



Avorama Pty Ltd

Horticulture Produce Agreement - (Agent)

Introduction

These Agency Trading Terms are preferred terms of trade of Avorama Pty Ltd t/a I & A Tolson Avocado Packing & Marketing when acting as agent in the trade of horticulture produce.

When accepted in writing, these Agency Trading Terms and Conditions constitute a horticulture produce agreement for the purposes of the Horticulture Code between Avorama Pty Ltd, set out in item 1 of the Schedule and the Grower, set out in Item 2 of the Schedule, appointing that Avorama Pty Ltd to act as agent for the Grower in respect of the Produce in item 9 of the Terms and Conditions, with effect from the Commencement Date set out in item 4 of the Schedule.

Terms and Conditions

1. Agreement

1.1. For the Term of this agreement, the Grower agrees to deliver, and the Agent agrees to arrange, on behalf of the Grower, the sale of Horticulture Produce of the type, quantity, quality, and specifications stated in this agreement, for the payment of a fee stated or calculated in accordance with this agreement.

2. Term

2.1. This agreement will commence on the Commencement Date set out in item 4 of the Schedule and will continue for the Term of the agreement unless it is terminated earlier in accordance with clause 18.

Event	Date
Commencement Date	As set out in item 4 of the Schedule or date the last party signs (whichever is the latter)
Term	This agreement will commence on the Commencement Date and will terminate on the date the agreement is terminated under clause 18 [if there is no end date].

3. Agent's reporting obligations

3.1. For the purposes of this agreement, the Reporting Period is monthly.

- 3.2. For each Reporting Period, the Agent will give the Grower a statement for the Reporting Period, specifying for the Grower's Horticulture Produce received by the Agent during the Reporting Period:
- (a) the date on which the Horticulture Produce was delivered to the Agent
 - (b) the date or dates the Horticulture Produce was packed by the Agent
 - (c) the type and quantity of the Horticulture Produce sold
 - (d) the price received for the Horticulture Produce sold
 - (e) details of each amount deducted by the Agent from the sale price of the Horticulture Produce, and
 - (f) details of any amounts of the Horticulture Produce not sold by the Agent during that period, including:
 - i. the reasons why the Horticulture Produce was not sold
 - ii. details of any amounts of the Horticulture Produce destroyed by the Agent, and the costs incurred in destroying the Horticulture Produce, and
 - iii. details of any amounts of the Horticulture Produce held by the Agent at the end of the period.
- 3.3. The Agent will give the statement referred to in subclause 3.2 to the Grower within the Statement Period, which is 30 business days following the end of the Reporting Period. Unless otherwise requested by the Grower, the Statement will be taken to have been delivered to the Grower if it is made available for collection at the Avorama Pty Ltd premises.

4. Agent's other obligations

- 4.1. During the period the Grower's Horticulture Produce is under the Agent's control, the Agent will exercise all reasonable care and skill in handling and storage to ensure that the Horticulture Produce remains of the highest quality.
- 4.2. The care and skill the Agent must exercise under subclause 4.1 must be exercised until the ownership of the Horticulture Produce passes to a purchaser of the Horticulture Produce.
- 4.3. The Agent will act in the best interests of the Grower when selling Horticulture Produce under this agreement.

5. Commission and fees

- 5.1. Subject to subclause 12.2, the Agent will charge the Grower a fee / specified extra of:
- (a) \$ (plus GST) marketing fee per package of packed and marketed Horticulture Produce
 - (b) \$ (plus GST) marketing fee per kilo (kg) of processing marketed Horticulture Produce
 - (c) \$ (plus GST) marketing fee per package of marketed only Horticulture Produce
- 5.2. The agent will charge the Grower, and the Grower will pay, for any additional expenses arising from the sale of the Produce pursuant to these Terms, including without limitation freight, packing, packaging, levies, ripening, quality assurance testing, storage or any other expenses permitted under an agreement between the parties.

6. Price

- 6.1. The Agent will sell Horticulture Produce on behalf of the Grower for the highest price available, reflective of quality and condition.
- 6.2. The Grower consents to Avorama Pty Ltd selling the Horticulture Produce to any third party that Avorama Pty Ltd thinks fit, including any related entity of Avorama Pty Ltd. The Grower also consents to Avorama Pty Ltd selling the Horticulture Produce in any location.

7. Payment

- 7.1. Subject to clauses 5.2 and 12, the Agent will pay to the Grower the proceeds of a sale of the Grower's delivered Horticulture Produce, less fees calculated in accordance with subclauses 5.1 and 5.2.
- 7.2. Payment under subclause 7.1 will be made:
 - (a) By Sunday, 4 weeks after the end of the week (ending Sunday) following the Grower's Horticulture Produce being packed by the Agent.
 - (b) by electronic funds transfer, unless otherwise agreed in writing between the Agent and the Grower.

8. Delivery of Horticulture Produce

For the purposes of this agreement, delivery of Horticulture Produce occurs when the Horticulture Produce arrives at the address specified in accordance with subclause 8.3.(c).

- 8.1. The Grower will bear the costs of delivery of the Horticulture Produce to the Agent.
- 8.2. The Grower may deliver Horticulture Produce to the Agent in the following circumstances:
 - (a) Between the hours of 10 am – 5 pm, Monday to Friday;
 - (b) Or at a mutually agreed time with the Agent
- 8.3. The Grower will comply with the following requirements when delivering Horticulture Produce to the Agent:
 - (a) The Grower will include/complete with each delivery, documentation listing the quantity and type of all Horticulture Produce in the delivery.
 - (b) The Grower will follow signage at the premise and adhere to safe work practices including but not limited to, wearing protective footwear and high visibility clothing.
 - (c) Where the Grower delivers Horticulture Produce to the Agent, the Grower is to deliver the Horticulture Produce to 906 Stuarts Point Road, Stuarts Point NSW 2441 or as otherwise instructed by the Agent from time to time.
 - (d) The Grower is to ensure Horticulture Produce delivered to the Agent is free of contaminants.
- 8.4. The Agent will provide secure and suitable off-loading facilities at the premises referred to in subclause 8.5 to facilitate the safe and timely off-loading of the Horticulture Produce.

- 8.5. The Agent will be responsible for giving, or taking reasonable steps to ensure that the Grower is given, a document evidencing receipt of delivered Horticulture Produce.
- 8.6. The Agent will accept as proof of delivery of Horticulture Produce by the Grower, any document that acknowledges, reflects, or evidences delivery:
 - (a) where delivery is to an address that is the usual place of business of the Agent, given to the Grower by the Agent, its officers, employees or agents, or
 - (b) where delivery is to an address that is not the usual place of business of the Agent, given to the Grower by any person who accepts delivery at that address and has the actual, apparent or ostensible authority of the Agent or is a person who is apparently an adult and appears to be engaged in the service of the business at that address.

9. Type of Horticulture Produce

- 9.1. The Grower will deliver the following types of Horticulture Produce to the Agent in accordance with the terms of this agreement:
 - (a) Avocados, Mangos, Limes, Peaches, Nectarines, Custard Apples, Persimmons, or
 - (b) as requested by the Agent from time to time.

10. Quality of Horticulture Produce

- 10.1. Horticulture Produce delivered by the Grower must meet *Fresh Markets Australia's FreshSpecs Produce Specifications* for each type of Horticulture Produce delivered by the Grower.

11. Quantity requirements

- 11.1. An agreement between the Grower and Agent will define the quantity of Horticulture Produce delivered by the Grower.

12. Rejection of Horticulture Produce

- 12.1. The Agent will accept and be deemed to have accepted delivery of all Horticulture Produce delivered in accordance with this agreement, unless the circumstances set out in this clause apply.
- 12.2. The Agent may reject Horticulture Produce delivered by the Grower in the following circumstances:
 - (a) If the Horticulture Produce delivered does not satisfy the type, quality or quantity requirements specified in clauses 9 to 11, above. However, if part of the delivered Horticulture Produce does not satisfy the requirements in clauses 9 to 11 and part of the delivered Horticulture Produce does satisfy those requirements, the Agent may only reject the part of the Horticulture Produce that does not meet those requirements.
 - (b) If the Grower does not have title in the Horticulture Produce delivered by it
- 12.3. The Agent may only reject Horticulture Produce under subclause 12.2 within twenty-four (24) hours of packing the Produce in accordance with this agreement.
- 12.4. Where the Agent rejects Horticulture Produce under subclauses 12.2 and 12.3, the Agent will within 24 hours after the time at which the Produce is rejected, notify the

Grower of the rejection by telephone, fax, email or other electronic means. Where an Agent fails to comply with this obligation, the Agent will be deemed to have accepted delivery of the Horticulture Produce.

- 12.5. Where Horticulture Produce is rejected by the Agent, the Agent may return the Produce to the Grower at the Grower's expense / hold the Produce at 906 Stuarts Point Road, Stuarts Point for collection by the Grower at an agreed time / or where the Produce is rejected for failure to meet the quantity specifications set out in subclause 11.1, pool the Produce in accordance with clause 13.

13. Pooling of produce

- 13.1. The Agent may pool Horticulture Produce delivered by the Grower under this agreement with other produce if:
- (a) the other produce is of the same quality as the Horticulture Produce delivered by the Grower, and
 - (b) the Grower's Horticulture Produce and the other produce meet the quality requirements, specified in subclause 10.1 of this agreement.
- 13.2. Where the Agent pools Horticulture Produce in accordance with this clause, the amount payable to the Grower will be a proportion of the total proceeds received by the Agent for the pooled Horticulture Produce that is equal to the proportion of the pooled Horticulture Produce that was contributed by the Grower, less any fees specified in clause 5.

14. Title

- 14.1. The Grower warrants (at the time of accepting these Terms and Conditions and each time that it provides Horticulture Produce to Avorama Pty Ltd) that it is the owner of the Horticulture Produce that it delivers to the Agent.
- 14.2. Title in the Horticulture Produce will not pass to the Agent and remains with the Grower until the Agent sells the Horticulture Produce.

15. Insurance

The Agent has insurance for Horticulture Produce under the Agent's control.

- 15.1. The details of the insurance policy are as follows:
- (a) The insurance policy is with CGU Insurance
 - (b) The maximum amount of insurance cover provided by the policy in respect of claims that may be made in relation to the Horticulture Produce is \$1,200,000.
 - (c) The policy covers fire/storm and accidental damage (other than deterioration of quality or any other inherent losses).

16. Bad debts

- 16.1. The Agent will pursue payment for Bad Debts of the Grower arising under this agreement.
- 16.2. The Agent will pursue payment for Bad Debts of the Grower on the following basis:
- (a) At no cost to the Grower

(b) When the Agent pursues a Bad Debt, the Grower will have no role.

(c) In the event that there is a dispute with the Agent under this agreement or the Code, the Grower should contact the person specified below:

Agent contact

Name:	Ian Tolson
Phone:	0418 262 595
Email:	<u>iatolson@bigpond.com</u>

16.3. In the event that there is a dispute with the Grower under this agreement or the Code, the Agent should contact the person specified below:

Grower contact

Name:	
Phone:	
Email:	

16.4. The parties agree that if a dispute arises between them in relation to any matter covered by this agreement, they will follow the dispute resolution procedure set out in Part 5 of the Code.

17. Termination

17.1. This agreement can be terminated by either party giving four (4) weeks' written notice of termination to the other party.

17.2. Despite anything else in this agreement, where the term of this agreement is 90 days or more, or is not specified, either party may terminate this agreement at any time within the cooling-off period being:

(a) 14 days after the day on which this agreement was entered into, or

(b) such shorter or longer period as is agreed by the parties, provided the initial cooling-off period is not reduced by more than 7 days.

17.3. Where this agreement is terminated any trade that has occurred under the agreement before the termination is governed by the terms of this agreement.

17.4. A party to this agreement who receives a payment (of money or other valuable consideration) for the purposes of, and directly related to, trade that would have occurred after the termination of the agreement, must return the payment to the party who made the payment within 14 days after the day on which the agreement is terminated.

17.5. A party required to return a payment may deduct, from the amount to be returned, reasonable expenses incurred under the agreement for the purposes of, and directly related to, trade that would have occurred after the termination of the agreement.

17.6.

18. Variation

18.1. This agreement may only be varied by further agreement in writing between the Agent and the Grower and be accepted by the parties to it either by signature by both parties or a written notice of offer and a written notice of acceptance.

SCHEDULE – HORTICULTURE PRODUCE AGREEMENT DETAILS

1. AGENT

Agent Name: Avorama Pty Ltd (trading as I & A Tolson Avocado Packing & Marketing)

ACN (if applicable): 151 659 586

ABN (if applicable): 47 151 659 586

Address: 238 Fisherman's Reach Road, Stuarts Point NSW 2441

Email: iatolson@bigpond.com

Phone: 0418 262 595

2. GROWER

Grower's Name:

ACN (if applicable):

ABN (if applicable):

Address:

Email:

Phone:

Contact Person:

4. COMMENCEMENT DATE

__ / __ / ____

Agreement Signing Page

The parties agree that by signing this agreement, they enter into an agreement comprising:

- (a) the terms and conditions set out in clauses 1 to 19 above, and
- (b) Annexure 1 – Definitions and Interpretation

Executed by or on behalf of Avorama Pty Ltd ABN 47 151 659 586

.....)
Signature of director)	Signature of company secretary
.....)
Name of director (print))	Name of company secretary (print)
Date / /)	Date / /

Executed by or on behalf of [Print Grower's name]

.....

[If Grower is an individual]

.....

Signature of Grower

Date / /

[If Grower is a company]

.....)
Signature of director)	Signature of director/company secretary
.....)
Name of director (print))	Name of director/company secretary (print)
Date / /)	Date / /

Annexure 1 – Definitions and interpretation

1. Definitions

In this agreement–

Agent means a person who sells Horticulture Produce on behalf of a Grower to a person for a commission or fee and for the purposes of this agreement is the person specified on page 1 of the agreement.

Bad Debt means a bad debt of the Grower and is an amount owed by a person where:

- (a) an Agent arranges for the person to buy the Horticulture Produce of the 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.

Code means the Horticulture Code of Conduct prescribed by the *Competition and Consumer (Industry Codes–Horticulture) Regulations 2017*, as amended from time to time.

Grower means a person who grows Horticulture Produce for sale and for the purposes of this agreement is the person specified on page 1 of the agreement.

Horticulture Produce means unprocessed fruit, unprocessed vegetables (including mushrooms and other edible fungi), unprocessed nuts, unprocessed herbs, other unprocessed edible plants, but does not include Nursery Products.

Nursery Products include: trees, shrubs, plants, seeds, bulbs, corns and tubers (other than edible tubers); propagating material and plant tissue cultures, grown for ornamental purposes or for producing fruits, vegetables, nuts or cut flowers or foliage; and cut flowers or foliage.

Reporting Period means the period specified in subclause 3.1.

Start Date means the period specified in subclause 2.1.

Statement Period means the period specified in subclause 3.3.

Term means the period specified in subclause 2.1.

2. Interpretation

In this agreement, unless the contrary intention appears:

- (a) words in the singular include the plural and words in the plural include the singular
- (b) the word “includes” in any form is not a word of limitation
- (c) a reference to “\$” or dollars is a reference to Australian dollars
- (d) a reference to any legislation or legislative provision includes a statutory modification, substitution or re-enactment of that legislation or legislative provision
- (e) if any word or phrase is given a defined meaning, any part of speech or other grammatical form of that word or phrase has a corresponding meaning.