

HORTICULTURE PRODUCE AGREEMENT

DATED:

BETWEEN

Butler Market Gardens (Aust) Pty Ltd (ACN 605 710 521) of 198 Old Dandenong Road,
Heatherton 3202
(**'BMG'**)

AND

The party specified at Item 1 in Schedule 1
(**'Grower'**)

RECITALS

- A BMG offers to buy and the Grower offers to sell horticulture produce on the terms of this agreement.
- B This agreement is a horticulture produce agreement pursuant to the Competition and Consumer (Industry Codes - Horticulture) Regulations 2017.

DEFINITIONS

"Code" means the Horticulture Code of Conduct;

"Commencement Date" means the date of execution of this agreement;

"Order" means a purchase order given by BMG to the Grower requesting the Grower to supply Produce;

"Price" means the purchase price for the Produce as determined in accordance with clause 14;

"Produce" means the goods supplied to BMG by the Grower pursuant to the terms of this agreement.

AGREEMENT

1. BMG trades as a merchant, as defined in the Code, under this agreement.
2. This agreement commences on the Commencement Date and shall continue until terminated in accordance with the procedure set out herein.

Supply and Delivery

3. BMG will submit all orders to the Grower by completing a purchase order form (**Purchase Order**).
4. BMG will specify any quantity and quality requirements for the Produce together with its Purchase Order. Prior to issuing any Purchase Order, the BMG procurement team will discuss with the Grower the Grower's available volumes and quality.
5. The Grower must not deliver produce to BMG that does not comply with the product specifications provided by BMG to the Grower in respect of the Produce.
6. The Grower must deliver the Produce to BMG to the address listed at Item 2 of Schedule 1 unless otherwise directed by BMG.

7. Risk and title in the Produce will pass to BMG on delivery of the Produce in accordance with clause 6.
8. The procedure for the delivery of the Produce is as follows:
 - a) BMG will communicate with the Grower on a weekly basis regarding BMG's requirements to procure Produce for the following week, including quantity and timing of required produce.
 - b) The Grower will deliver the Produce to BMG noting the item description, quantity and price (if applicable) and any other information relevant to the delivery as required by BMG from time to time. A copy of the delivery docket for the Produce will be sent with the Produce being delivered to BMG together with the Grower's invoice where practical.
 - c) Upon receipt of the Grower's Produce, BMG will inspect the produce type, quantity and quality to ensure accuracy against the delivery docket accompanying the Produce and will immediately notify the Grower of any discrepancy.
 - d) Quality assessment of the Produce will be made with reference to BMG's Goods Inward Check (**GIC**) which is set out in Schedule 2 of this agreement. The GIC may be updated or amended from time to time in accordance with any quality requirements of BMG's customers. BMG will notify the Grower of any amendments to the GIC and provide a copy of the updated GIC as soon as possible prior to the implementation of the relevant amendments.
 - e) BMG Inwards will deliver all inwards paperwork into BMG's Procurement Department which will match the documentation against the Purchase Order and invoice issued by the Grower.

Rejection of Produce

9. BMG will not be deemed to have accepted any Produce until BMG has had a reasonable time to inspect the Produce following delivery to BMG.
10. If the Grower supplies any Produce to BMG which BMG reasonably considers does not comply with the produce specifications communicated by BMG to the Grower (**Non-Complying Produce**), BMG may reject the Produce and at its option may:
 - (a) require the Grower to refund any payments made by BMG to the Grower in respect of the Non-Complying Produce; and/or
 - (b) require the Grower to collect and replace the Non-Complying Produce at the Grower's cost; and/or
 - (c) dispose of the Non-Complying Produce.
11. For the avoidance of doubt, if the Grower delivers Produce that does not comply with BMG's quantity and quality specifications as communicated by BMG to the Grower prior to despatch of the Produce (including with reference to the GIC & associated specifications) BMG reserves the right to reject the Produce.
12. In the event that BMG rejects any Produce in accordance with this agreement, BMG will notify the Grower via telephone or email and, notwithstanding clause 10, will either:

- a) (if the produce is not useable at all) reject all the produce and request the Grower's direction as to whether the Grower requires BMG to return the rejected produce or dispose of it; or
 - b) (if part of the delivery is usable) negotiate with the Grower to accept part of the delivery and reject the balance.
13. If BMG rejects any Produce, it will notify the Grower in writing within 24 hours of rejecting the Produce and will advise the Grower of the reasons for the rejection.

Price

14. The Price for the Produce will be agreed in writing between the parties prior to delivery of the Produce or Order.
15. BMG will pay to the Grower the Price within 30 days following delivery of the Produce.
16. The collection of vegetable levies may apply to produce provided by the Grower to BMG. In entering into this agreement, the Grower acknowledges that it has read and understood the Vegetable Levy Information Sheet annexed at Schedule 3 of this agreement.
- 17.

Reporting

18. BMG will provide to the Grower each calendar month (**Reporting Period**) a statement specifying the Produce received by BMG during the Reporting Period, including:
- a) the quantity and quality of the produce bought by BMG;
 - b) the date or dates of the purchases;
 - c) the price paid for the produce; and
 - d) the time at which the produce was delivered to BMG.

(Statement)

19. BMG will provide the Statement to the Grower within 30 days of the relevant Reporting Period.

Termination

20. This Agreement may be terminated by BMG or the Grower by providing notice in writing to the other party (**Termination Notice**).
21. In the event that a Termination Notice is served, unless otherwise agreed between the parties:
- a) the Grower must prevent any despatch of Produce by the Grower under this agreement following service of the Termination Notice; and
 - b) BMG will accept delivery of any Produce despatched by the Grower prior to receipt of the Termination Notice.
22. Service of a Termination Notice will not affect any accrued rights or obligations of BMG or the Grower prior to the Termination Notice.

Cooling-off Period

23. If this agreement is for a period of more than 90 days, either party may terminate within:
- a) 14 days of the agreement being entered into; or
 - b) such shorter or longer period as is agreed between the parties, but in any case, not less than 7 days from the date of entering into the agreement.

Notices

24. The contact details of the person the Grower should contact in the event of a dispute with BMG are, Mr Rick Butler, (03) 9551 8430, rick@butlermarketgardens.com.au.
25. The contact details of the person BMG should contact in the event of a dispute with the Grower are set out in Item 3 of Schedule 1.

Governing Law

26. This agreement is governed by and is to be construed in accordance with the laws in force in the State of Victoria. Each party submits to the non-exclusive jurisdiction of the courts of Victoria.

Severance

27. If any provision of this agreement shall be or be determined to be illegal, invalid, void or voidable the legality or validity of the remainder of the terms will not be affected and will continue in full force and effect.

Variation

28. These terms can only be varied by agreement in writing by BMG and the Grower.

EXECUTED AS AN AGREEMENT

EXECUTED BY BUTLER)
MARKET GARDENS (AUST))
PTY LTD ACN 605 710 521)
.....	
	Sole Director
Name: Rick Butler	

EXECUTED BY THE GROWER)
LISTED AT ITEM 1 OF)
SCHEDULE 1)
.....	
Director	Director/Secretary
Name:	Name:

SCHEDULE 1

Item 1: Grower

Name and ABN: _____ (ABN _____)

Address: _____

Item 2: Delivery Address

Butler Market Gardens (Aust) Pty Ltd, 198 Old Dandenong Road, Heatherton VIC 3202

Item 3: Grower's Contact Person

Name:

Office held:

Telephone:

Email: