

# **Turners & Growers Fresh Limited** **Standard Terms and Conditions of Trade with Suppliers**

## **INTRODUCTION**

This document sets out terms and conditions on which Turners and Growers Fresh Limited ("T&G") will purchase Product from Suppliers (each as defined below), which together with any documents, additional terms or statements referred to herein will form terms and conditions of trade with Suppliers ("Terms and Conditions").

These Terms and Conditions will come into full effect and operation in 27 October 2005 and will replace all existing terms and conditions between T&G and any Supplier and will apply to all T&G business units (except for the Exports Division) where those business units are contracting with Suppliers, unless otherwise expressly consented to in writing by T&G.

T&G is a merchant having operations located throughout New Zealand. In the course of its business it:

- a) sells Product on consignment on Suppliers' behalf to Buyers (hereinafter referred to as "sales on consignment"); and
- b) purchases Product from Suppliers as principal (including in accordance with clause 3.2) and sells such Product on to Buyers (hereinafter referred to as "trade sales");
- c) hires out Container Equipment; and
- d) transports Product.

## **1.0 DEFINITIONS**

**1.1** In these Terms and Conditions, the following words and expressions have the following meanings:

- "Business Day" means any day on which registered banks in New Zealand are open for general banking business in Auckland, excluding bank branches that choose to offer service on a weekend day.
- "Buyer" means the purchaser of Product via the T&G market place or trade markets.
- "Carrier Agent" means any carrier contracted by the Supplier to transport Product from T&G's facilities to a designated destination.
- "Container Equipment" means all wooden or plastic hire containers, pallets, cages and trolleys that are returnable and officially approved by T&G.
- "Customer Services" means the Customer Services business unit at T&G whose contact number is 0508 800 100 as updated from time to time.
- "Food Safety Practices" means T&G's programme to provide safe food items and meet the requirements of the NZ Food Safety Authority for exemption from the Food Regulations 1974, as may be notified to the Buyer and updated from time to time.

- “Force Majeure” means any circumstances or events beyond the reasonable control of T&G including without limitation any acts of God, or the public enemy, flood, earthquake, storm, cyclone, tornado, hurricane, lightning, fire, explosion, epidemic, war, embargos, riot or civil disturbance, lock out, strikes or other labour disputes or industrial actions.
- “GST” means Goods and Services Tax pursuant to the Goods and Service Tax Act 1985.
- “Product” means fresh fruit and vegetables and any other plant produce and/or flowers and/or food items and/or associated items.
- “Quality Assurance Programme” means an industry approved certified quality assurance programme acceptable to T&G.
- “Statement Date” means the date on which T&G sends to the Supplier an invoice/statement, setting out the Product supplied by the Supplier since the last statement date and any other associated transactions for which the Supplier owes T&G any moneys.
- “Supplier” means the producer/vendor of Product for whom T&G purchases in a trade sale, or whose Product T&G sells on consignment, acting as agent for such grower or vendor.
- “Supplier Account Application Form” means the form completed by the Supplier to activate a supply account through which the Supplier can supply products to T&G, which must include a direct debit authority, quality assurance information guarantees and GST registration numbers, where appropriate.
- “TAG Specifications” means the current T&G TAG Quality System specifications and all amendments thereto published by T&G on the Turners and Growers web site [www.turnersandgrowers.com](http://www.turnersandgrowers.com).

**1.2** In these Terms and Conditions the singular will include the plural and a reference to a “party” or the “parties” will mean either each of T&G or the Supplier or T&G and the Supplier together.

## **2.0 ACCEPTANCE OF TERMS AND CONDITIONS**

**2.1** Unless otherwise agreed in writing and at T&G’s discretion T&G will not purchase any Product from a Supplier nor sell any Product on a Supplier’s behalf unless that Supplier has completed and executed an approved Supplier Account Application Form and all other related documents and become an authorised account holder.

