

MONTAGUE FRESH TERMS AND CONDITIONS

Unless otherwise agreed in writing by Montague and the Customer, these Terms and Conditions are the only terms and conditions on which Montague supplies Goods to the Customer and are incorporated into and form part of all Orders accepted by Montague. The Customer acknowledges and agrees that it is contracting with the Montague Group Company named as the supplier of the Goods and/or Services on the invoice for the Goods and/or Services supplied and not with any other Montague Group Company.

Definitions

1. In these Terms and Conditions:

“**Customer**” means the person named as the Customer in the Order;

“**Delivery**” means:

- (a) for Goods supplied within Australia, delivery is ‘delivered duty paid’ (DDP) to the Customer’s nominated delivery location in Australia;
- (b) for Goods supplied for export, delivery is free carrier (FCA) to the Customer’s port agent in the destination country

“**Goods**” means the fruit supplied to the Customer by Montague under these Terms and Conditions.

“**PPSA**” means the Personal Property Securities Act (Cth) 2009.

“**Montague**” means the Montague Group Company that supplies the Goods and/or Services to the Customer as set out in the acceptance of the Order or the invoice issued by Montague.

“**Montague Group Company**” means WF Montague Pty Ltd (ACN 004 410 664), Montague Fresh (Aust) Pty Ltd (ACN 075 580 111) or Montague Fresh (QLD) Pty Ltd (ACN 067 212 935).

“**Order**” means any written or telephone order for Goods placed by the Customer with Montague.

“**Services**” means any ancillary services provided in relation to the Goods such as arranging or procuring logistics and freight, dealing with customs and quarantine requirements or any other services provided by Montague in respect of the Goods.

“**Terms and Conditions**” means these terms and conditions and any additional terms and conditions included by Montague in an invoice for the Goods and Services supplied under these Terms and Conditions.

Terms and Conditions

2. These Terms and Conditions override any inconsistent terms or conditions in any document or communication used by the Customer in relation to the supply of the Goods and/or Services or any industry practice or earlier course of dealing. This applies even if the Order, delivery receipt or any other document contains a similar condition to this one or if Montague fails to object to any term or condition the Customer purports to include in its agreement with Montague.

Orders

3. Supply and delivery of Goods and/or Services will only be made against an Order. Placement of an Order by the Customer constitutes an offer to form an agreement with Montague, which agreement is formed upon acceptance by Montague of an Order. Montague is not under an obligation to accept an Order. Montague may accept the Order by: (i) communicating acceptance of the Order in writing or verbally; (ii) providing an invoice for the Goods and/or Services; or (iii) by supplying the Goods and/or Services. In the event of a dispute, Montague’s internal records will be conclusive evidence of the details of the Order, when the agreement was formed and the Goods and/or Services supplied by Montague.

Cancellation of an Order

4. A Customer may request cancellation of an Order by notice in writing to Montague at any time before the Goods are loaded for delivery at Montague’s premises but Montague is under no obligation to accept a cancellation request. In the event that a cancellation request is not accepted by Montague, the

Customer must satisfy its obligations as if cancellation had not been requested.

5. Montague may cancel an Order that it has accepted at any time by notice in writing to the Customer, including where an Order has been fulfilled in part. The Customer must pay for any Goods delivered or Services performed prior to cancellation of the Order.

Delivery and risk

6. The Customer agrees that risk in the Goods shall pass to the Customer:

- (a) for Goods supplied within Australia, immediately on the commencement of unloading at the Customer’s nominated delivery location;
- (b) for Goods supplied for export, on commencement of unloading and delivery of the Goods to the Customer’s port agent in the destination country

7. Unless otherwise agreed by Montague, the Customer must make all arrangements necessary to enable Delivery.

Acceptance and rejection of Goods

8. Goods will be deemed to have been accepted by the Customer unless the Customer notifies Montague otherwise in writing within 48 hours of receipt of the Goods into the Customer’s warehouse (for Goods supplied within Australia) or by the Customer’s port agent (for Goods supplied for export). Upon receipt of any such notice, Montague will advise the Customer whether it requires access to the Goods to conduct an inspection and the Customer must co-operate with Montague and facilitate such an inspection within the time requested by Montague, if required. Montague will determine and notify the Customer whether the Goods the subject of the notice are defective and, at Montague’s option, will either replace the Goods or refund the price paid for the Goods.

Exclusion of implied terms

9. To the extent permitted by law, all terms, conditions, guarantees or warranties that would be implied into these Terms and Conditions or in connection with the supply of any Goods and/or Services by Montague under law or statute or custom or international convention are excluded.

Limitation of liability

10. To the extent permitted by law, Montague only accepts liability to the Customer in connection with the supply of Goods and/or Services to the extent expressly provided in these Terms and Conditions or as otherwise agreed in writing by Montague. Montague excludes any other liability Montague might otherwise have to the Customer (whether based in contract, tort (including negligence), statute or otherwise).

11. Montague accepts liability to the Customer where not to do so would be illegal, or would make any part of the Terms and Conditions void or unenforceable. If Montague is liable for any non-excludable conditions, warranties or guarantees, and where permitted by law to do so, Montague’s liability is limited to (at Montague’s option) replacing the relevant Goods, performing the Services again or paying the Customer the cost of doing so. Any claims whatsoever against Montague arising out of this clause must be made within 7 days of the act or omission giving rise to the claim.

12. Montague’s maximum liability to the Customer for any loss the Customer suffers or incurs in connection with these Terms and Conditions or any other liability arising out of or in connection with their subject matter (whether based in contract, tort (including negligence), statute or otherwise) is, to the extent permitted by law, limited to a maximum amount equal to one third of the amount the Customer has paid to Montague for the relevant Goods and/or Services pursuant to these Terms and Conditions.

Indemnity

13. The Customer indemnifies Montague and shall keep Montague indemnified against all liability, loss, costs (including legal costs on an indemnity basis), charges and expenses Montague suffers (either directly or indirectly) in connection with:
- (a) the Customer's breach of these Terms and Conditions or any other act or omission by the Customer;
 - (b) any claim or demand made by a third party against Montague in connection with the Goods and/or Services supplied to the Customer; and
 - (c) Montague exercising or enforcing its rights under these Terms and Conditions.

Price and payment

14. The price for the Goods and Services shall be the price current at the date of acceptance of the Order and specified by Montague in the invoice. Unless otherwise agreed in writing, prices will be in Australian dollars (AUD).
15. All price-lists and quotations provided by Montague from time to time are based on prices and availability at that time but the Customer acknowledges and agrees that these prices are subject to variation and that final prices stipulated in the invoice are binding.
16. All amounts payable by the Customer under these Terms and Conditions are payable within 7 days of the date of invoice unless otherwise agreed by Montague in writing. Late payment may incur interest at the rate of 18.5% per annum calculated on a daily basis. Interest shall be payable on any moneys outstanding under these Terms and Conditions from the date payment was due until the date payment is received by Montague but without prejudice to Montague's other rights or remedies in respect of the Customer's failure to pay on time.
17. **GST**
- (a) In this Clause 17:
"GST" has the meaning given it in Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999;
"Supplier" means the person providing the Taxable Supply; and
"Taxable Supply" has the meaning given it in Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 and in connection with these Terms and Conditions includes the supply of goods or services by the Supplier.
 - (b) If any transaction contemplated by these Terms and Conditions constitutes a Taxable Supply, the party obliged to pay for the Taxable Supply must pay an additional amount equal to the GST payable (if any) on or for the Taxable Supply.
 - (c) The Supplier will provide the party receiving the Taxable Supply with a valid tax invoice for GST purposes at the time of request for payment.
 - (d) Payment of the GST will be made at the same time, as the payment for the Taxable Supply is required to be made.

Levies and export charges

18. Prices are inclusive of Australian statutory horticultural levies and export charges. Montague will remit all such levies and export charges payable to the Australian government (if any) in respect of Goods supplied to the Customer. The Customer must not make any deductions or remittances for statutory levies or export charges payable in Australia in respect of the Goods.

Retention of title

19. As between Montague and the Customer, Montague retains legal and beneficial title to the Goods until Montague has received clear payment in full for all amounts payable by the Customer in relation to the Goods. The Customer acknowledges that this constitutes a security agreement for the purposes of the PPSA and that a security interest exists in all Goods supplied to the Customer (and their proceeds).
20. Until Montague has received clear payment in full for all amounts payable by the Customer in relation to the Goods:
- (a) the Customer must hold those Goods as the fiduciary agent and bailee of Montague and store those Goods so as to show that they are the property of Montague;
 - (b) payment received from the Customer will be treated as having been made first in respect of Goods which have passed out of the possession of the Customer and then in respect of Goods which are still in the possession of the Customer; and
 - (c) the Customer may in the ordinary course of business sell those Goods provided that it keeps separate accounts of such sales and receives all proceeds in trust for Montague and as agent of Montague.
21. The Customer irrevocably grants to Montague the right to enter upon the Customer's premises, so as to enable Montague to inspect and reclaim possession of the Goods in the event of any default by the Customer, and otherwise if Montague has cause to exercise any of Montague's rights. The Customer shall indemnify Montague and keep Montague indemnified against any claims or demands made by any third party on any account whatsoever as a result of such exercise.
22. **PPSA**
- (a) In clause 19 and this clause 22, terms that are defined in the PPSA have the same meanings (unless otherwise defined in these Terms and Conditions or the context requires otherwise).
 - (b) The Customer acknowledges that these Terms and Conditions constitute a security agreement for the purposes of the PPSA and that a security interest exists over the Goods (and their proceeds) pursuant to clause 19.
 - (c) In relation to any security interest arising out of these Terms and Conditions, the Customer (as grantor):
 - (i) agrees with Montague (as secured party) that, if Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest, each of the provisions of the PPSA which section 115 of the PPSA permits parties to contact out of, other than sections 117, 118, 123, 128, 134(1) and 135, does not apply to the enforcement of the security interest; and
 - (ii) waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
 - (d) The Customer (as grantor) consents to Montague (as secured party) effecting a registration on the Personal Property Securities Register established under the PPSA in relation to any security interest arising under or in connection with these Terms and Conditions, and agrees to provide all information and assistance reasonably required to facilitate such registration.

General

23. Any notice or communication to the Customer under these Terms and Conditions shall be delivered personally, by post, facsimile or by email. If by post, such notice shall be sent to the last known address of the Customer and shall be deemed to have been received by the Customer at the time when in the ordinary course of post it should have been delivered. If by facsimile, such notice shall be deemed to be duly given or made when confirmation of transmission has been received. If by email, such notice shall be deemed to be duly given or made when sent, unless the sender is notified, at the time of sending, that the email has not been successfully transmitted.
24. These Terms and Conditions constitute the entire agreement between Montague and the Customer except to the extent that they are varied or modified by agreement in writing signed by the duly authorised representatives of Montague and the Customer.
25. If any term or condition or part of a term or condition is illegal, unenforceable or invalid, that term or condition or part of the term or condition is to be treated as removed from these terms and conditions, but the rest of these terms and conditions are not affected.
26. Time is of the essence in relation to all of the Customer's obligations.
27. These Terms and Conditions shall be governed by the laws of the State of Victoria, Australia and the Customer agrees to submit to the non-exclusive jurisdiction of its courts.