



HORTICULTURE PRODUCE TERMS- TOMATO EXCHANGE

These Horticulture Produce Terms (“HP Terms”) constitute a horticulture produce agreement for the purposes of the Horticulture Code. These HP Terms set out the terms and conditions of trade by which TomatoExchange Pty Ltd ACN 008 277 772 of 275 Robinsons Road Ravenhall VIC 3023, (“TomatoExchange”) will purchase produce (“Produce”) from any grower of Produce (“Grower”).

From 14 May 2007, **subject to clause 2**, the following HP Terms shall apply:

1. TomatoExchange is trading with the Grower as a merchant and may purchase Produce from the Grower from time to time.
2. These HP Terms will commence 7 days after 14 May 2007 (“**Cooling Off Period**”) or on the date **Produce is provided by the Grower to CostaFarms after the Grower has been notified of the terms of these HP Terms** (“Effective Date”) and has a term of one year. These HP 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 HP Terms. During the Cooling Off Period, either party may terminate these HP Terms by notice in writing to the other party. Any trading that has been undertaken during the Cooling Off Period is deemed to have been undertaken pursuant to the terms of these HP Terms.
3. All Produce provided by the Grower for purchase by TomatoExchange must strictly meet the specifications for that Produce. The Specifications can be found at www.costaexchange.com.au (“**Terms of Trade and Specifications**”). The determination of CostaFarms as to compliance with this clause is conclusive.
4. The Grower, will punctually make the Produce available for inspection by TomatoExchange at the times and locations as instructed to the Grower by TomatoExchange from time to time. The Produce must be made available by the Grower to TomatoExchange strictly in accordance with the TomatoExchange.
5. 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 not made available for inspection strictly as directed by CostaFarms.
6. 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 the cost of the Grower, unless otherwise agreed with the Grower.
7.
 - a. The Grower acknowledges and agrees that the Produce may contain latent quality defects which do not manifest until after Delivery. TomatoExchange reserves its right to exercise its rights and remedies under this clause with respect to Produce that manifests such latent quality defects and after transfer of title to the Produce.
 - b. TomatoExchange’s confirmation in writing of the rejection shall set out details of the latent quality defect together with reasonable evidence of the latent quality defect and shall be prima facie evidence of such latent quality defect, the cost to TomatoExchange of the defect and when the defect became apparent to TomatoExchange.
 - c. TomatoExchange shall be entitled to set off and deduct the cost to it of any latent quality defect from any monies payable by it to the Grower.
8. TomatoExchange will, as soon as practically possible after compliance by the Grower with clause 4, determine at its absolute discretion whether to accept or reject the Produce in accordance with clauses 3 and 5 and agree a price for the Produce with the Grower. Title to the Produce and ownership of the Produce will pass to TomatoExchange when TomatoExchange arms is satisfied that the Produce meets the Specifications and it has not exercised any rights pursuant to clause 5 and has agreed a price in writing with the Grower for the Produce.
9. The parties will use their best endeavours to agree the price pursuant to clause 8 (“the Price”) immediately after the Produce has been delivered by the Grower to TomatoExchange as contemplated in clause 4.

10. Any queries about these HP Terms or for the delivery of notices should be addressed to the Divisional Manager, 275 Robinsons Road Ravenhall VIC 3023. The Grower will be contacted at the Grower's trading address unless notified otherwise, in writing.
11. Other than by operation of clause 14, these HP Terms can be terminated by either party on 48 hours written notice.
12. Payment will occur within 25 days of the end of the month in which the Grower has complied with clause 4. Payment will be made by electronic funds transfer.
13. TomatoExchange will use its best endeavours to report to the Grower, 21 days after transfer of title and ownership to the Produce, on:
 - a. all the quantity, quality of the Produce purchased by TomatoExchange;
 - b. the dates of purchase of the Produce;
 - c. the price paid for the Produce; and
 - d. time of Delivery of the Produce; ("Sales Report").The packed fruit record is prima facie evidence of the accuracy of the matters set out in (a) to (d) above, in the absence of manifest error.
14. 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.
15. All rights subsisting to the parties at termination shall survive termination.
16. 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.
17. The proper law of these HP Terms is the law of the State of Victoria and the parties submit to the exclusive jurisdiction of the state of Victoria.
18. These HP 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
TomatoExchange by:

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