**2.2** The Supplier acknowledges and agrees that:

- a) any supply of Product by the Supplier to T&G; and/or
- b) any sale of Product by T&G on consignment, on the Supplier’s behalf; and/or
- c) the completion and execution of any Supplier Account Application Form by the Supplier,

will be deemed to be an acceptance of these Terms and Conditions by the Supplier from the time when such supply, sale or execution took place.

- 2.3** T&G may alter these Terms and Conditions by giving notice of those alteration(s) to the Supplier and the subsequent dealing by the Supplier with T&G will be deemed to be acceptance of the alteration(s) to these Terms and Conditions.

### **3.0 CONSIGNMENT/TRADING**

- 3.1** T&G generally sells as agent and intermediary to effect the purchase on consignment of a Supplier's Product for a Buyer and T&G will not be liable to the Supplier as principal for the purchase price of the Product, nor for any failure by the Buyer to perform its obligations.

- 3.2** Notwithstanding clause 3.1, the Supplier authorises T&G to purchase any of the Supplier's Products sold on consignment through T&G's markets, as principal, without notice to the Supplier. In this event, the Supplier will remain liable to T&G for the commission and other charges payable in respect of such purchase as if the Buyer of the Supplier's Product were a third party. T&G will endeavour to achieve any price indicated. The Supplier acknowledges that to the extent that it may be possible to achieve a price in excess of the price indication, this clause may operate so the price paid to the Supplier for the Product is not the best price available on the day. At times T&G will make a profit upon resale of Product purchased by T&G as principal, however, it also bears the risk of any loss. T&G will not be liable to account to the Supplier for any profits or losses T&G may make upon any resale of such Product purchased by T&G as principal.

### **4.0 PRICE**

- 4.1** Except in the instances of a trade sale, the Supplier may not set any reserve price or other term(s) as a condition of T&G's sale of the Product.

- 4.2** Where T&G sells Product on consignment, it acts only as an agent for the Supplier and will not be liable to the Supplier for the purchase price as principal (except as provided in clause 3.2 above). In the event T&G advise the Supplier of the price that T&G expects to be achieved for Product, such price is indicative only. It is not intended that that Supplier will rely upon the same and T&G will not be liable if the Product fails to sell at that indicated price or at all.

### **5.0 DELIVERY, TITLE AND RISK**

- 5.1** The Supplier will, at its cost and risk, arrange for the delivery of the Product to T&G's premises or to such other place as T&G may direct.

- 5.2** Where T&G is acting as principal and purchases the Product from a Supplier as a trade sale, title in the Product will pass to T&G at the time T&G agrees to purchase the Product. The risk in that Product will pass to T&G at the time T&G takes delivery of the Product, provided always that the Product complies in all respects with the terms under which it is sold, including any TAG warranty. If the Product does not comply with the terms under which it is sold, including any TAG warranty, then the risk in the Product will remain with the Supplier at all times.

- 5.3** Where T&G is acting as agent for the Supplier effecting a sale on consignment to a Buyer, title in the Product will remain with the Supplier until T&G has been paid in full for

such Product. The risk in the Product will pass upon delivery, which will be deemed to occur when the Product is either:

- a) collected from T&G's premises by the Buyer, its employee or Carrier Agent; or
- b) where T&G (or an associated entity) has agreed in writing to deliver the Product, when the Product is delivered to the agreed delivery point (unless otherwise agreed in writing),

whichever occurs first.

**5.4** T&G will not be liable for any non-delivery of Product or late collection by a Carrier Agent from a Supplier.

**5.5** The Supplier will procure that the Product is safely and properly packaged at all times, labelled and fully described in writing in all documents relating to transportation of the Product and at all times complies with any applicable TAG warranty for that Product and any other terms on which the Product is sold, from time to time.

## **6.0 ADVICE NOTE**

**6.1** The Supplier will procure that all Product supplied to T&G will be labelled in accordance with the relevant TAG Specifications and will be accompanied by a T&G Supplier advice note and container card in a form acceptable to T&G, which will accurately record the minimum following details:

- a) the name and physical address of the Supplier;
- b) T&G Supplier code;
- c) the date of supply;
- d) Product type, variety, and either count size or weight;
- e) the grade standard of the Product being TAG 1, 2, or 3 as defined for the particular Product type in the relevant TAG Specifications, if such Product is required by T&G current specifications to be graded;
- f) the quantity of each type of Product;
- g) the quantity of each type of container and/or pallet;
- h) the Supplier's reference number;
- i) any special delivery location; and
- j) whether the Product is to be sold on consignment or has been sold by trade sale.

**6.2** T & G reserves the right to reject any Product that is not accompanied with the information set out in clause 6.1 above.

## **7.0 WARRANTIES**

**7.1** The Supplier warrants to T&G and for the benefit of the Buyer (and T&G in the case of a trade sale) that, at the time of purchase of any Product and for a reasonable period thereafter given the type of Product:

- a) all Product will meet the minimum quality standards set out in the TAG Specifications in respect of the grade that has been allocated to that Product by the Supplier on the Supplier's advice note ("the TAG warranty");
- b) all Product supplied to T&G is graded in accordance with the relevant grading system for that particular Product type in the TAG Specifications;
- c) all Product complies with all Food Safety Practices, food safety standards and legislation that are notified to the Supplier by T&G, generally accepted in the industry or deemed to apply in law; and
- d) each container of Product is clearly marked with a T&G advice notice, setting out all of the information required by clause 6.1 of these Terms and Conditions.

**7.2** T&G reserves the right not to accept for sale on consignment or purchase by trade sale any Product that it determines (in its sole discretion) does not meet any of the requirements set out in clause 7.1 above. T&G's decision in this matter will be conclusive and notified to the Supplier accordingly.

**7.3** Where any Product does not meet the minimum requirements set out in clause 7.1, T&G may, at its sole discretion, re-grade a Product's TAG Specification grading (as defined for that particular Product type in the relevant TAG Specifications) and sell that Product under the new grade without prejudice to any rights or remedies T&G may have in respect of the Product. T&G will not be liable to the Supplier for any loss or damage to the Supplier arising from such regrading.

**7.4** In addition to T&G's rights under clause 7.3, T&G, at its option, may:

- a) return the Product to the Supplier at the Supplier's risk and expense; or
- b) store the Product ready for collection by the Supplier within 24 hours of any notice of rejection by T&G to the Supplier at the Supplier's risk and expense; or
- c) dispose of the Product, without compensation to the Supplier,

where such Product does not meet the minimum requirements set out in clause 7.1, without prejudice to any other rights or remedies T&G may have. T&G's costs incurred in performing any such acts will be deducted from any amounts owed to the Supplier by T&G in respect of any such Product.

**7.5** If T&G is required to credit a Buyer with any sums as a result of the failure of any of the Supplier's Product to meet the minimum requirements set out in clause 5.1 above, then the Supplier irrevocably authorises T&G to deduct an amount equal to the sums credited to the Buyer from any amounts that T&G may owe the Supplier from any sale on consignment of that Product, without prejudice to any other rights or remedies T&G may have.

## **8.0 BREACH OF WARRANTY**

- 8.1** In the event that a Buyer claims that a Supplier is in breach of the TAG warranty in respect of any particular Product, then a quality assessor approved by T&G will decide whether the Product meets the TAG Warranty. Such assessor will be selected from a list of approved assessors, available on request from T&G. If that assessor concludes that the Product in question does not meet the TAG warranty, then T&G will credit the Buyer's account with a sum up to the invoiced amount for the Product and the Supplier will indemnify T&G in accordance with clause 8.3.
- 8.2** T&G will not be obliged to sell any Product on consignment for, or purchase by trade sale any Product from, any Supplier who has breached its TAG warranty in respect of any Product on more than one (1) occasion and T&G is entitled to refuse to sell on consignment or purchase by trade sale any Product at any time without giving any reason.
- 8.3** The Supplier will indemnify T&G and keep T&G harmless against all claims made against T&G and loss, damage, cost (including legal costs calculated on a solicitor and client basis) or expense suffered or incurred by T&G resulting from any claim or potential claim in connection with any breach of warranty, including, but not limited to, those set out in clause 7.1 of these Terms and Conditions.
- 8.4** The Supplier acknowledges that this clause 8 is for the benefit of the Buyer who, notwithstanding that it is not a party to these Terms and Conditions, may enforce this clause 8 as if it were a party to these Terms and Conditions by virtue of section 4 of the Contracts (Privity) Act 1982.

## **9.0 RETURNABLE CONTAINER EQUIPMENT**

- 9.1** T&G will be entitled to reject any Product that is not supplied in Container Equipment without liability to the Supplier and without prejudice to any other rights or remedies available to T&G in respect of such Product.
- 9.2** The Supplier acknowledges and agrees that:
- a) the Supplier has no title in the Container Equipment and that absolute title and ownership in the Container Equipment will at all times remain with the container equipment supplier whether that Supplier is T&G or an appointed third party; and
  - b) where Container Equipment is supplied by container equipment suppliers other than T&G, T&G is at all times acting as agent of the container equipment supplier and is not obliged to, but may accept, the Product in such Container Equipment and pay any deposit or hire fees that may be applicable to such Container Equipment on the Supplier's behalf.
- 9.3** Where T&G effects a sale on consignment of Product in Container Equipment on behalf of a Supplier, T&G may deduct any deposit or hire fees due to any container equipment supplier, from the sums owed to the Supplier in respect of such sale. In the event that the sale on consignment effected by T&G realises less than the amount the Supplier may owe T&G in respect of any Container Equipment, then the Supplier shall pay T&G the balance in accordance with the payment mechanism in clause 9.4 below.

- 9.4** Unless otherwise agreed, where a Supplier hires Container Equipment but T&G does not hold any sums which are owed to the Supplier, the Supplier will pay to T&G by direct debit within ten (10) Business Days of the Statement Date, the full price for all Container Equipment deposits and hire fees, together with all applicable taxes, levies, site and handling fees and any other fees and charges.
- 9.5** Where the Supplier pays by direct debit for Container Equipment hire and for any associated taxes, fees, levies, costs and charges on credit payment terms, the Supplier will be deemed to do so on the credit payment terms and conditions set out in the Supplier Account Application Form or on such other terms as may be agreed in writing with the Supplier from time to time.
- 9.6** If payment for Container Equipment hire is not made in full by the due date, T&G is entitled to charge the Supplier a late payment fee on the unpaid overdue balance from the due date for payment at the rate of 15% p.a. on the overdue balance, plus any GST thereon, compounding weekly on the unpaid balance owing on the first day of each week until payment in full is received by T&G. Such late payment fee may be raised by T&G, without notice, at T&G's discretion.
- 9.7** Notwithstanding clause 9.6 above, all payments for Container Equipment deposit hire fees will become due and payable to T&G in the event that:
- a) a receiver is appointed over any of the Supplier's assets or undertakings;
  - b) a liquidator is appointed or the Supplier goes into voluntary liquidation;
  - c) the Supplier makes or attempts to make an arrangement or composition with creditors; or
  - d) the Supplier becomes insolvent within the meaning of the Insolvency Act 1967 or the Companies Act 1993, or commits any act of bankruptcy.
- 9.8** Once T&G has sold the Supplier's Product to a Buyer in the relevant Container Equipment, T&G reserves the right to notify the container equipment supplier (where applicable) that the Container Equipment has been transferred to the Buyer. Upon notifying the container equipment supplier of such transfer, T&G ceases to be liable to the Supplier and to the container equipment supplier in respect of such Container Equipment.
- 9.9** T&G will not charge the Buyer, nor collect on behalf of a Supplier any deposit or hire charges that may be due and payable in relation to any non-returnable or unapproved container equipment.

## **10.0 USE OF FORK HOISTS OR OTHER EQUIPMENT**

- 10.1** Where a Supplier or Supplier's agent has express written authority from a T&G representative to use a fork hoist mobile container moving device or other equipment owned by or in the care of T&G ("Equipment"), such authority will be conditional on the Supplier providing that only qualified and certified operators operate such Equipment at all times.
- 10.2** The Supplier will indemnify T&G against all claims against T&G and all loss, damage, expense, cost or penalties suffered by T&G as a result of the Supplier's use of the Equipment, together with all costs incurred by T&G (including legal costs calculated on a

solicitor and client basis) in dealing with any such action, unless the Supplier establishes that the relevant loss was caused by T&G's failure to properly maintain the Equipment in question.

**10.3** The Supplier will indemnify T&G for any loss, claim, or cost or damage to, or loss of Product as a result of Suppliers or Suppliers' agents moving Product with the Equipment or of T&G' staff moving product with T&G's Equipment on the Supplier's behalf, in instances where the load of Product is deemed by T&G (in its absolute discretion) to have been unsafely or incorrectly packaged by the Supplier, the Supplier's employee or the Supplier's agent.

**10.4** If the Supplier or Supplier's employee or agent causes damage to privately owned vehicles at any T&G site, and/or to T&G property, plant, buildings or injury to staff while using the Equipment, then the Supplier will indemnify T&G against all resultant claims against T&G and any loss (including consequential loss), damage, cost, expense or penalties suffered by T&G, together with all costs incurred by T&G (including legal costs calculated on a solicitor and client basis) in dealing with any claim made or action taken by T&G with respect to such loss or damage.

## **11.0 LIMITATION OF LIABILITY AND INDEMNITY**

**11.1** T&G's liability to the Supplier is limited to whichever is the least of:

- a) the commission payable in relation to the particular Product to which the Buyer's claim relates, where T&G is acting as a Suppliers' agent in relation to a sale on consignment; or
- b) to the invoice price for the particular Product to which the Suppliers' claim relates, where T&G sells Product as principal on a trade sale; or
- c) in either case, to direct loss or damage.

**11.2** All warranties, conditions and other terms implied by statute or common law and any express terms, representations, warranties or undertakings made by T&G that are not made in writing are, to the fullest extent permitted by law, expressly excluded from these Terms and Conditions.

**11.3** The Supplier will fully and completely indemnify T&G and keep T&G harmless against any claims, proceedings, costs, expenses, losses, damages and liability (including legal fees on a solicitor and client basis) arising out of, connected with or resulting from a breach by the Supplier of its obligations under these Terms and Conditions.

## **12.0 FORCE MAJEURE**

**12.1** T&G will not be liable for any delay or failure to perform its obligations under these Terms and Conditions by reason of any Force Majeure. Any suspension of performance by reason of this clause will be limited to the period during which the Force Majeure exists.

**12.2** T&G may terminate the performance of its obligations in respect of the particular dispatch or order of Product to which the Force Majeure relates immediately by giving notice to the Buyer if the delay arising directly out of Force Majeure precluding that other entity from complying with its obligations under the Contract continues for more than five (5) consecutive Business Days.



## **13.0 ALTERNATIVE DISPUTE RESOLUTION**

- 13.1** In the event of any dispute arising between the parties in relation to these Terms and Conditions (including the validity, breach or termination of them) the parties will, without prejudice to any other right or entitlement they may have pursuant to these Terms and Conditions or otherwise, explore whether the dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted will be as agreed between the parties or as selected by the President of LEADR (Lawyers Engaged in Alternative Dispute Resolution – New Zealand Chapter).
- 13.2** In the event the dispute is not resolved by such agreement within fourteen (14) Business Days of written notice by one party to the other of the dispute (or such further period agreed in writing between the parties), either party may refer the dispute to arbitration. The arbitrator will be agreed between the parties within ten (10) Business Days of written notice of referral by the referring party to the other or, failing agreement, appointed by the President of the Auckland District Law Society from time to time or its successor organisation. In either case, the arbitrator will not be a person who has participated in an informal dispute resolution procedure in respect of the dispute. The arbitration shall be in English, shall take place in New Zealand and shall be conducted in accordance with the Arbitration Act 1996, unless the parties agree otherwise.
- 13.3** Notwithstanding anything in this clause or the Arbitration Act 1996, T&G may commence court proceedings in relation to any dispute for which T&G seek urgent interlocutory relief.

## **14.0 PRIVACY ACT**

- 14.1** T&G will hold any personal information that it receives from the Supplier for the purposes of its own marketing and Product development, account administration and credit purposes. The Supplier agrees that T&G may ask for and disclose personal information about the Supplier to any person named by the Supplier as a credit reference in connection with the Suppliers' account, and to any person in circumstances reasonably deemed necessary by T&G in order to protect T&G interests in respect of its relationship with the Supplier.

## **15.0 INFORMATION**

- 15.1** Information or further details related to market place rules, TAG related details and emergency procedures are available on request from the main T&G Auckland reception, or from Customer Services.

## **16.0 GENERAL CONDITIONS**

- 16.1 Entire Agreement:** These Terms and Conditions and any documents or materials referred to in them, constitute the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of these Terms and Conditions. The Supplier acknowledges that in entering into these Terms and Conditions, it does not rely on and will not have any remedy in respect of any statement, representation, warranty, undertaking or understanding (whether or not negligently made by any person other than as expressly set out in these Terms and Conditions).
- 16.2 Prevalence:** These Terms and Conditions will prevail over any terms and conditions contained in any order or offer made by the Supplier or any document used by the Supplier and purporting to have contractual effect.
- 16.3 Non-waiver:** Where T&G fails to enforce any of these Terms and Conditions or fails in any way to exercise its rights under them, T&G will not be deemed to have waived those rights with respect to any subsequent breach of any Term or Condition or right.
- 16.4 Severability:** If any clause or part of a clause of these Terms and Conditions is held to be invalid or unenforceable for whatever reason, the remaining provisions will remain in full force and effect.
- 16.5 Governing Law:** These Terms and Conditions will be governed by and interpreted in accordance with the laws of New Zealand and both T&G and the Supplier agree to submit to the exclusive jurisdiction of the courts of New Zealand.

<b>TERMS AND CONDITIONS APPLYING TO CONSIGNMENT SALES</b>
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**17.0 COMMISSION AND PAYMENT**

**17.1** T&G will pay the Supplier any undisputed Supplier Return (as defined in clause 17.2 below) within five (5) Business Days of the end of each of T&G's fourteen (14) day accounting cycles in respect of the Product sold on consignment by T&G.

**17.2** The Supplier Return will be an amount equal to:

- a) the sales revenue (excluding GST) received and retained by T&G from sales of the Supplier's Product on consignment; less
- b) T&G's commission for the Product, which will be calculated in accordance with T&G's then current rates as notified to the Supplier or available from T&G from time to time; less
- c) any associated costs, including, without limitation any transport, freight, insurance or other costs, site, handling and freight forwarding fees, taxes and late payment fees; less
- d) any industry levies paid, payable or deductible by T&G in respect of the Product and/or the Supplier.

**17.3** Where T&G extends credit to a Supplier, that credit may be withdrawn without prior notice in respect of any overdue account and will only be reinstated by T&G in its sole discretion, if and when all outstanding amounts are paid by the Supplier.

**17.4** If T&G is owed any money by the Supplier, has incurred any cost, expense or has any claim against the Supplier, or any contingent liability arising out of a breach by the Supplier of the Terms and Conditions ("**Liability**") and such Liability remains outstanding for more than ten (10) Business Days from when it fell due or was incurred, then the Supplier authorises T&G to set off such Liability from any sum owed to the Supplier by T&G or any trading division or affiliated company of Turner's & Growers Fresh Limited and its successors in title, from time to time.

<b>TERMS AND CONDITIONS APPLYING TO TRADE SALES</b>
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**18.0 PAYMENT**

**18.1** T&G will pay the Supplier the agreed price for Product within twenty-one (21) days of the date of receipt by T&G of a valid tax invoice with respect of that Product.

**18.2** The Supplier authorises T&G to deduct from the agreed price all freight/transport charges (unless otherwise agreed), taxes, costs, compensation, late payment fees, deposit and hire charges payable in respect of Container Equipment and any other charges owed by the Supplier to T&G, together with any other moneys that may be owing to T&G by the Supplier.