



# ODEUM PRODUCE

PTY LTD

A.C.N. 009 404 031 A.B.N. 56 009 404 031, 34 Catalano Road Canning Vale 6155 P.O. Box 1285 Canning Vale W.A. 6970 Telephone: (08) 9256 8100 Facsimile: (08) 9256 8181 Email: admin@odeum.com.au Web: www.odeum.com.au

## TERMS OF TRADE

**ODEUM PRODUCE PTY LTD**  
**ACN 009 404 031**  
**ABN 56 009 404 031**

1<sup>st</sup> November 2008

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

### 1. Application of Terms of Trade

1.1. These terms apply to all trade in horticulture produce between Odeum Produce Pty Ltd (**Odeum**) and a Grower. These terms are effective from the above date until these Terms of Trade are replaced by another document.

1.2. These terms are intended to be fully compliant with the HCC Code. Where any term or condition may be interpreted as being contrary to the HCC Code, then the provisions of the HCC Code shall prevail for the benefit of the Grower.

1.3. Definitions

1.3.1. In these **Terms of Trade** and the accompanying **HPA-A** or **HPA-M** –

**Account Sale** means the statement prepared by Odeum for the Grower for the reporting period, specifying:

- 1) For the Grower's Produce received by Odeum as an Agent under an HPA-A:
  - (a) the date or dates of the sale of the Produce by Odeum; and
  - (b) the type and quantity of the Produce sold; and
  - (c) the price received for the Produce sold; and
  - (d) details of each amount deducted by Odeum from the sale price of the Produce; and
  - (e) the date on which the Produce was Delivered to Odeum; and
  - (f) details of any amounts of the Produce accepted for Delivery by Odeum during the period and not sold by Odeum during that period; and
  - (g) details of any amounts of the Produce not sold during that period but destroyed by Odeum and details of the costs incurred in destroying the produce; and
  - (h) details of any amounts of the Produce not sold by Odeum at the end of that period; and
  - (i) if Produce that is Delivered to Odeum during the period is not sold by the end of the period, the reasons why the produce was not sold;

but not

  - (j) the name or contact details of the Person to whom the Produce was sold.
- 2) For the Grower's Produce received by Odeum as a Merchant under an HPA-M:
  - (a) the quantity and quality of the Produce purchased by Odeum; and
  - (b) the date or dates of the purchases; and
  - (c) the price paid for the Produce; and
  - (d) the date on which the Produce was Delivered to Odeum.

**Agent** means a Person who sells Horticulture Produce on behalf of a Grower to a Person for a commission or fee.

**Bad Debt** has the following meaning according to *Trade Practices (Horticulture Code of Conduct) Regulations 2006 (Cth)* Part 1, clause 3, subclause (2):

If:

- (a) an agent arranges for a person to buy the horticulture produce of a 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;

the amount owed by the Person is a **Bad Debt** of the Grower.

**Consignment Lot** means a pre-defined volume, quantity and quality of a single grouping of similar Produce which has been supplied from the Grower on any given date and to which a unique Consignment Lot number has been



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assigned by Odeum and for the avoidance of doubt, the assignment by Odeum of a unique Consignment Lot number to a Grower's Consignment Lot does not constitute Delivery of the Produce to Odeum, and has as its sole purpose the maintenance of traceability of the Produce prior to Delivery.

**Delivery** occurs when Produce is received and accepted by Odeum as being, in Odeum's reasonable opinion, acceptable for the purposes of immediately making the Produce available for resale by Odeum, and for the avoidance of doubt, delivery will not occur where one or more Delivery Rejection Events occurs.

**Delivery Rejection Events** means any of the following events:

- (a) All or part of the Produce received does not satisfy one or more of the requirements outlined in clauses 5 and 6 of these Terms of Trade; and/or
- (b) The Produce is received at the Premises without Odeum voluntarily taking possession of the Produce (including without limitation the Produce being left in or near the Premises without prior consent or knowledge); and/or
- (c) The Produce is received by Odeum (or a third party) as bailee under storage and warehousing arrangements.

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

**HCC Code** means the Horticulture Code of Conduct contained in the *Trade Practices (Horticulture Code of Conduct) Regulations 2006 (Cth)*.

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

**HPA-A** means a Horticulture Produce Agreement (Agent) between Odeum and the Grower, incorporating all of the Terms herein and specifying that Odeum agrees to trade as an Agent under the Terms and in full compliance with the HCC Code. The HPA-A and the Terms are to be read together as one integrated document.

**HPA-M** means a Horticulture Produce Agreement (Merchant) between Odeum and the Grower, incorporating all of the Terms herein and specifying that Odeum agrees to trade as a Merchant under the Terms and in full compliance with the HCC Code. The HPA-M and the Terms are to be read together as one integrated document.

**Merchant** means a Person who purchases Horticulture Produce from a Grower for the purpose of reselling that Horticulture Produce, but does not include a person who purchases the produce for the purpose of export or retail sale.

**Odeum** means Odeum Produce Pty Ltd ACN 009 404 031 of 34 Catalano Road, Canning Vale, Western Australia (the Premises).

**Person** shall include an incorporated body or other legal entity.

**Purchase Order** means a written purchase order for Produce detailed in a form submitted from time to time by Odeum or any nominee of Odeum to the Grower.

**Purchase Price** means the price for Produce that is agreed between Odeum and the Grower under the terms of a valid HPA. The purchase price shall be agreed in writing and before Delivery where Odeum and the Grower are operating under the terms of a valid HPA-M.

**Premises** means 34 Catalano Road, Canning Vale, Western Australia.

**Produce** means Horticulture Produce

**Reporting Period** means the later of:

- (a) 21 days from Delivery; or
- (b) 14 days from the date when an entire Consignment Lot of Produce has been fully sold or otherwise disposed of:
  - i. by Odeum to a Person when Odeum is acting as an Agent; or
  - ii. to Odeum from the Grower when Odeum is acting as a Merchant.

**Terms** means this document as amended from time to time.

**Trader** means an Agent or a Merchant.

**Sale** [of a Grower's Produce] refers to an entire Consignment Lot of Produce that has been fully sold or otherwise disposed of by Odeum



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**Statement Period** means 14 days from the end of the Reporting period.

## 2. Basis on which Trader is prepared to trade

2.1. Odeum is prepared to trade in Horticulture Produce as a Merchant or an Agent under these Terms.

## 3. Payment

3.1. Payment will be by Direct EFT, unless otherwise agreed in writing.

3.2. If Odeum is trading as an Agent, following the Sale of a Grower's Produce, Odeum will issue an Account Sale to the Grower within the Reporting Period. An Odeum Remittance Advice Statement will be issued to the Grower together with payment for the Produce within the Statement Period.

3.3. If Odeum is trading as a Merchant, following the Delivery and Transfer of Title of a Grower's Produce to Odeum, Odeum will issue an Account Sale to the Grower within the Reporting Period. An Odeum Remittance Advice Statement will be issued to the Grower together with payment for the Produce within the Statement Period.

3.4. If Odeum has not paid an amount due to the Grower as mentioned in subclause (3.2) or (3.3), the Grower is entitled to take one or both of the following actions:  
(a) suspend any further Deliveries under the agreement until the amount owed is paid;  
(b) cancel the agreement.

3.5. Before taking action under subclause (3.4), the Grower must give 24 hours written notice to Odeum of the Grower's intention to take the action.

## 4. Determination of Price

4.1. If the Grower has signed the HPA-A with Odeum, Odeum is trading as an Agent and Odeum will abide by clause 2 'Determination of Price' in the HPA-A signed between Odeum and the Grower.

4.2. If the Grower has signed the HPA-M with Odeum, Odeum is trading as a Merchant and Odeum will abide by clause 2 'Determination of Price' in the HPA-M signed between Odeum and the Grower.

## 5. Delivery of Produce

5.1. A Grower will bear the costs of Delivery of the Horticultural Produce to Odeum, unless agreed otherwise.

5.2. A Grower can Deliver Horticulture Produce to Odeum in the following circumstances:

5.2.1. If Odeum is to be trading as an Agent, the Grower and Odeum must have signed the HPA-A between Odeum and the Grower before Delivery of the Produce.

5.2.2. If Odeum is to be trading as a Merchant, the Grower and Odeum must have signed the HPA-M between Odeum and the Grower before Delivery of the Produce.

5.3. A Grower must comply with the following requirements when delivering Produce to the Trader:

5.3.1. The Grower will advise Delivery details including estimated time of arrival not less than 4 hours prior to Delivery of the Produce to Odeum.

5.3.1.1. The Grower must provide documentation that clearly and accurately identifies the following:  
(a) Name of the Grower;  
(b) Description of the Produce;  
(c) Quantity of Produce supplied;  
(d) Weight/Count;  
(e) Container quantity and type;  
(f) Pallet quantity and type.

for all Produce supplied by the Grower to Odeum.

5.3.1.2. The Grower must ensure that all Produce is pre-chilled to the required temperatures specified by Odeum in writing either:

(a) At the start of the growing season; and/or  
(b) At the time of ordering; and/or



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(c) Prior to Delivery.

5.3.1.3. The Grower must ensure that all Produce is suitably packaged and safely stacked to prevent any hazard to the safety and health of Odeum staff or personnel.

5.3.1.4. The Grower is responsible for insuring the Produce prior to Delivery to the Premises.

5.4. Odeum will provide secure and suitable off-loading facilities at the Premises so as to facilitate the safe and timely off-loading of the Horticulture Produce.

5.5. In accordance with the HCC Code, whilst the Grower's Produce is under the control of Odeum, Odeum will exercise all reasonable care and skill in handling and storage of the Grower's Produce to ensure that the Produce remains of the highest quality possible.

## 6. Quality of Produce

6.1. Horticulture Produce delivered by a Grower must meet the following quality requirements:

6.1.1. The Grower must maintain membership of an industry recognised and third party audited Quality Assurance programme, and maintain current certification status at all times.

6.1.2. All Produce supplied by the Grower must have been produced by the Grower under an industry recognised and third party audited Quality Assurance programme.

6.1.3. The Grower must provide evidence of current Quality Assurance certification and/or recent food safety testing results to Odeum within 7 days upon Odeum requesting such information.

6.1.4. The quality of the Produce must meet or exceed the quality assurance requirements and/or quality and/or sizing specifications communicated by Odeum to the Grower in writing either:

- (a) At the start of the growing season; and/or
- (b) At the time of ordering; and/or
- (c) Prior to Delivery.

6.1.5. The Grower guarantees that the Produce is fit for human consumption and complies with all statutory requirements concerning product quality, food safety, packaging and labelling.

6.1.6. Odeum will maintain full traceability throughout the receipt, temporary storage, handling, remanufacturing and sale of the Produce by using a unique Consignment Lot number that is assigned to the Produce upon supply to Odeum.

6.1.7. Any Produce that has been supplied by the Grower may be randomly or selectively tested by Odeum to identify any food safety hazards or to verify fitness for human consumption.

6.1.8. The Grower must never supply Produce that has been grown by any Person who is not a party to this agreement without the prior knowledge and written consent of Odeum.

## 7. Transfer of Title and Risk

7.1. If Delivery has occurred and the Grower has signed a HPA-A with Odeum, Odeum is trading as an Agent and:

7.1.1. Ownership and title to the Produce covered by the HPA-A will remain with the Grower until such time as Odeum sells the Produce to a Person.

7.1.2. Risk associated with the Produce will remain with the Grower upon Delivery of the Produce.

7.1.3. In accordance with the HCC Code, whilst the Grower's Produce is under the control of Odeum, Odeum will exercise all reasonable care and skill in handling and storage of the Grower's Produce to ensure that the Produce remains of the highest quality possible.

7.1.4. The Grower authorises Odeum to sell, re-sell, unpack, modify, repack, relabel, remanufacture or otherwise deal with the Produce at Odeum's discretion.

7.2. If Delivery has occurred and the Grower has signed a HPA-M with Odeum, Odeum is trading as a Merchant and:

7.2.1. title to the Produce will be deemed to have passed to Odeum:



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7.2.1.1. If the Purchase Price of the Produce has been agreed to by Odeum and the Grower signing acceptance of a Purchase Order, or orally confirming acceptance of the price stated on the Purchase Order before Delivery of the Produce to Odeum; or

7.2.1.2. if the Purchase Price of the Produce has not been agreed to in accordance with clause 4, title shall pass at the time that Odeum and the Supplier agree on the Purchase Price for the Produce.

7.2.2. If Odeum is trading as a Merchant, Odeum will assume all risk in respect of the Produce once title to the Produce passes to Odeum under clause 7.2.1.

## 8. Rejection of Produce

8.1. Odeum may, at its sole discretion, reject Delivery of some or all Horticulture Produce from a Grower if the following circumstances arise:

8.1.1. If the Horticulture Produce delivered does not satisfy one or more of the requirements outlined in clause 5 and/or clause 6 above; and/or

8.1.2. If, in the sole opinion of Odeum (or its nominee acting reasonably) it is determined that the Produce is:  
(a) a hazard to food safety; and/or  
(b) not fit for resale; and/or  
(c) unfit for the purpose for which it was intended.

8.2. If the Product does not satisfy the requirements within subclause 8.1, Delivery will be deemed not to have occurred, and a Delivery Rejection Event will result.

8.3. If a Odeum rejects any or all of the Produce:

8.3.1. Odeum will:

8.3.1.1. Immediately advise the Grower, by telephone, fax, email or other electronic means, that the Produce has been rejected;

8.3.1.2. Provide written notification of the Rejection to the Grower, including the reason(s) for the Rejection, together with copies of any supporting documentation or photographs, within 14 days after Rejection of the Produce.

8.3.2. Upon notification of Rejection of Produce the Grower must:

8.3.2.1. Respond within 24hrs by fax, email or other electronic means; and

8.3.2.2. Elicit at the cost of the Grower to:

8.3.2.2.1. Redirect the Produce to another consignee; and/or

8.3.2.2.2. Instruct Odeum to dispose of the Produce; and/or

8.3.2.2.3. Request an independent inspection by a Person qualified by education and/or experience to assess the Produce; and/or

8.3.2.2.4. Request Odeum to accept Delivery under a valid HPA-A for the purpose of making the Produce immediately available for sale by Odeum.

8.3.3. In the absence of any instruction from the Grower within 24 hours of having been notified by Odeum that the Produce has been Rejected, Odeum may arrange for the disposal of the Produce at the Grower's cost.

8.4. Where a Delivery Rejection Event has occurred, Delivery will be deemed to subsequently occur:

8.4.1. if the Grower changes the nature of the Produce to satisfy the requirements detailed in clause 5 and/or clause 6; and/or

8.4.2. if the Grower changes the nature of the Produce to satisfy the requirements detailed in subclause 8.1; and/or

8.4.3. if the Produce was submitted for Delivery under the Terms of a HPA-M and the Grower requests that the Produce be submitted for Delivery to Odeum under the Terms of a HPA-A; and/or



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8.4.4. if the Produce was submitted for Delivery under the Terms of a HPA-M and the Grower has not complied with subclauses 8.1 and/or 8.3.2, Odeum may elect at its discretion to change the nature of its possession of the Produce such that it is held under the Terms of a valid HPA-A, for the purpose of making the Produce immediately available for sale by Odeum.

## 9. Insurance

- 9.1. Odeum has insurance for Horticulture Produce under Odeum's physical control.
- 9.2. The details of the insurance policy are as follows:
  - 9.2.1. The insurance policy is with Calliden Insurance Ltd (Policy No. 06FOP80025771)
  - 9.2.2. The policy covers defined perils including but not limited to loss caused by fire, theft and accidental damage (other than deterioration, inherent loss or consequential loss of any kind)
  - 9.2.3. The maximum value of claims for Produce covered by the policy is \$100,000, or such other amount stated on the Odeum public website [www.odeum.com.au](http://www.odeum.com.au)

## 10. Commission and fees

- 10.1. If, the Grower has signed the HPA-A with Odeum, Odeum is trading as an Agent and commission is payable to Odeum on a percentage basis as follows:
  - 10.1.1. Odeum will deduct 17.5% commission + GST from the final sale price obtained for the Grower's Produce.
- 10.2. The payment of any extra costs is contingent on the following:
  - 10.2.1. The Delivery of Horticulture Produce by the Grower to Odeum under a valid HPA-A.
  - 10.2.2. By Delivering Produce under a valid HPA-A, the Grower has granted Odeum the authority to sell, re-sell, unpack, modify, repack, relabel, remanufacture or otherwise deal with the Produce in order for Odeum to make a sale of the Produce to a Person.
  - 10.2.3. The Grower acknowledges that in granting Odeum the authority to sell, re-sell, unpack, modify, repack, relabel, remanufacture or otherwise deal with the Produce in order for Odeum to make a sale of the Produce to a Person, the Grower may incur extra costs.
  - 10.2.4. Extra costs + GST are to be deducted by Odeum from the final sale price, after deduction of the commission detailed in subclause 10.1.1.

## 11. Bad Debts

- 11.1. If, the Grower has signed the HPA-A with Odeum, Odeum is trading as an Agent. Odeum is prepared to pursue payments for bad debts of a Grower.
- 11.2. Odeum is prepared to pursue payment for bad debts of a Grower and will undertake all reasonable steps to recover the debt, including:
  - 11.2.1. Making telephone calls on behalf of the Grower to demand payment for the debt.
  - 11.2.2. Sending letters on behalf of the Grower to demand payment for the debt.
  - 11.2.3. Odeum will provide the Grower with any and all information concerning the transaction, including the buyer's name and contact details.