bear the costs or if the Produce is to be collected by the Agent.]

8.3. The Grower may deliver Horticulture Produce to the Agent in the following circumstances:

- (a) [Insert any specific requirements relating to delivery of Horticulture Produce—e.g. whether delivery is upon request, etc.]

8.4. The Grower will comply with the following requirements when delivering Horticulture Produce to the Agent:

- (a) The Grower will include with each delivery, documentation listing the quantity and type of all Horticulture Produce in the delivery
- (b) [Insert any other specific requirements relating to delivery—e.g. timing.]

8.5. Where the Grower delivers Horticulture Produce to the Agent, the Grower is to deliver the Horticulture Produce to [insert address or location] or as otherwise instructed in

writing by the Agent from time to time. [**Note: Amend to include any other requirements**]

- 8.6. The Agent will provide secure and suitable off-loading facilities at the premises referred to in subclause 8.5 so as to facilitate the safe and timely off-loading of the Horticulture Produce. [**Note: delete if not applicable.**]
- 8.7. The Agent will be responsible for giving, or taking reasonable steps to ensure that the Grower is given, a document evidencing receipt of delivered Horticulture Produce.
- 8.8. The Agent will accept as proof of delivery of Horticulture Produce by the Grower, any document that acknowledges, reflects or evidences delivery:
  - (a) where delivery is to an address that is the usual place of business of the Agent, given to the Grower by the Agent, its officers, employees or agents, or
  - (b) where delivery is to an address that is not the usual place of business of the Agent, given to the Grower by any person who accepts delivery at that address and has the actual, apparent or ostensible authority of the Agent or is a person who is apparently an adult and appears to be engaged in the service of the business at that address.

## 9. Type of Horticulture Produce

- 9.1. The Grower will deliver the following types of Horticulture Produce to the Agent in accordance with the terms of this agreement:
  - (a) [**Specify the types of Produce that will be delivered**], or
  - (b) as requested in writing by the Agent from time to time.

## 10. Quality of Horticulture Produce

- 10.1. Horticulture Produce delivered by the Grower must meet [*Fresh Markets Australia's FreshSpecs Produce Specifications / other specifications*] [**delete as appropriate. If including specifications other than the FreshSpecs Produce Specifications then include details of the specifications that apply**] for each type of Horticulture Produce delivered by the Grower.

## 11. Quantity requirements

- 11.1. Horticulture Produce delivered by the Grower must meet the following quantity requirements:
  - (a) [**Insert any specific quantity requirements that you have in relation to Horticulture Produce.**]

## 12. Rejection of Horticulture Produce

- 12.1. The Agent will accept and be deemed to have accepted delivery of all Horticulture Produce delivered in accordance with this agreement, unless the circumstances set out in this clause apply.
- 12.2. The Agent may reject Horticulture Produce delivered by the Grower in the following circumstances:
  - (a) If the Horticulture Produce delivered does not satisfy the type, quality or quantity requirements specified in clauses 9 to 11, above. However, if part of the delivered

Horticulture Produce does not satisfy the requirements in clauses 9 to 11 and part of the delivered Horticulture Produce does satisfy those requirements, the Agent may only reject the part of the Horticulture Produce that does not meet those requirements [**Note:** *delete if not applicable.*]

- (b) If the Grower does not have title in the Horticulture Produce delivered by it
- (c) [*Insert any other specific circumstances (if any) in which an Agent may reject a Grower's Produce.*] [**Note:** *Horticulture Produce can only be rejected in these circumstances*].

12.3. The Agent may only reject Horticulture Produce under subclause 12.2 within [*specify time period. e.g. 24 hours*] of delivery of the Produce in accordance with this agreement.

12.4. Where the Agent rejects Horticulture Produce under subclauses 12.2 and 12.3, the Agent will within 24 hours after the time at which the Produce is rejected, notify the Grower of the rejection by telephone, fax, email or other electronic means. Where an Agent fails to comply with this obligation, the Agent will be deemed to have accepted delivery of the Horticulture Produce.

12.5. The Agent will notify the Grower in writing of the rejection under subclause 12.4 and the reasons for the rejection within [*insert time period*] of the Grower delivering the Produce to the Agent.

12.6. Where Horticulture Produce is rejected by the Agent, the Agent may [return the Produce to the Grower at the Grower's expense / hold the Produce at [*insert premises*] for collection by the Grower at an agreed time / or where the Produce is rejected for failure to meet the quantity specifications set out in subclause 11.1, pool the Produce in accordance with clause 13. [**Note:** *select the appropriate option/s*]

## 13. Pooling of produce

13.1. The Agent may pool Horticulture Produce delivered by the Grower under this agreement with other produce if:

- (a) the other produce is of the same quality as the Horticulture Produce delivered by the Grower, and
- (b) the Grower's Horticulture Produce and the other produce meet the quality requirements, specified in subclause 10.1 of this agreement.

13.2. Where the Agent pools Horticulture Produce in accordance with this clause, the amount payable to the Grower will be a proportion of the total proceeds received by the Agent for the pooled Horticulture Produce that is equal to the proportion of the pooled Horticulture Produce that was contributed by the Grower, less any commission, fees or extra costs specified in clause 5.

## 14. Title

14.1. The Grower warrants that it has title in the Horticulture Produce that it delivers to the Agent.

14.2. Title in the Horticulture Produce will not pass to the Agent and remains with the Grower until the Agent sells the Horticulture Produce.

## 15. Insurance

15.1. **[Note: if the Agent does not have insurance, include the following clause.]**

The Agent does not hold any insurance policies in relation to Horticulture Produce under the Agent's control covered by this agreement.

OR

**[Note: if the Agent has insurance, provide details about the insurance policy]**

The Agent has insurance for Horticulture Produce under the Agent's control.

15.2. The details of the insurance policy are as follows:

- (a) The insurance policy is with **[insert name of insurer]**.
- (b) The maximum amount of insurance cover provided by the policy in respect of claims that may be made in relation to the Horticulture Produce is **[insert amount]**.
- (c) The policy covers **[delete whichever do not apply]** fire, theft and accidental damage (other than deterioration of quality or any other inherent losses).

## 16. Bad debts

16.1. The Agent will / will not **[delete whichever does not apply]** pursue payment for Bad Debts of the Grower arising under this agreement.

**[Note: If the Agent will pursue Bad Debts, the agreement must specify the basis and terms applying to the pursuit of payment.]**

16.2. The Agent will pursue payment for Bad Debts of the Grower on the following basis:

- (a) **[Insert the terms upon which the Agent is prepared to pursue the Debt—e.g. Does the Agent require additional payment for pursuing the Debt? Will the Agent only pursue Bad Debts if they are above a certain value? Will the Agent only pursue the Debt for a certain period? How will the Agent go about pursuing the Debt?]**
- (b) When the Agent pursues a Bad Debt, the Grower will **[have no role/ have the following role.]**

**[Note: The agreement must specify whether the Grower does or does not have a role in pursuing a Bad Debt. Where the Grower does have a role, the details of their role should be set out in this clause.]**

## 17. Dispute resolution

17.1. In the event that there is a dispute with the Agent under this agreement or the Code, the Grower should contact the person specified below:

### Agent contact

Name:	
Phone:	
Email:	

17.2. In the event that there is a dispute with the Grower under this agreement or the Code, the Agent should contact the person specified below:

## Grower contact

Name:	
Phone:	
Email:	

17.3. The parties agree that if a dispute arises between them in relation to any matter covered by this agreement, they will follow the dispute resolution procedure set out in Part 5 of the Code.

## 18. Termination

18.1. Subject to subclause 18.2, this agreement can be terminated by either party giving four (4) weeks' written notice of termination to the other party. **[Note: parties can choose their own termination process, but the agreement must specify a process for termination]**

18.2. Despite anything else in this agreement, where the term of this agreement is 90 days or more, or is not specified, either party may terminate this agreement at any time within the cooling-off period being:

(a) 14 days after the day on which this agreement was entered into, or

(b) such shorter or longer period as is agreed by the parties, provided the initial cooling-off period is not reduced by more than 7 days.

18.3. Where this agreement is terminated pursuant to subclauses 18.1, 18.2(a) or 18.2(b), any trade that has occurred under the agreement before the termination is governed by the terms of this agreement.

18.4. Subject to subclause 18.5, a party to this agreement who receives a payment (of money or other valuable consideration) for the purposes of, and directly related to, trade that would have occurred after the termination of the agreement, must return the payment to the party who made the payment within 14 days after the day on which the agreement is terminated.

18.5. A party required to return a payment under subclause 18.4 may deduct, from the amount to be returned, 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.

**[Note: clauses 18.2 to 18.5 mirror obligations in the Horticulture Code]**

## 19. Variation

19.1. This agreement may only be varied by

further agreement in writing between the Agent and the Grower and be accepted by the parties to it either by signature by both parties or a written notice of offer and a written notice of acceptance. **[Note: the parties can choose their own process for varying an agreement, but the agreement must specify that process]**

**[Note: An example of a notice of offer or acceptance is a confirmation of the offer or acceptance by email].**



**[Note: an Agent's terms of trade may also include other relevant terms on which the Agent is prepared to trade in Horticulture Produce and that the Agent wishes to include in this agreement, provided the additional terms are not inconsistent with any of the provisions of the Code.]**

SAMPLE

# Agreement Signing Page

The parties agree that by signing this agreement, they enter into an agreement comprising:

- (a) the terms and conditions set out in clauses 1 to 19 above, and
- (b) Annexure 1 – Definitions and Interpretation

Executed by or on behalf of [Print Agent's name and ACN/ABN]

---

.....	)	.....
.....	)	.....
Signature of director	)	Signature of director/company secretary (delete as appropriate, or entire column if sole director company)
.....	)	.....
Name of director (print)	)	Name of director/company secretary (print)
Date	)	Date

---

Executed by or on behalf of [Print Grower's name and, if relevant, ACN/ABN]

.....

---

[If Grower is an individual]

.....

Signature of Grower

Date

---

[If Grower is a company]

.....	)	.....
.....	)	.....
Signature of director	)	Signature of director/company secretary (delete as appropriate, or entire column if sole director company)
.....	)	.....
Name of director (print)	)	Name of director/company secretary (print)
Date	)	Date

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# Annexure 1 - Definitions and interpretation

## 1. Definitions [Note: *delete and include additional definitions as required*]

### In this agreement–

**Agent** means a person who sells Horticulture Produce on behalf of a Grower to a person for a commission or fee and for the purposes of this agreement is the person specified on page 1 of the agreement.

**Bad Debt** means a bad debt of the Grower and is an amount owed by a person where:

- (a) an Agent arranges for the person to buy the Horticulture Produce of the Grower, and
- (b) the person does not pay the Agent for some or all of the Produce by the time that payment is required for the Produce.

**Code** means the Horticulture Code of Conduct prescribed by the *Competition and Consumer (Industry Codes–Horticulture) Regulations 2017*, as amended from time to time.

**Grower** means a person who grows Horticulture Produce for sale and for the purposes of this agreement is the person specified on page 1 of the agreement.

**Horticulture Produce** means unprocessed fruit, unprocessed vegetables (including mushrooms and other edible fungi), unprocessed nuts, unprocessed herbs, other unprocessed edible plants, but does not include Nursery Products.

**Nursery Products** include: trees, shrubs, plants, seeds, bulbs, corns and tubers (other than edible tubers); propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers or foliage; and cut flowers or foliage.

**Reporting Period** means the period specified in subclause 3.1.

**Start Date** means the period specified in subclause 2.1.

**Statement Period** means the period specified in subclause 3.3.

**Term** means the period specified in subclause 2.1.

## 2. Interpretation

In this agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular
- (b) the word “includes” in any form is not a word of limitation
- (c) a reference to “\$” or dollars is a reference to Australian dollars
- (d) a reference to any legislation or legislative provision includes a statutory modification, substitution or re-enactment of that legislation or legislative provision
- (e) if any word or phrase is given a defined meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning.