

Terms of Trade relating to Produce and Grocery sourced for sale



Effective Date: 1 August 2020

Introduction

Turners and Growers Fresh Limited itself and through its subsidiaries carries on a number of Activities in New Zealand and these terms of trade (“**Terms of Trade**”) shall apply to all Activities undertaken by T&G Fresh with a Supplier on and from the Effective Date, unless otherwise expressly agreed to in writing with that Supplier by T&G Fresh.

These Terms of Trade have full effect from and including the Effective Date and will replace all existing terms and conditions between T&G Fresh and each Supplier in relation to Produce and Activities.

1. DEFINITIONS

1.1 In these Terms of Trade, the following words and expressions have the following meanings:

“**Activities**” means the activities that may be carried on by T&G Fresh, in relation to the Produce, including the following:

- (a) planning demand and supply for Produce;
- (b) sourcing or responding to orders from Buyers for Produce and negotiating quality, volume, pricing and timing of demand for that Produce;
- (c) negotiating with Suppliers for the supply of Produce to meet existing orders (including Advance Orders) and forecast demands;
- (d) purchasing Produce, as principal, from Suppliers;
- (e) receiving Produce from Suppliers to be sold, on a consignment basis, to Buyers;
- (f) transporting or procuring the transport of Produce; and
- (g) other activities relating to carrying out the above activities.

“**Advance Order**” means an advance order for Produce placed with T&G Fresh by a Buyer.

“**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 or potential purchaser of Produce from T&G Fresh, in whatever capacity.

“**Buyer Created Tax Invoice**” means a Tax Invoice issued in accordance with Section 24(2)(d) of the GST Act 1985.

“**Buyer Policies**” means policies and/or procedures that a Buyer may from time to time issue that are to apply directly or indirectly to the Supplier where they supply Produce to T&G Fresh for sale to the Buyer.

“**Carrier Agent**” means any carrier contracted by a Supplier to transport Produce from a T&G Fresh facility to a designated destination.

“**Customer Services**” means T&G Fresh’s Customer Services business unit whose contact details can be found at <https://tandg.global/links/applications/>.

“Effective Date” means the effective date of these Terms of Trade, as set out at the top of these Terms of Trade.

“Food Safety Laws” means all New Zealand food safety codes, standards and legislation that apply to the sale and/or purchase of or dealing with the relevant Produce together with all other food safety standards generally accepted in the relevant industry.

“Food Safety Practices” means T&G Fresh’s programs focused on providing safe food items for consumers and to meet compliance requirements of New Zealand Food Safety Laws.

“Force Majeure” means any circumstances or events beyond the reasonable control of T&G Fresh including, without limitation, any acts of God, or the public enemy, flood, earthquake, storm, cyclone, tomado, hurricane, lightning, fire, explosion, epidemic, pandemic, 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, as may be updated or replaced from time to time.

“GST Registered” means a registered person as defined by Section 2 of the GST Act 1985.

“Produce” means any fresh fruit, vegetable, other plant produce or other food (including grocery) item acquired by T&G Fresh (as agent or principal) for the purposes of sale together with any items associated with the same.

“Produce Supplier Account Application Form” means the T&G Fresh form(s) to be completed by the Supplier to activate a supply account through which the Supplier can supply Produce to T&G Fresh.

“Produce Supplier Return” means, in relation to sale of Produce on consignment, an amount equal to:

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

“Quality Assurance Programme” means an industry approved certified quality assurance program that is acceptable to T&G Fresh.

“Supplier” means the person who supplies Produce to T&G Fresh, which T&G Fresh purchases as principal or sells on consignment as agent.

“Statement Date” means the date on which T&G Fresh sends to the Supplier an invoice/statement setting out the Produce supplied by the Supplier since the last statement date and any other associated transactions for which the Supplier owes

T&G Fresh any moneys.

“T&G Fresh” means Turners and Growers Fresh Limited together with each subsidiary of Turners and Growers Fresh Limited that operates a fresh fruit, vegetable or other plant produce business in New Zealand (whether under a different trading name or not), which subsidiaries currently include:

- Freshmax NZ Limited

“T&G Market” means a market operated or participated in by T&G Fresh in connection with the buying and selling of Produce.

“T&G Policies” means policies and/or procedures that T&G Fresh may from time to time issue that are to apply to the Supplier where they supply Produce to T&G Fresh.

“TAG Specifications” means the current TAG Quality System specifications and all amendments thereto published by T&G Fresh on its web site <https://tandg.global/links/information-for-growers/>.

“TAG Warranty” has the meaning given to it in clause 8.2(b).

“Taxable Supply” means taxable as defined by Section 2 of the GST Act 1985.

“Tax Invoice” means tax invoice as defined by Section 2 of the GST Act 1985.

1.2 In the interpretation of these Terms of Trade:

- words importing the singular or plural number shall be deemed to include the singular or plural respectively;
- referring to anything after the word “including” shall not limit what else may be included;
- the word “person” includes a natural person and any body or entity whether incorporated or not;
- words importing a gender shall include every gender;
- headings used in these Terms of Trade are inserted only as a matter of convenience and in no way define, limit, or describe the scope of the clauses that follow;
- a reference to an enactment or to any regulation is a reference to that enactment or regulation as may be amended from time to time and shall include any enactment or regulation that replaces it; and
- a reference to a “party” or the “parties” will mean either each of T&G Fresh or the Supplier or T&G Fresh and the Supplier together.

2.0 ACCEPTANCE OF TERMS OF TRADE

2.1 Each Supplier acknowledges and agrees that:

- any supply of Produce by it to T&G Fresh;
- any purchase of its Produce by T&G Fresh;
- any sale of its Produce by T&G Fresh on consignment; or
- the completion and delivery to T&G Fresh of a Produce Supplier Account Application Form by the Supplier,

will be deemed to be an acceptance of these Terms of Trade by that Supplier from the time when such supply, sale or execution took place (whichever the earlier).

- 2.2 These Terms of Trade shall apply to all Activities involving a Supplier or its Produce unless otherwise expressly agreed to in writing with that Supplier by T&G Fresh.
- 2.3 Unless otherwise agreed in writing, T&G Fresh will not be required to pay a Supplier the proceeds of any sale of its Produce unless and until that Supplier has completed, executed and delivered to T&G Fresh:
- (a) an approved Produce Supplier Account Application Form;
 - (b) a written authority for T&G Fresh to issue buyer created tax invoices for all transactions with the Supplier; and
 - (c) all other related documents that T&G Fresh may require from the Supplier for it to become an authorised account holder with T&G Fresh.
- 2.4 T&G Fresh may alter these Terms of Trade by giving notice of those alteration(s) to Suppliers and any subsequent dealings by those Suppliers with T&G Fresh will be deemed to be acceptance of those updated Terms of Trade.

3.0 TRADING

- 3.1 Where T&G Fresh deems appropriate, the T&G Fresh may source Advance Orders and then seek to fill them by negotiating the supply of the relevant Produce from Growers that can meet the quality, volume, pricing and timing of required supply of those Advance Orders.
- 3.2 T&G Fresh may approach a Supplier to determine whether the Supplier wishes to supply certain Produce to meet one or more Advance Orders. If a Supplier wishes to supply Produce to meet an Advance Order, T&G Fresh and the Supplier will negotiate the terms under which the Supplier will supply and sell and T&G Fresh will receive and purchase the relevant Produce.
- 3.3 In respect of an Advance Order, T&G Fresh may offer the Supplier a fixed price for the relevant Produce or a range within which it will acquire that Produce from the Supplier.
- 3.4 The Supplier acknowledges that:
- (a) the price for Produce that T&G Fresh may agree with the Supplier, in connection with filling an Advance Order, may not always be the best price available in the market for such Produce but that there are other benefits to the Supplier in participating in the Advance Order and selling its Produce to T&G Fresh;
 - (b) Advance Orders may be subject to change by Buyers. If the Buyer reduces the price it will pay under an Advance Order, T&G Fresh shall be entitled to reduce the amount it is required to pay the Supplier, for the relevant Produce, proportionally to the reduction in price payable to T&G Fresh imposed by the Buyer in respect to such Produce; and
 - (c) T&G Fresh may make a profit on the resale of Produce to a Buyer under an Advance Order and, where this occurs, T&G Fresh will not have any liability or obligation to account to the Supplier for any profit made.
- 3.5 T&G Fresh may also negotiate to purchase Produce from a Supplier unrelated to an Advance Order. In those circumstances, T&G Fresh may offer the Supplier a fixed price for the relevant Produce or a range within which it will acquire that Produce from the Supplier. Where T&G Fresh and the Supplier agree to a range of prices for the Produce, T&G Fresh and the Supplier will also agree:
- (a) a margin that T&G Fresh may make on the sale of that Produce; and
 - (b) the associated costs that T&G Fresh can deduct from the sale proceeds,

and the ultimate price payable by T&G Fresh to the Supplier will be the price T&G Fresh receives for the relevant Produce less the agreed margin and associated costs.

- 3.6 The Supplier acknowledges that where T&G Fresh purchases any Produce as principal, T&G Fresh may subsequently make a profit or a loss on any resale of that Produce. The Supplier acknowledges the associated risks taken by the T&G Fresh in purchasing that Produce as principal and agrees that, where T&G Fresh purchases Produce as principal, that T&G Fresh will not have any liability or obligation to account to the Supplier for any profit made or any recourse (other than loss arising out of quality issues associated with the relevant Produce) to the Supplier for any loss suffered on resale.

4.0 CONSIGNMENT

- 4.1 Where T&G Fresh receives Produce from a Supplier unrelated to an Advance Order or where T&G Fresh has not negotiated to purchase that Produce as principal, T&G Fresh will endeavor to sell that Produce for the Supplier as agent and on a commission basis. The Supplier agrees that, in connection with such sales, T&G Fresh will have no liability to the Supplier for the amount of the purchase price received for the Produce or any failure by the Buyer to perform its obligations in respect of any sale of the Produce.
- 4.2 Nothing in Clause 4.1 will prevent T&G Fresh negotiating a fixed price or a range for the fixed price with the Supplier for any Produce that might otherwise be sold on consignment.
- 4.3 In relation to consignment sales, T&G Fresh will pay the Supplier the Produce Supplier Return for the relevant Produce.

5.0 PAYMENT

- 5.1 Unless otherwise specifically agreed in writing by T&G Fresh, T&G Fresh will make payments to the Supplier for the relevant Produce within twenty-one (21) days of the date of the tax invoice issued by T&G Fresh for the relevant Produce. The Supplier authorises T&G Fresh to deduct from any amounts payable to the Supplier all amounts owing by the Supplier to T&G Fresh.
- 5.2 Unless otherwise specifically agreed in writing by T&G Fresh, T&G Fresh will issue Buyer Created Tax Invoices to GST Registered Suppliers for the relevant Produce and the Supplier will not issue Tax Invoices in respect of those supplies. Furthermore, for the avoidance of doubt, in the event the Supplier issues a Tax Invoice in respect of those supplies, it will be disregarded as a Taxable Supply and payment will be based on the Buyer Created Tax Invoice issued by T&G Fresh.

6.0 DELIVERY, TITLE AND RISK

- 6.1 Unless otherwise agreed with T&G Fresh in writing, the Supplier will, at its cost and risk, arrange for the delivery of the Produce to T&G Fresh's premises or to such other place as T&G Fresh may direct.
- 6.2 Where T&G Fresh is acting as principal (in respect to an Advance Order or otherwise) and purchases the Produce from a Supplier, title in the Produce will pass to T&G Fresh at the time T&G Fresh agrees to purchase the Produce. The risk in that Produce will pass to T&G Fresh at the time that T&G Fresh takes delivery of the Produce, provided always that the Produce complies in all respects with the terms under which it is sold, including any TAG Warranty. If the Produce does not comply with the terms under

which it is sold, including any TAG Warranty, then the risk in the Produce will remain with the Supplier.

- 6.3 Where T&G Fresh is acting as agent for the Supplier, effecting a sale on consignment to a Buyer, title in the Produce will remain with the Supplier until T&G Fresh has been paid in full for such Produce. The risk in the Produce will pass upon delivery, which will be deemed to occur on the earlier of when the Produce is either:
- (a) collected from T&G Fresh's premises by the Buyer, its employee, any carrier agent of the Buyer or any Carrier Agent; or
 - (b) where T&G Fresh has agreed in writing to deliver the Produce to a Buyer, when that Produce is delivered to the agreed delivery point (unless otherwise agreed in writing).
- 6.4 T&G Fresh will not be liable to the Supplier or any Buyer for any late collection, late delivery or non-delivery of Produce by any person.
- 6.5 The Supplier will procure that the Produce is safely and properly packaged at all times, labelled and fully described in writing in all documents relating to transportation of the Produce and at all times complies with any applicable TAG Warranty for that Produce and any other terms on which the Produce is sold, from time to time.
- 6.6 If T&G Fresh arranges for the delivery of the Supplier's Produce to its premises or to a Buyer, subject to clause 11 the transportation by or on behalf of T&G Fresh shall be at 'limited carrier's risk', as that term is defined in the Contract and Commercial Law Act 2017 ("**CCL Act**"), and the following provisions will apply:
- (a) T&G Fresh shall, to the maximum extent permitted by law, not be liable to the Supplier for any damage to, loss of, deterioration, mis-delivery, delay in delivery or non-delivery of the Produce whether caused by T&G Fresh's negligence or otherwise;
 - (b) if, notwithstanding clause 6.6(a), T&G Fresh is found to be liable under the CCL Act, its maximum liability to the Supplier will be \$2000 or such other amount as may be specified from time to time by Section 259 of the CCL Act for each unit of Produce (as determined by the CCL Act) which is lost or damaged by T&G Fresh;
 - (c) T&G Fresh shall not be liable for any consequential or indirect loss suffered by a Supplier relating to the transportation of any of their Produce; and
 - (e) T&G Fresh shall not be deemed to have waived any of its rights in relation to the rejection of Produce simply as a result of collecting of the Produce for transportation.

7.0 ADVICE NOTE / INSPECTION OF PREMISES

- 7.1 The Supplier will ensure that all Produce supplied to T&G Fresh or any Buyer will be labelled in accordance with the relevant TAG Specifications and will be accompanied by a T&G Fresh supplier advice note and container card, in each case, in a form acceptable to T&G Fresh, and which will accurately record, as a minimum, the following details:
- (a) the name and physical address of the Supplier;
 - (b) the T&G Supplier code;
 - (c) the date of supply;
 - (d) the Produce type, variety, and either count size or weight;
 - (e) the grade standard of the Produce being TAG 1, 2, or 3 as defined for the particular Produce type in the relevant TAG Specifications, if such

- Produce is required by TAG Specifications to be graded;
- (f) the quantity of each type of Produce;
 - (g) the quantity of each type of Container Equipment;
 - (h) the Supplier's reference number;
 - (i) any special delivery location; and
 - (j) whether the Produce is to be sold on consignment or has been sold by trade sale.

7.2 T&G Fresh reserves the right to reject any Produce that is not accompanied with the information set out in clause 7.1 above.

7.3 T&G Fresh shall be entitled to inspect the Supplier's premises and operations and to undertake tests at or in those premises and/or on the Produce to determine whether or not such premises and/or Produce are in compliance with the TAG Specifications. No such inspection or testing shall reduce the Supplier's ongoing obligations to operate its premises and supply Produce such that the warranties given in clause 8 remain true and accurate in all respects.

8.0 WARRANTIES AND ACKNOWLEDGEMENT

8.1 The Supplier warrants that it is the legal and beneficial owner of all Produce supplied to T&G Fresh and that the Supplier has not breached the intellectual property rights of any third party in relation to or in connection with the Produce.

8.2 The Supplier warrants to T&G Fresh and each relevant Buyer that, at the time of purchase of any Produce from the Supplier and for a reasonable period thereafter (taking into account the type of Produce):

- (a) all Produce is of good and merchantable quality, fit for purpose, described accurately and complies with the Weights and Measures Act 1987 and all other applicable laws and regulations;
- (b) all Produce will meet the minimum quality standards set out in the TAG Specifications in respect of the grade that has been allocated to that Produce by the Supplier on the Supplier's advice note ("**TAG Warranty**");
- (c) all Produce supplied to T&G Fresh is graded in accordance with the relevant grading system for that particular Produce type in the TAG Specifications;
- (d) all Produce complies with all Food Safety Practices and Food Safety Laws; and
- (e) each item of Container Equipment containing Produce is clearly marked with a T&G Fresh advice notice, setting out all the information required by clause 7.1 of these Terms of Trade.

8.3 The Supplier agrees to comply with all T&G Policies and, where T&G Fresh advises that the Produce is to be sold to a particular Buyer, the Buyer Policies of the relevant Buyer, as advised to the Supplier by T&G Fresh or the relevant Buyer from time to time.

8.4 T&G Fresh reserves the right not to accept for sale on consignment or purchase by trade sale any Produce that it determines (in its sole discretion) does not meet one or more of the requirements set out in clause 8.2 above. T&G Fresh's decision in this matter will be conclusive and notified to the Supplier accordingly.

8.5 Where any Produce does not meet the minimum requirements set out in clause 8.2, T&G Fresh may, at its sole discretion but at the Supplier's cost, re-grade that Produce's TAG Specification grading (as defined for that particular Produce type in the relevant TAG Specifications) and sell that Produce under the new grade without prejudice to any rights or remedies that T&G Fresh may have in respect of the Produce or the Supplier. T&G

Fresh will not be liable to the Supplier for any loss or damage to the Supplier arising from such re-grading.

- 8.6 In addition to T&G Fresh's rights under clause 8.5, T&G Fresh may, at its option:
- (a) return the Produce to the Supplier at the Supplier's risk and expense;
 - (b) store the Produce ready for collection by the Supplier within 24 hours of any notice of rejection by T&G Fresh to the Supplier at the Supplier's risk and expense; or
 - (c) dispose of the Produce, without compensation to the Supplier,

where such Produce does not meet the minimum requirements set out in clause 8.2, without prejudice to any other rights or remedies T&G Fresh may have. The costs incurred by T&G Fresh in performing any such acts may be deducted from any amounts owed to the Supplier by T&G Fresh.

- 8.7 If T&G Fresh is required to credit a Buyer with any sums as a result of the failure of any of the Supplier's Produce to meet the minimum requirements set out in clause 8.2 above, then the Supplier irrevocably authorises T&G Fresh to deduct an amount equal to the sums credited to the Buyer from any amounts that T&G Fresh may owe the Supplier, without prejudice to any other rights or remedies T&G Fresh may have.
- 8.8 The Supplier acknowledges and agrees that the use of any trade mark, logo or other intellectual property right owned or licenced by T&G Fresh ("**T&G IP**") on or in respect of a Produce shall not give the Supplier any ownership or other right in or in respect of such T&G IP.

9.0 BREACH OF WARRANTY

- 9.1 In the event that a Buyer claims that a Supplier is in breach of the TAG Warranty in respect of any particular Produce, then a quality assessor approved by T&G Fresh will decide whether or not the Produce meets the TAG Warranty. Such assessor will be selected from a list of approved assessors, available on request from T&G Fresh. If that assessor concludes that the Produce in question does not meet the TAG Warranty, then T&G Fresh will credit the Buyer's account with a sum up to the invoiced amount for the Produce and the Supplier will indemnify T&G Fresh in accordance with clause 9.3.
- 9.2 T&G Fresh is entitled to refuse to sell on consignment or purchase by trade sale any Produce, at any time, without giving any reason. Without limiting the foregoing, T&G Fresh will not be obliged to sell any Produce on consignment for, or purchase by trade sale any Produce from, any Supplier who has breached its TAG Warranty in respect of any Produce on more than one (1) occasion.
- 9.3 The Supplier will indemnify T&G Fresh and keep and hold them harmless against all claims made against them and all losses, damages, costs (including legal costs calculated on a solicitor and client basis) and expenses that they may suffer or incur as a result of any claim or potential claim by any third party in connection with any breach of warranty by the Supplier, including those set out in clause 8.2 of these Terms of Trade.
- 9.4 The Supplier acknowledges that this clause 9 is also for the benefit of the Buyer who, notwithstanding that it is not a party to these Terms of Trade, may enforce this clause 9 as if it were a party to these Terms of Trade by virtue of Subpart 1 (Contractual Privity) of Part 2 of the Contract and Commercial Law Act 2017.

10.0 HEALTH & SAFETY, USE OF FORK HOISTS OR OTHER EQUIPMENT

- 10.1 It is the objective of T&G Fresh that all operational aspects are conducted in such a way that no employee, contractor, visitor or member of the public is harmed in any way. Accordingly, the health and safety of all employees, contractors, visitors and members of the public, is central to the way T&G Fresh operates. No task is so important that a safe method of implementing the task cannot be found.
- 10.2 Where the Supplier or any of its employees, contractors or agents are at the premises of T&G Fresh, the Supplier will ensure that they all:
- (a) comply with the health and safety policies applicable to that site and any related directions by T&G Fresh representatives; and
 - (b) work and operate in a safe manner and promptly report all hazards, accidents and incidents they become aware of.
- 10.3 Where a Supplier or Supplier's employee, contractor or agent has express written authority from a T&G Fresh representative to use a fork hoist mobile container moving device or other equipment owned by or in the care of T&G Fresh ("**Equipment**"), such authority will be conditional on the Supplier only providing and using qualified and certified operators, who have been properly inducted by T&G Fresh, to operate such Equipment at all times.
- 10.4 The Supplier will indemnify T&G Fresh and keep and hold them harmless against all claims made against them and all losses, damages, costs (including legal costs calculated on a solicitor and client basis) and expenses that they may suffer or incur as a result of the Supplier's use of the Equipment, together with all costs incurred by T&G Fresh (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 Fresh's failure to properly maintain the Equipment in question.
- 10.5 The Supplier will indemnify T&G Fresh for any loss, claim, or cost or damage to, or loss of Produce that arises as a result of the Suppliers or the Suppliers' employee, contractor or agent moving Produce with the Equipment or of any staff of T&G Fresh moving Produce with T&G Fresh's Equipment on the Supplier's behalf, in instances where the load of Produce is deemed by T&G Fresh (in its absolute discretion) to have been unsafely or incorrectly packaged by the Supplier, the Supplier's employee, contractor or agent.
- 10.6 If the Supplier or Supplier's employee, contractor or agent causes:
- (a) damage to any vehicles or assets owned by third parties that are at any T&G Fresh site;
 - (b) damage to any property, plant or buildings of T&G Fresh; or
 - (c) injury to any employee, contractor of T&G Fresh or any visitor to a T&G Fresh site,

while using the Equipment, then the Supplier will indemnify T&G Fresh against all resultant claims against T&G Fresh and all losses (including consequential losses), damage, costs, expenses or penalties suffered by T&G Fresh, together with all costs incurred by T&G Fresh (including legal costs calculated on a solicitor and client basis) in dealing with any such claim or actions taken by T&G Fresh with respect to such loss or damage.

11.0 LIMITATION OF LIABILITY AND INDEMNITY

- 11.1 The liability of T&G Fresh to a Supplier under or in any way connected with these Terms of Trade or the provision of any services is, at all times, limited to whichever is the lesser of the:
- (a) commission payable in relation to the particular Produce to which the Buyer's claim relates, where T&G Fresh is acting as a Suppliers' agent in relation to a sale on consignment;
 - (b) invoice price for the particular Produce to which the Suppliers' claim relates, where T&G Fresh has purchased the Produce as principal on a trade sale basis; or
 - (c) direct loss or damage caused by T&G Fresh.
- 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 Fresh that are not made in writing are, to the fullest extent permitted by law, expressly excluded from these Terms of Trade and all transactions in respect of which these Terms of Trade have effect.
- 11.3 The Supplier will indemnify T&G Fresh and keep and hold T&G Fresh harmless against all claims made against them and all losses, damages, costs (including legal costs calculated on a solicitor and client basis) and expenses that they may suffer or incur as a result of or arising from any breach by the Supplier of its obligations under these Terms of Trade.

12.0 FORCE MAJEURE

- 12.1 T&G Fresh will not be liable for any delay or failure to perform its obligations under these Terms of Trade 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 Fresh may terminate the performance of its obligations in respect of the particular dispatch or order of Produce 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 continues for more than seven (7) consecutive days.

13.0 ALTERNATIVE DISPUTE RESOLUTION

- 13.1 In the event of any dispute arising between the parties in relation to these Terms of Trade (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 of Trade 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.
- 13.2 In the event the dispute is not resolved by such agreement within fourteen (14) 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 fifteen (15) 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 organization. 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 Fresh may commence court proceedings in relation to any dispute for which T&G Fresh seeks urgent interlocutory relief.

14.0 PRIVACY ACT

14.1 T&G Fresh may 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 Fresh 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 Fresh in order to protect its interests in respect of its relationship with the Supplier.

15.0 INFORMATION

15.1 Information or further details related to market place rules, TAG Specifications, related information and emergency procedures are available on request from the main T&G Fresh Auckland reception or from Customer Services. A current copy of these Terms of Trade, T&G Policies and, where relevant, Buyer Policies are also available on request.

16.0 GENERAL CONDITIONS

- 16.1 **Entire Agreement:** These Terms of Trade and any documents or materials generated or to be generated by T&G Fresh that are 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 of Trade. The Supplier acknowledges that in entering into these Terms of Trade, 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 of Trade).
- 16.2 **Prevalence:** These Terms of Trade 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 **Credit:** Where T&G Fresh 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 Fresh, in its sole discretion, if and when all outstanding amounts are paid by the Supplier.
- 16.4 **Set-off:** If T&G Fresh is owed any money by the Supplier, has incurred any cost or expense on behalf of a Supplier, has any claim against the Supplier or is exposed to any contingent liability arising out of a breach by the Supplier of the Terms of Trade ("**Liability**") and such Liability remains outstanding for more than ten (10) days from when it fell due or was incurred, then the Supplier authorises T&G Fresh to set off such Liability, together with any applicable GST, from any sum that may be owed to the Supplier by T&G Fresh.
- 16.5 **Non-waiver:** Where T&G Fresh fails to enforce any of these Terms of Trade or fails in any way to exercise its rights under them, T&G Fresh will not be deemed to have waived those rights with respect to any subsequent breach of any Term or Condition or right.
- 16.6 **Severability:** If any clause or part of a clause of these Terms of Trade is held to be invalid or unenforceable for whatever reason, the remaining provisions will remain in full

force and effect.

- 16.7 **Governing Law:** These Terms of Trade will be governed by and interpreted in accordance with the laws of New Zealand and T&G Fresh and the Supplier agree to submit to the exclusive jurisdiction of the courts of New Zealand.