

**COMPETITION AND CONSUMER ACT 2010**

**UNDERTAKING TO THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION GIVEN  
FOR THE PURPOSES OF SECTION 87B**

**BY**

**V. & A. LIANGOS PTY LTD  
(ACN 006 914 478)**

**Persons giving this undertaking**

1. This undertaking is given to the Australian Competition and Consumer Commission (**the ACCC**) by V. & A. Liangos Pty Ltd ACN 006 914 478 (**VAL**) of 90 Robbs Road, Werribee South, in the State of Victoria for the purposes of section 87B of the *Competition and Consumer Act 2010 (the Act)*.

**Background**

2. VAL was incorporated on 3 February 1988 and trades in horticulture produce, namely cauliflower.
3. Section 51AD of the Act provides that a corporation must not, in trade or commerce, contravene an applicable industry code. The Horticulture Code of Conduct (**the Code**), which is a schedule to the *Trade Practices (Horticulture Code of Conduct) Regulations 2006*, came into effect on 14 May 2007 and is a prescribed industry code for the purposes of section 51AD of the Act.
4. Subclause 3(1) of the Code defines a trader to be either an 'agent' or a 'merchant' for the purposes of the Code. VAL trades in the capacity of an 'agent' as defined in the Code.
5. Clause 6 of the Code provides that a trader and a grower may only trade in horticulture produce if they enter into a written agreement which complies with the Code, namely a Horticulture Produce Agreement (**HPA**). A HPA must contain prescribed minimum terms, as set out in Part 3 of the Code, and be signed by both parties.
6. Subclause 4 of the Code further provides that a trader must prepare, publish and make publicly available a document that sets out the general terms and conditions under which it will trade with growers of horticulture produce (**Terms of Trade**). The Terms of Trade must contain prescribed minimum terms, as set out in Part 2 of the Code.
7. Section 51ADD of the Act provides that, if a corporation is required to keep, generate or publish information or a document under an applicable industry code, the ACCC may give the corporation a written notice that requires the corporation to give the information, or to produce the document to the ACCC.
8. A notice pursuant to section 51ADD of the Act was issued to VAL on 3 February 2012 (**the Notice**). The Notice required VAL to give certain information and documents to the ACCC, including:
  - a. HPAs between VAL and growers entered into between 1 January 2009 and 31 December 2011; and
  - b. Terms of Trade published by VAL.

9. The ACCC, having considered VAL's response to the Notice, is of the view that since 14 May 2007 VAL has:
- a. traded in horticulture produce with growers without entering into HPAs with those growers; and
  - b. not prepared, published or made publically available its Terms of Trade.

**Commencement of undertaking**

10. This undertaking comes into effect when:
- a. the undertaking is executed by VAL; and
  - b. the ACCC accepts the undertaking so executed.
11. Upon the commencement of this undertaking, VAL undertakes to assume the obligations set out in paragraph 12 below.

**Undertakings**

12. VAL undertakes for the purposes of section 87B of the Act that it will:
- a. not, within 3 years of the commencement of this undertaking, trade in horticulture produce that is subject to the Code with any grower unless it has entered into an HPA with the relevant grower that is compliant with Part 3 of the Code;
  - b. within 2 weeks of the commencement of this undertaking, prepare, publish and make publicly available a document that sets out its Terms of Trade in accordance with Part 2 of the Code;
  - c. within 3 weeks of the commencement of this undertaking, send a letter to each grower with whom it has traded since 14 May 2007 in the form set out in **Annexure A** to this undertaking, enclosing a copy of its Terms of Trade and a proposed HPA;
  - d. within 1 week of writing to the growers pursuant to the Undertaking in paragraph 12(c) above, provide to the ACCC a written statement reporting on its compliance with each undertaking in paragraph 12(b) and 12(c) and enclosing:
    - i. a copy of its letter to the growers;
    - ii. the names and addresses of the growers to whom the letter was sent;
    - iii. a copy of its standard HPA; and
    - iv. a copy of its Terms of Trade, together with advice as to where its Terms of Trade are publicly available;
  - e. within 3 months of this undertaking coming into effect, arrange for all VAL employees to attend trade practices compliance training, that focuses on the Code and section 51AD of the Act, and is administered by a suitably qualified, compliance professional or legal practitioner with expertise in trade practices law; and
  - f. within 2 weeks of completion of the training referred to in paragraph 12(e) above, provide to the ACCC a written statement or certificate from the trade practices professional who conducts the training verifying that such training has occurred.


**Acknowledgements**

13. VAL acknowledges that:

- a. the ACCC will make this Undertaking publicly available including by publishing it on the ACCC's public register of section 87B undertakings on its website;
- b. the ACCC will, from time to time, make public reference to the Undertaking including in news media statements and in ACCC publications; and
- c. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

**Executed by**

V. & A. Liangos Pty Ltd ACN 006 914 478 and by its authorised officers pursuant to section 127(1) of the *Corporations Act 2001*.


  
.....  
Signature

TOM LIANGOS  
.....  
Print name

90 ROOBS RD WENNIBEE ST NT  
.....  
Office(s) held at V. & A. Liangos Pty Ltd

This 5<sup>TH</sup> day of FEB. 2013

**ACCEPTED BY THE AUSTRALIAN COMPETITION AND CONSUMER COMMISSION PURSUANT TO SECTION 87B OF THE COMPETITION AND CONSUMER ACT 2010**

  
.....  
Rodney Graham Sims  
Chairman

21<sup>ST</sup> day of February 2013

## ANNEXURE A

[V. & A. Liangos name, logo and contact details]

dd/mm/yyyy

Dear Grower

### **The Horticulture Code of Conduct**

During 2012, V & A Liangos Pty Ltd (**VAL**) was contacted by the Australian Competition and Consumer Commission (**ACCC**) in relation to its compliance with the Horticulture Code of Conduct (**the Code**).

On 14 May 2007 the Code came into effect. The Code is a mandatory industry code under the *Competition and Consumer Act 2010*. The purpose of the Code is to improve the clarity and transparency of transactions between growers and traders of horticulture produce and to establish a fair dispute resolution process. In order to achieve this, amongst other things, the Code requires traders (both agents and merchants) and growers to enter into a written agreement which complies with the Code. These agreements are known as Horticulture Produce Agreements (**HPA**).

Under the Code, a trader must also prepare, publish and make publicly available a document that sets out the general terms and conditions under which it will trade with growers of horticulture produce (**Terms of Trade**).

As a result of discussions with the ACCC, VAL has given a court enforceable undertaking to the ACCC requiring VAL to:

- have Code compliant HPAs with growers when trading in horticulture produce that is subject to the Code;
- prepare, publish and make publicly available its Terms of Trade; and
- arrange trade practices compliance training for its staff.

Should you wish to discuss the undertaking or this letter please contact me on [insert contact number].

Regards

Tom Liangos  
Director  
V. & A. Liangos Pty Ltd