



AGENCY TERMS

These Agency Terms constitute a horticulture produce agreement for the purposes of the Horticulture Code. These Agency Terms sets out the appointment of TomatoExchange Pty Ltd (ACN 126 583 140) care of the General Manager, TomatoExchange Pty Ltd, 275 Robinsons Road Ravenhall VIC 3023 ("TomatoExchange") as an agent for the producer of the produce ("Grower") and the terms and conditions of that agency.

From 14 May 2007, these Agency Terms are as follows:

1. TomatoExchange trades with any Grower as an agent in accordance with these Agency Terms. If the Grower requests that TomatoExchange act as an Agent for the Grower and TomatoExchange accepts that agency, these Agency Terms shall apply.
2. These Agency Terms will commence 7 days after 14 May 2007 ("**Cooling Off Period**") or on the date Produce is provided to TomatoExchange by the Grower after the Grower has been notified of the terms of these Agency Terms ("**Effective Date**") and has a term of one year. These Agency Terms will automatically renew on the first anniversary of the Effective Date and each anniversary thereafter, unless terminated by either party in accordance with these Agency Terms. During the Cooling Off Period, either party may terminate these Agency Terms by notice in writing to the other party. Any trading that has been undertaken in those 7 days is deemed to have been undertaken pursuant to these Agency Terms.
3. Pursuant to these Agency Terms, the Grower from time to time may request that TomatoExchange provide the service of marketing and selling the produce of the Grower ("**Produce**") on behalf of the Grower as the Grower's agent ("**Agency**"). Nothing in these Agency Terms shall oblige TomatoExchange to accept any Produce from the Grower pursuant to these Agency Terms. TomatoExchange retains an absolute discretion whether or not to accept Produce pursuant to these Agency Terms.
4. The Grower warrants that it is the owner of the Produce, it has authority to grant the Agency and that the Produce being marketed and sold by TomatoExchange is of merchantable quality, fit for its purpose and strictly meets the specifications for that Produce set out at www.costaexchange.com.au ("**Specifications**"). The determination of TomatoExchange Pty Ltd as to compliance with this clause is conclusive.
5. The Grower indemnifies TomatoExchange for all loss, damage, costs or expenses arising from any breach by the Grower of these Agency Terms including without limitation the warranties in clause 4.
6. TomatoExchange and the Grower must agree, in writing prior to any dealing with the Produce by TomatoExchange, that the Produce is the subject of these Agency Terms.
7. TomatoExchange will charge and the Grower shall pay the commissions (plus GST) for the Produce as notified to the Grower in writing prior to the first delivery of Produce to FreshExchange pursuant to the terms of these Agency Terms after the Effective Date ("**Commission**"). The parties may vary the Commission for some or all the Produce as agreed, in writing, between the parties from time to time.
8. TomatoExchange has the right to charge and the Grower shall be responsible for any additional expenses (which will include GST if charged to FreshExchange) arising from the sale of the Produce, pursuant to the terms of these Agency Terms after the Effective Date ("**Expenses**")
9. TomatoExchange will pay the Grower any proceeds TomatoExchange receives in cleared funds for the sale of the Produce less the Commission plus GST and Expenses applicable to the Produce sold ("**Proceeds**"). The Grower shall indemnify TomatoExchange if TomatoExchange pays or is required to repay to an Insolvency Agent of a Customer to whom Produce has been sold, any monies previously received by TomatoExchange on account of the Proceeds.
10. Payment of the Proceeds will be made to the Grower within 14 days of receipt of cleared funds by TomatoExchange. Payment of the proceeds will be accompanied by a recipient generated tax invoice pursuant to the *A New Tax System (Goods and Services Tax) Act 1999*.
11. TomatoExchange will provide a statement to the Grower every 28 days which will detail, the following:
 - a. The date or dates of the sale of the Produce;
 - b. The type and quantity of the Produce sold;
 - c. Details of the Commission and any Expenses deducted from the Proceeds;
 - d. The time and date at which the Produce was delivered;

- e. Details of any Produce delivered and not sold but destroyed and costs of destruction;
- f. Details of any Produce delivered and not sold and being held by TomatoExchange, and reasons why not sold.

("Statement")

The Statement is prima facie evidence of the accuracy of the matters set out in (a) to (f) above, in the absence of manifest error.

12. The Grower, at its own expense, will punctually make the Produce available for inspection by TomatoExchange at the time and location as instructed by TomatoExchange from time to time. The Produce must be made available by the Grower to TomatoExchange strictly in accordance with TomatoExchange's instructions, which may be varied at anytime and from time to time at the absolute discretion of TomatoExchange. The Produce is made available at the sole cost of and risk of the Grower.
13. TomatoExchange will inspect the Produce and may reject all or some of the Produce for the following reasons:
 - a. where all or some of the Produce does not meet the Specifications;
 - b. where all or some of the Produce is unfit for sale by TomatoExchange;
 - c. where all or some of the Produce is not made available for inspection strictly as directed by TomatoExchange.
14. If TomatoExchange rejects all or some of the Produce it will:
 - a. immediately contact the Grower to advise what amount of the Produce is rejected;
 - b. confirm that rejection in writing within 2 business days; and
 - c. return the rejected Produce to the Grower at the risk and cost of the Grower, unless otherwise agreed by the Grower.
15. a. The Grower acknowledges and agrees that the Produce may contain latent quality defects which do not manifest until after the Produce has been made available to TomatoExchange. TomatoExchange reserves its right to exercise its rights and remedies under this clause with respect to Produce that manifests such latent quality defects after the Produce has been made available to TomatoExchange in accordance with clause 12.

b. TomatoExchange's confirmation in writing of any latent quality defect in Produce together with reasonable evidence of the latent quality defect and shall be prima facie of such latent quality defect, the cost and damages to TomatoExchange of the defect and when the defect became apparent to TomatoExchange. TomatoExchange shall be entitled to set off and deduct the cost and damages to it of any latent quality defect from any monies payable by it to the Grower.
16. These Agency Terms may only be varied as agreed in writing between the parties;
17. Any queries about these Agency Terms or for the delivery of notices should be addressed to the General Manager, TomatoExchange Pty Ltd, 275 Robinsons Road Ravenhall VIC 3023. The Grower will be contacted at its trading address unless the Grower advises otherwise in writing.
18. Subject to clause 19, these Agency Terms can be terminated by either party on 7 days written notice.
19. If a dispute arises between the parties, a party will deliver a notice setting out the terms of the dispute. If the parties cannot resolve the dispute within 21 days after a party has given notice in writing to the other party, the parties shall within the next 7 days negotiate in good faith for an agreement to the identity of an appointed mediator. If the parties cannot agree on the appointment of a mediator, a mediator shall be appointed by the Horticultural Mediation Advisor. The parties must attend the mediation. The mediation shall take place in Victoria. If the parties cannot resolve the dispute by mediation, this agreement may be terminated by either party, in writing, on the next business day. Each party must pay half the costs of the mediation.
20. All dollar amounts expressed in or pursuant to these Agency Terms are exclusive of GST. The Grower is responsible for payment of all GST arising from this agreement.
21. All rights subsisting to the parties at termination shall survive termination.
22. Details of the insurance held by TomatoExchange are available at www.costaexchange.com.au. TomatoExchange's liability for any loss arising pursuant to these HP Terms is limited to events covered and any loss payable by TomatoExchange's insurance, current at the time that the loss is incurred.
23. The proper law of these Agency Terms is the law of the State of Victoria and the parties submit to the exclusive jurisdiction of the state of Victoria.
24. These Agency Terms may be executed in counter parts. All counter parts when taken together are taken to constitute the one Agreement.

EXECUTED for and on behalf of
TOMATO EXCHANGE PTY LTD

by:

EXECUTED for and on behalf of
the **GROWER** by: