

Please select the Type of Legal Entity from one of the options below. When the document is completed please sign the Execution page and return a completed copy of this Supply Agreement to tradingterms@metcash.com. Please also return the original Supply Agreement to Metcash at its address in the "Contact details" section on the front page of this Supply Agreement.

Agreement for the Supply of Goods

Contract details

Commencement Date: _____

Parties:

Supplier

Legal Entity: _____

Trading Name: _____ **ABN:** _____

Phone No: _____ **ACN:** _____

Postal Address: _____

Street Address: _____

Email Address for Payments: _____

Email Address for Orders: _____

Contact details for Claim Disputes: _____

Contact details for Contract Disputes: _____

Local Agent (where Supplier has no place of business in Australia):

Name of Local Agent:	
Address:	
Telephone No:	
Email:	

Grow er

Non-Grow er

Metcash

Legal Entity: Metcash Trading Limited ABN 61 000 031 569

Phone No: +61 2 9741 3000

Postal Address: PO Box 557, Macquarie Park, NSW 1670, AUSTRALIA

Street Address: 1 Thomas Holt Drive, Macquarie Park, NSW 2113, AUSTRALIA

Email Addresses:

Invoice Queries: metpay@metcash.com

Notices: tradingterms@metcash.com

Claim Disputes: claimsresolution@metcash.com Attention: Raul Bustos Yanez

Contract Disputes: _____ Attention: _____

State Selection:

All States, or

NSW/ACT

VIC

QLD

SA

WA

NT

Delivery Method:

C. Supply and purchase on terms of Supply Documents

- (a) The Supply Documents comprise this Supply Agreement, the Metcash Policies and Procedures and any Supplemental Agreement.
- (b) With effect from the Commencement Date, the Supplier agrees to supply the Goods to Metcash, and Metcash agrees to purchase the Goods from the Supplier, on the terms of the Supply Documents until the Supply Documents are terminated in accordance with this Supply Agreement.
- (c) The parties each otherwise agree to, and acknowledge and agree they are bound by, all terms of the Supply Documents.
- (d) Without limiting clauses C(b) and C(c), the Supplier must comply with the Metcash Policies and Procedures. If the Supplier fails to, or believes that it will be unable to, comply with the Metcash Policies and Procedures, it must promptly notify Metcash.

D. Monthly payment cycles

Where the payment terms for Invoices are 30, 60, 90 or another multiple of 30 days, the parties agree that:

- (a) the 30, 60, 90 or other multiple of 30 days period will be calculated from the end of the calendar month in which Metcash receives the Invoice;
- (b) payment will be made on the 10th day of the calendar month following the expiry of the 30, 60, 90 or other multiple of 30 days period (calculated in accordance with clause D(a)) except where that day falls on a day that is not a Business Day, in which case payment will be made on the next Business Day; and
- (c) Invoices accompanying Goods ordered by or on behalf of Metcash and delivered on or after the 27th day of a calendar month up to and including the last day of that calendar month are deemed to be received by Metcash for the purposes of clause D(a) on the first day of the next calendar month.

E. Weekly payment cycles

Where the payment terms for Invoices are 7, 14, 21, 28 or another multiple of 7 days, the parties agree that:

- (a) the 7, 14, 21, 28 or other multiple of 7 days period will be calculated on and from Thursday for all Invoices which Metcash has received on and from the preceding Friday up to and including that Thursday; and
- (b) payment will be made on the first Thursday following the expiry of the 7, 14, 21, 28 or other multiple of 7 days period (calculated in accordance with clause E(a)), except where that Thursday falls on a day that is not a Business Day, in which case payment will be made on the next Business Day.

F. Trading Terms

F.1 Application

The Supplier acknowledges and agrees that:

- (a) the Trading Terms apply to all Goods ordered by or on behalf of Metcash and regardless of whether such Goods are ordered from or delivered by the Supplier directly or from or by the Supplier's agent or distributor;
- (b) the Trading Terms are in addition to, and in no circumstance are replaced or substituted or otherwise affected by, any other rebate, allowance or discount agreed by Metcash and the Supplier and/or any of its Related Bodies Corporate from time to time; and
- (c) Metcash may deduct all Trading Terms from any payment for Goods in accordance with the Supply Documents.

F.2 Calculation and payment of Trading Terms

- (a) Subject to clause F.2(b), all Trading Terms are calculated on the GST exclusive price of the Goods to which they apply specified in the Invoice for those Goods (being the List Price exclusive of GST).
- (b) Early Payment Discounts are calculated on the GST inclusive price of the Goods to which they apply specified in the Invoice for those Goods (being the List Price inclusive of GST).
- (c) Subject to clause F.2(d), in addition to the Trading Terms, the Supplier must pay Metcash any GST for which Metcash is or may become liable on the Trading Terms.
- (d) The Supplier must pay Metcash any GST for which Metcash is or may become liable on Early Payment Discounts only where the Supplier classifies the Goods to which they apply as attracting GST.
- (e) Except where the parties otherwise agree in writing, Metcash may deduct any Trading Terms from the next or any other payment for any Goods after receipt of the Goods to which they apply.

Schedule: Terms and Conditions

1. Orders

- (a) Each Order Metcash issues constitutes an offer by Metcash to purchase Goods from the Supplier on the terms of the Supply Documents to the exclusion of all other terms unless expressly agreed to by the parties in writing. A separate agreement is formed incorporating the Order and the terms of the Supply Documents each time the Supplier accepts (or is deemed to accept) an Order Metcash issues.
- (b) Metcash may issue Orders from time to time. Nothing in the Supply Documents requires Metcash to order any Goods from the Supplier or, subject to clauses 1(c) and 7(a)(2) of these Terms and Conditions, requires the Supplier to accept any Order Metcash issues. If Metcash issues an Order, the Supplier will be deemed to have accepted, and must fulfil, that Order unless the Supplier notifies Metcash that it does not accept the Order within:
 - 1) the period specified in the Order; or
 - 2) if no period is specified in the Order, 24 hours after receipt of the Order.
- (c) To avoid doubt, nothing in the Supply Documents including clause 1(b) of these Terms and Conditions entitles or permits the Supplier to refuse to supply Goods to Metcash on a permanent or ongoing basis before the Supply Documents are terminated in accordance with their terms.
- (d) Metcash may vary or cancel an Order in accordance with the Metcash Policies and Procedures.

2. Title and risk

Title to and risk in Goods supplied to Metcash passes from the Supplier to Metcash on delivery of the Goods to Metcash, being:

- (a) for Overseas Goods, in accordance with the relevant Incoterm or other terms governing delivery as specified in the Order or, if the Order does not specify the relevant Incoterm or any delivery terms, DDP (Incoterms 2010) the place of delivery specified in the Order or otherwise notified to the Supplier in accordance with the Metcash Policies and Procedures or agreed by the parties in writing; and
- (b) for all other Goods, when the Goods are delivered to the place of delivery specified in the Order or otherwise notified to the Supplier in accordance with the Metcash Policies and Procedures or agreed by the parties in writing,

other than in each case any Goods:

- (c) which cease to be required pursuant an Order which is varied or the subject of an Order which is cancelled in accordance with the Metcash Policies and Procedures; or
- (d) rejected in accordance with clause 9 of these Terms and Conditions.

3. Price

- (a) The price of Goods specified in the Invoice for those Goods must be the List Price of the Goods as at the date of the Supply Agreement or otherwise binding on Metcash in accordance with clauses 3(b) or 3(c) of these Terms and Conditions, adjusted by deducting any Trading Terms in accordance with the Supply Documents or otherwise adjusted in accordance with any terms that impact pricing in the Supply Documents.
- (b) The Supplier may increase the List Price of any Goods by giving Metcash notice of the proposed increase and the increase will be binding on Metcash only for any Order issued on and from the later of the notice and the effective date of the increase specified in the notice, or any other Order to which Metcash agrees that the proposed increase will be binding on Metcash.
- (c) If the Supplier decreases the List Price of any Goods, the Supplier must notify the decrease to Metcash before the effective date of the decrease and Metcash may deduct the difference in List Price for any Goods:
 - 1) held by Metcash; or
 - 2) ordered by or on behalf of but not yet delivered to Metcash,

as at the effective date of the decrease from the next or any other payment for any Goods.

- (d) Unless the parties otherwise agree in writing, the price of Goods specified in an Invoice includes all, and Metcash is not otherwise responsible or liable in any respect for any, costs and expenses suffered or incurred by the Supplier in manufacturing, importing and/or supplying the Goods up to and including delivery of the Goods, including:
- 1) all taxes (subject to other provisions in the Supply Agreement in respect of GST), levies and duties (including customs levies and duties); and
 - 2) all design, development, testing, sensory evaluation, verification, audit, compliance, labelling, packaging, storage, packing, loading and off-loading, transportation (including shipping, carriage and freight), customs, labour and insurance costs and expenses.

4. Invoicing and payment

- (a) Subject to clauses 4(b), 4(c), 5(b) and 9(e) of these Terms and Conditions, Metcash will pay all Invoices for Goods supplied to Metcash in accordance with the payment terms in the Supply Agreement.
- (b) If at any time Metcash disputes an Invoice, Metcash will pay the undisputed amount in accordance with the payment terms in the Supply Agreement but does not have to pay the disputed amount until the Dispute is resolved in accordance with clause 19 of these Terms and Conditions. If Metcash has already paid the disputed amount, it may withhold that amount from the next or any other payment for any Goods. The Supplier may not, wholly or partially, suspend, cancel or withdraw the supply of Goods to Metcash in accordance with an Order accepted (or deemed accepted) by it or reject an Order issued by Metcash or a Customer merely on the basis that an Invoice is being disputed.
- (c) Metcash has no obligation to pay, nor is responsible or liable in any respect for, any Invoice that is received more than 3 months after the Goods to which the Invoice relates were delivered to Metcash.
- (d) If the Supplier does not pay any amounts due to Metcash in accordance with the Supply Documents, Metcash may deduct or set-off those amounts from any amount owing or payment by Metcash to the Supplier or any of its Related Bodies Corporate.

5. Transport and delivery

- (a) The Supplier must deliver the Goods ordered by or on behalf of Metcash to the place, at the time and in the manner specified in the Order or otherwise notified to the Supplier in accordance with the Metcash Policies and Procedures or agreed by the parties in writing and must promptly notify Metcash of any delays or anticipated delays in the delivery of the Goods.
- (b) Metcash has no obligation to pay, nor is responsible or liable in any respect, for any Goods ordered by or on behalf of Metcash, but:
- 1) not delivered to Metcash; or
 - 2) not delivered to Metcash by the delivery date specified in the Order or otherwise notified to the Supplier in accordance with the Metcash Policies and Procedures or agreed by the parties in writing, and Metcash elects not to accept late delivery.

6. Country of original labelling and illegal logging information

- (a) The Supplier must provide to Metcash, before delivery of the Goods to Metcash or a Customer (as applicable):
- 1) the country of origin label included on the labelling or packaging for the Goods; and
 - 2) the information or records relied on to substantiate the country of origin label,
- including in accordance with any directions or requirements Metcash notifies to the Supplier.
- (b) The Supplier must provide to Metcash, before delivery to Metcash or a Customer (as applicable) of any Overseas Goods to which Illegal Logging Laws apply, all information which an importer of such Goods is required to obtain under Illegal Logging Laws, including in accordance with any directions or requirements Metcash notifies to the Supplier.
- (c) The Supplier must promptly provide additional information Metcash requests from time to time to verify compliance of the Goods with Country of Origin Laws and Illegal Logging Laws.

- (d) Metcash may provide the information provided under clauses 6(a) to 6(c) of these Terms and Conditions to any persons who acquire the Goods for resupply.
- (e) To avoid doubt, Metcash is under no obligation to distribute, sell, market, promote or advertise the Goods until it has received the information in clauses 6(a) or 6(b) (as applicable) of these Terms and Conditions from the Supplier to Metcash's satisfaction in its discretion.

7. Service levels

- (a) The Supplier:
 - 1) acknowledges and agrees that any failure to deliver any Goods ordered by or on behalf of Metcash or Customers will materially adversely affect both Metcash and Customers, including in the case of Metcash through loss of income from each of the Supplier and Customers; and
 - 2) must provide a service level to Metcash of delivering (in accordance with clause 5(a) of these Terms and Conditions) not less than 98% of the value of Goods ordered by or on behalf of Metcash or a Customer and which the Supplier accepts (or is deemed to accept) which are due to be delivered to Metcash or the Customer in any 1 week period,

and where this service level is not achieved, Metcash may deduct all Trading Terms from any payment for Goods in accordance with the Supply Documents as if this 98% service level had been achieved.
- (b) Goods ordered but rejected in accordance with clause 9 of these Terms and Conditions will not count towards the Supplier's achieving the 98% service level referred to in clause 7(a)2) of these Terms and Conditions, and Metcash may deduct all Trading Terms from any payment for Goods in accordance with the Supply Documents in respect of such rejected Goods to the extent of the shortfall below that 98% service level.

8. Distribution, sale and promotion of Goods

The Supplier acknowledges and agrees that Metcash may:

- (a) distribute and sell the Goods to any person in any jurisdiction (domestic or foreign) including Customers; and
- (b) market, promote and advertise the Goods as it determines in its sole and absolute discretion.

9. Rejection of Goods

- (a) The Supplier must notify Metcash of any defects in, damage to or other problems with the Goods (including any non-compliance with any Product Specifications or the Receiving Limit) as soon as reasonably practicable after the Supplier becomes aware of the defect, damage or other problem.
- (b) Metcash may reject any Goods supplied to Metcash if the Goods or any labelling or packaging for the Goods:
 - 1) have any defects, damage or other problems; or
 - 2) do not comply with any standards or requirements for the Goods or their labelling or packaging in the Supply Documents (including any Product Specifications or the Receiving Limit) or arising under applicable laws or Industry Codes.
- (c) If Metcash rejects any Goods supplied to Metcash in accordance with clause 9(b) of these Terms and Conditions, Metcash will notify the Supplier of the rejection within 24 hours after the Goods are delivered and Metcash will give reasons for the rejection within 24 hours after notice of the rejection is given.
- (d) The rejection of any Goods in accordance with clause 9(b) of these Terms and Conditions will not affect the validity of the Supply Documents for the remainder of the relevant Order.
- (e) Metcash has no obligation to pay, nor is otherwise responsible or liable in any respect, for any Goods rejected in accordance with clause 9(b) of these Terms and Conditions.

10. Return of Goods

- (a) Metcash may, at the Supplier's sole cost and expense, return (or procure the return) to the Supplier or, if Metcash reasonably determines it necessary or appropriate, destroy or otherwise dispose of any Goods:

- 1) delivered to Metcash which cease to be required pursuant to an Order which is varied or the subject of an Order which is cancelled in accordance with the Metcash Policies and Procedures;
 - 2) not delivered to Metcash by the delivery date specified in the Order or otherwise notified to the Supplier in accordance with the Metcash Policies and Procedures or agreed by the parties in writing, and Metcash elects not to accept late delivery; or
 - 3) rejected in accordance with clause 9(b) of these Terms and Conditions.
- (b) Metcash will store without charge any such Goods, for collection by the Supplier, for up to 24 hours after delivery of the Goods (in the case of Goods described in clauses 1) and 2) above) or the notice of rejection is provided under clause 9(c) of these Terms and Conditions (in the case of Goods described in clause 3) above). Storage will be at the optimum temperature range specified in the Horticulture Produce Specifications for the relevant Goods. Metcash may otherwise deduct any costs and expenses that it suffers or incurs and which are borne by the Supplier under this clause 10 from any payment for any Goods.

11. Recalls and product notifications

- (a) The Supplier must notify Metcash of any intention or requirement to recall or issue a product notification in relation to a Good as soon as reasonably practicable after the Supplier forms the intention or becomes aware of the requirement.
- (b) Metcash agrees to, at the sole cost and expense of the Supplier, reasonably assist the Supplier with any recall of, or product notification relating to, any Goods notified under clause 11(a) of these Terms and Conditions. Metcash may deduct any costs and expenses that it suffers or incurs and which are borne by the Supplier under this clause 11(b) from any payment for any Goods.
- (c) Without limiting clause 11(b) or the indemnity in clause 17(b) of these Terms and Conditions, the Supplier must pay reasonable administration fees in connection with any recall of, or product notification relating to, any Goods, as set out in the Metcash Policies and Procedures.
- (d) The Supplier acknowledges and agrees that nothing in this clause 11 limits Metcash's right, power and authority to:
 - 1) withdraw Goods from distribution or sale; or
 - 2) recall or issue a product notification in relation to any Goods, including under or in connection with any obligations it has as a supplier of Goods under the *Competition and Consumer Act 2010* (Cth), similar state/territory legislation or other legislation.

12. Horticulture Produce

12.1 Application of this clause 12

Where the Supplier is a Grower, this clause 12 applies to supplies of Horticulture Produce by the Supplier to Metcash. Where the Supplier is not a Grower, this clause 12 does not apply.

12.2 Capacity of Metcash in respect of supplies of Horticulture Produce by the Supplier

Metcash trades as a Merchant in respect of Horticulture Produce under the Supply Documents.

12.3 Quality and Quantity of Horticulture Produce

- (a) The Supplier must supply Horticulture Produce which meets the Horticulture Produce Specifications for each type of Horticulture Produce delivered by the Supplier.
- (b) The Supplier must supply the quantity of Horticulture Produce specified in each accepted Order.

12.4 Reports by Metcash in respect of Horticulture Produce received

- (a) Metcash must give the Supplier a statement in respect of each 3 month period (**Reporting Period**) during which Metcash receives Horticulture Produce from the Supplier, specifying for the Supplier's Horticulture Produce received by Metcash during the Reporting Period:
 - 1) the quality and quantity of the Horticulture Produce bought by Metcash;
 - 2) the date or dates of the purchases;
 - 3) the price paid for the Horticulture Produce; and

- 4) where the price was determined by a method or formula specified in the Supply Documents, the gross sale price of the Horticulture Produce, the details of any Horticulture Produce not sold and the details of any Horticulture Produce destroyed, or to be destroyed, and the reason why the Horticulture Produce was, or is to be, destroyed; and
 - 5) the date on which the Horticulture Produce was delivered to Metcash.
- (b) Metcash must provide the statement under clause 12.4(a) within 1 month after the end of each Reporting Period.

12.5 Pooling of Horticulture Produce

Metcash may pool the Horticulture Produce with horticulture produce supplied by third parties where the Horticulture Produce and the third party horticulture produce is of the same quality and both meet the Horticulture Produce Specifications.

12.6 Insurance coverage as at the Commencement Date

- (a) As at the Commencement Date:
- 1) Metcash has insurance provided by Lloyd's of London through Lloyd & Partners for its legal liability arising from physical loss or damage to Horticulture Produce under its control before title passes to Metcash, subject to a limit of \$1,000,000 per occurrence;
 - 2) Metcash has insurance provided by AAI Limited t/as Vero Insurance, Berkshire Hathaway Specialty Insurance, HDI Global SA, Insurance Aust Ltd t/as CGU, QBE Insurance (Australia) Ltd, Lloyd's of London through Lloyd & Partners Ltd and XL Insurance Company for physical loss or damage to Horticulture Produce controlled and owned by Metcash, subject to a limit of \$600,000,000 per occurrence;
 - 3) physical loss or damage covered by the insurance described in clause 12.6(a)(2) includes fire, theft and accidental damage (other than deterioration of quality or any other inherent losses).
- (b) Metcash is not obliged to hold insurance under the Supply Documents. Any insurance held by Metcash is for Metcash's benefit only and does not confer any rights on the Supplier.

13. Inspection and audit

- (a) Metcash may, after giving reasonable notice to the Supplier, at any time during reasonable business hours inspect the premises at which the Goods or their components or ingredients are manufactured or stored and inspect and/or audit all records, data and information relating to the Goods or their manufacture, importation and/or supply for the purposes of assessing whether the Goods, and the Supplier in manufacturing, importing and/or supplying the Goods, comply with the Supply Documents (including the representations and warranties made or given under or in connection with them), the Product Specifications and all applicable laws and Industry Codes.
- (b) The Supplier must in connection with any inspection or audit under clause 13(a) of these Terms and Conditions:
- 1) give Metcash and its Representatives access (or procure they are given access) to the premises, records, data and information referred to in clause 13(a) of these Terms and Conditions; and
 - 2) provide all reasonable information and assistance Metcash or any of its Representatives requests, including answering reasonable questions.
- (c) Subject to clause 13(d) of these Terms and Conditions, each party will bear its own costs and expenses associated with any inspection or audit under clause 13(a) of these Terms and Conditions.
- (d) If following any inspection or audit under clause 13(a) of these Terms and Conditions Metcash determines (acting reasonably) that the Supplier has breached any of its material obligations or any representations or warranties made or given under or in connection with any of the Supply Documents, the Supplier must pay or reimburse Metcash or as it directs on request for all out of pocket third party costs and expenses suffered or incurred by Metcash or any of its Representatives involved in the inspection or audit (including to avoid doubt any fees charged by any auditor or other consultant, agent, adviser or sub-contractor involved in the inspection or audit). Metcash may deduct any costs and expenses that it suffers or incurs and which are borne by the Supplier under this clause 13(d) from any payment for any Goods.

14. Intellectual Property Rights

- (a) Except to the extent of the rights assigned to Metcash under clause 14(b)3) of these Terms and Conditions, each party acknowledges and agrees that nothing in any Supply Document is intended to transfer, assign or convey, or has the effect of transferring, assigning or conveying, any right, title or interest in or to the other party's Intellectual Property Rights.
- (b) The Supplier:
 - 1) acknowledges and agrees:
 - (i) all Metcash IP is the property of Metcash and vests on creation in Metcash;
 - (ii) the Supplier must not use any Metcash IP in any way other than as strictly necessary for the purpose of supplying the Goods to Metcash in accordance with the Supply Documents and strictly in accordance with any guidelines and policies Metcash provides the Supplier in respect of the use of the Metcash IP; and
 - (iii) Metcash may alter, modify and use any Metcash IP for any purposes and in any manner as it determines in its discretion;
 - 2) must ensure that it has all necessary consents in writing from all authors employed or engaged by or on behalf of the Supplier or any of its Related Bodies Corporate to create any Metcash IP, to Metcash, its licensees, assignees or successors in title, or any person authorised by any of them, doing or omitting to do any act which, but for that consent, might infringe that author's moral rights (within the meaning of the *Copyright Act 1968* (Cth) and similar legislation outside of Australia) in such Metcash IP;
 - 3) hereby assigns all right, title and interest in the Metcash IP to Metcash on creation of that Metcash IP, and must procure from any contractors it engages (or any of its Related Bodies Corporate engages) who create Metcash IP assignments of the Metcash IP such that the Metcash IP fully vests in Metcash on creation; and
 - 4) must do all things reasonably necessary including executing appropriate documents to give effect to this assignment and vesting of all Metcash IP to and in Metcash.
- (d) The Supplier irrevocably and unconditionally grants Metcash a worldwide, non-exclusive, perpetual and royalty-free licence to use all of the Supplier's Intellectual Property Rights in the Goods, any labelling and packaging for the Goods and any records, data, information, documents, materials and images in respect of the Goods to sell, distribute, market, promote and advertise the Goods as Metcash determines in its discretion.
- (e) Metcash may refer to itself in any documents, materials, marketing, promotion, advertising or signage as an "Authorised Wholesaler" or "Authorised Retailer" for the Goods.
- (f) Each party must:
 - 1) not misuse, interfere with, damage or infringe the Intellectual Property Rights of the other party; and
 - 2) notify the other party as soon as reasonably practicable after it becomes aware of any unauthorised use or infringement by any person of the other party's Intellectual Property Rights.

15. Insurance

- (a) The Supplier must take out and maintain current at all times the following insurances:
 - 1) public and product liability insurance for at least \$20 million in respect of any one claim or any one occurrence giving rise to a claim; and
 - 2) insurance for any loss of or damage to the Goods and any property or equipment owned or used by the Supplier in performing or otherwise complying with its obligations under the Supply Documents for the full replacement value of the Goods and property and equipment.
- (b) The Supplier must:
 - 1) on the date the Supplier executes the Supply Agreement and whenever Metcash reasonably requests, give Metcash copies of certificates of currency of the Insurance Policies; and
 - 2) not do or permit, or omit to do, anything which prejudices the rights of any insured or third party beneficiary under any of the Insurance Policies.

- (c) The Supplier acknowledges and agrees that:
- 1) neither the requirement for the Supplier to effect or maintain the Insurance Policies, nor the actual effecting or maintaining of those Insurance Policies, in any way limits or derogates from the obligations of the Supplier under the Supply Documents or at law; and
 - 2) any insurances taken out or maintained by Metcash or a Customer or any of its Related Bodies Corporate does not relieve the Supplier of any of its obligations under this clause 15.

16. Warranties

16.1 Mutual warranties

Each party represents and warrants to the other that:

- (a) it has full power and authority and has obtained all authorisations, approvals, consents, licences, permits, qualifications, accreditations and filings required to enter into and perform the Supply Documents and the person or persons executing the Supply Documents on its behalf are duly authorised to do so;
- (b) except as expressly set out in this Supply Agreement, it enters into and performs the Supply Documents on its own account and not as trustee for, or agent or nominee of, any other person;
- (c) its obligations under the Supply Documents are valid, binding and enforceable against it;
- (d) its entry into and performance of the Supply Documents does not breach any of its obligations, any laws or its constitution or other governing documents; and
- (e) it is not Insolvent.

16.2 Supplier warranties

The Supplier represents and warrants to Metcash, on each occasion it accepts (or is deemed to accept) an Order Metcash or a Customer issues, that:

- (a) the prices for Goods specified in the List Price are no more than the list prices for those Goods offered to each of the Supplier's other customers from time to time (exclusive of to avoid doubt any rebates, discounts or allowances offered to such other customers);
- (b) the Relevant Goods are of an Acceptable Quality, fit for any usual, common or disclosed purpose and for sale to a Customer or the public, correspond with the most recent sample of the Relevant Goods approved by Metcash (if any) including in quality, state and condition, and will be delivered to Metcash free and clear of any encumbrance, security interest or third party rights;
- (c) the Relevant Goods, and the manufacture, importation and supply of the Relevant Goods to Metcash, comply with the Supply Documents, the Product Specifications and all applicable laws and Industry Codes and Metcash's importation, possession, control or resupply of the Relevant Goods will not contravene any Country of Origin Laws or Illegal Logging Laws due to any act or omission of the Supplier;
- (d) all records, data, information, documents and materials provided with or in relation to the Relevant Goods, including all volume, pricing and payment details for Goods ordered and/or delivered (whether provided in an Invoice or otherwise) all records, data and information provided in any monthly reconciliation of orders and payments for Goods that Metcash requests under the Metcash Policies & Procedures, and all records, data, information, documents and materials provided pursuant to clauses 6 or 13 of these Terms and Conditions are up to date, complete and accurate;
- (e) the Supplier has the financial means, capability, capacity and resources to manufacture and/or supply the Goods and distribute the Goods nationally in response to Orders that Metcash or Customers issue;
- (f) the importation, supply, distribution, sale, promotion, marketing or advertising of the Relevant Goods, including the use of records, data, information, documents, materials or images provided by the Supplier in relation to the Relevant Goods in the importation, supply, distribution, sale, promotion, marketing or advertising of the Relevant Goods, will not infringe any person's Intellectual Property Rights;
- (g) all representations and warranties that the Supplier makes or gives in relation to the Relevant Goods, whether to Metcash or any other person and including all representations and warranties in any marketing, promotions or advertising or on labelling or packaging are accurate and not misleading or deceptive;

- (h) no prison, forced or child labour is used for or in connection with the manufacture, importation and/or supply of the Goods (child labour being, for these purposes, the employment or engagement of any person less than 15 years old); and
- (i) the service terms and conditions, including working hours and remuneration, and working facilities and environment of any person employed or engaged in the manufacture, importation and/or supply of Goods comply with all applicable laws and Industry Codes.

16.3 Notification of breach and Third Party Claims

- (a) Each party must promptly notify the other if any of the representations or warranties made or given by them under or in connection with a Supply Document is or becomes inaccurate, misleading or deceptive.
- (b) The Supplier must notify Metcash of:
 - 1) any Third Party Claim involving death, serious injury or major property damage or loss immediately; and
 - 2) any other Third Party Claim as soon as reasonably practicable and in any event within 10 Business Days after the Supplier becomes aware of the Third Party Claim.

17. Indemnities

The Supplier indemnifies Metcash against all Claims and Loss made or brought against or suffered or incurred by Metcash and arising out of or in connection with:

- (a) a breach of any of the Supply Documents by the Supplier including a breach of any representation or warranty made or given under or in connection with a Supply Document;
- (b) any recall of or product notification in relation to the Goods (for any reason, and whether voluntary or otherwise and by any party or other person, and whether the Goods are located in Australia or elsewhere), including in the case of any recalled Goods, all storage, insurance and transport costs and expenses in respect of those Goods;
- (c) the Supplier's classification of whether or not Goods attract GST being inconsistent with a classification by the ATO; or
- (d) any personal injury, sickness or death or loss of or damage to real or personal property arising from any defect (including a safety defect) in, damage to, or other problem with the Goods or otherwise caused by any act or omission of the Supplier or any of its Related Entities,

except to the extent in each case that the Claim or Loss is caused by the wrongful, fraudulent, dishonest or negligent act or omission of Metcash, a Customer or any other person in the supply chain after delivery by the Supplier.

18. Anti-Bribery Laws

The Supplier must:

- (a) at all times comply (and procure that its Related Entities at all times comply) with all Anti-Bribery Laws; and
- (b) adopt and maintain policies, procedures and systems to ensure the Supplier and its Related Entities comply with all Anti-Bribery Laws and agrees to enforce them where appropriate.

19. Dispute resolution

- (a) Neither party may commence legal proceedings (other than for urgent interlocutory relief) in respect of any Dispute unless it has first complied with this clause 19.
- (b) If a party considers there is a Dispute:
 - 1) the party must notify the other party of the Dispute and provide reasonable details in the notice of the Dispute and the facts, matters, circumstances and events giving rise to the Dispute; and
 - 2) each party must refer the Dispute to a representative and procure that the representative negotiates in good faith and uses reasonable endeavours to resolve the Dispute within 10 Business Days of the date the notice referred to in clause 19(b)1) of these Terms and Conditions is given.

- (c) If the Dispute is not resolved within the 10 Business Day period referred to in clause 19(b)2) of these Terms and Conditions, each party must refer the Dispute to a senior executive and procure that the senior executive negotiates in good faith and uses reasonable endeavours to resolve the Dispute within 20 Business Days of the expiry of the 10 Business Day period.

20. Amendments, variations and additions

- (a) The parties may amend, vary or supplement the Supply Documents at any time by written agreement.
- (b) Subject to clause 20(d) of these Terms and Conditions, Metcash may amend, vary or supplement a Supply Document by giving reasonable notice to the Supplier (**Variation Notice**) provided that the amendment, variation or addition:
- 1) is to correct a minor error, ambiguity, omission, conflict or inconsistency in the Supply Document and the amendment is not materially adverse to the Supplier; or
 - 2) is:
 - (i) reasonable in the circumstances having regard to, without limitation, any benefits, costs and risks (if any) for the parties; and
 - (ii) necessary or desirable having regard to changes or developments in:
 - (A) the law or Industry Codes;
 - (B) community, Customer or consumer expectations for or in respect of the Goods;
 - (C) technology;
 - (D) Metcash's supply-chain, distribution, ordering, payment, invoicing and/or other operational processes and systems; or
 - (E) obligations or processes relating to, or costs and expenses suffered or incurred in connection with, recalling, issuing product notifications in respect of, or conducting product testing or sensory evaluation of goods.
- (c) A Variation Notice must set out:
- 1) the terms of the amendment, variation or addition;
 - 2) Metcash's reasons for making the amendment, variation or addition; and
 - 3) the date that the amendment, variation or addition will take effect.
- (d) Metcash must not make any amendment, variation or addition to the Supply Documents under clause 20(b) of these Terms and Conditions which has retrospective effect unless the amendment, variation or addition arises from or in connection with changed circumstances which are beyond Metcash's control.
- (e) The latest versions of the Metcash Policies and Procedures may be posted online from time to time by Metcash, but to avoid doubt the versions of those documents included in the Supply Documents between and binding on the parties are those versions as at the date of the Supply Agreement, and those documents may only be amended, varied or supplemented for the purpose of the Supply Documents between and binding on the parties in accordance with this clause 20.

21. Termination

21.1 Mutual termination rights

Either party may terminate the Supply Documents by giving the other party 3 months' notice of the termination.

21.2 Metcash's termination rights

Metcash may terminate the Supply Documents or the supply of any particular Goods under the Supply Documents by notice to the Supplier immediately or at such time within the succeeding 12 months as specified in the notice if:

- (a) the Supplier breaches any material term of the Supply Documents, which includes for these purposes clause 18 (*Anti-Bribery Laws*) and any representation or warranty made or given under or in connection with a Supply Document;
- (b) the Supplier is or becomes Insolvent;

- (c) Metcash receives, in its reasonable opinion, an unacceptable number of complaints regarding the Goods;
- (d) the supply of Goods by the Supplier, in Metcash's reasonable opinion, falls materially below the service levels required under clause 7 of these Terms and Conditions;
- (e) the Supplier or any of its Related Entities:
 - 1) is convicted of a serious criminal offence; or
 - 2) engages in any conduct:
 - (i) which, in Metcash's reasonable opinion, is fraudulent, dishonest, brings the Supplier's reputation into disrepute or is contrary to prevailing community standards; or
 - (ii) as a consequence of which, Metcash reasonably believes that its continued association with the Supplier may adversely affect its reputation or best interests;
- (f) the Supplier sells or agrees to sell all or substantially all of its assets and undertaking to another person without Metcash's prior written consent (which must not be unreasonably withheld); or
- (g) any person who Controls or any persons who together Control the Supplier directly or indirectly cease to Control the Supplier directly or indirectly without Metcash's prior written consent (which must not be unreasonably withheld).

21.3 Effect of termination

- (a) If the Supply Documents are terminated in accordance with this clause 21:
 - 1) clauses 14 (*Intellectual Property Rights*), 17 (*Indemnities*), 21.3 (*Effect of termination*), 21.4 (*Obligations on termination*), 22 (*Confidentiality*), 24 (*Notices*) and 25 (*General*) of these Terms and Conditions and any other clause which by its nature is intended to continue beyond termination of a Supply Document survive the termination and continue to apply; and
 - 2) each party is released from its obligations under the Supply Documents other than any obligation under a clause that survives the termination and continues to apply; and
 - 3) each party retains the rights it has against the other party in connection with any breach or Claim that has occurred, accrued or arisen on or before termination.
- (b) If the supply of any particular Goods is terminated in accordance with clause 21.2 of these Terms and Conditions:
 - 1) that termination does not affect the validity of the Supply Documents in respect of the supply of any other Goods, which remain in full force and effect and continue to operate in respect of the supply of those other Goods;
 - 2) each party is released from its obligations under the Supply Documents in so far as they apply to the supply of those Goods other than under clauses 14 (*Intellectual Property Rights*), 17 (*Indemnities*), 21.3 (*Effect of termination*), 21.4 (*Obligations on termination*), 22 (*Confidentiality*), 24 (*Notices*) and 25 (*General*) of these Terms and Conditions and any other clause which by its nature is intended to continue beyond that termination; and
 - 3) each party retains the rights it has against the other party in connection with any breach or Claim that has occurred, accrued or arisen on or before termination in any way relating to those particular Goods.

21.4 Obligations on termination

Upon termination of the Supply Documents, the Supplier must deliver up to Metcash all documents and materials reproducing or containing any of Metcash's Intellectual Property Rights, including Metcash IP.

22. Confidentiality

22.1 Obligations

- (a) Except as permitted or required by the Supply Documents, each party must hold the other party's Confidential Information in strict confidence and not:
 - 1) disclose (or permit the disclosure of) that Confidential Information to any person; nor

- 2) use, copy or reproduce (including by developing documents incorporating) the other party's Confidential Information.
- (b) Each party must take steps no less rigorous than those which it takes in respect of its own Confidential Information to prevent any theft, loss or unauthorised access, disclosure, use, copying or reproduction of the other party's Confidential Information.

22.2 Permitted disclosure and use

- (a) A party may disclose the other party's Confidential Information:
- 1) to the extent it is required to do so by law or any Authority; and
 - 2) to such of its Representatives whose duties or functions reasonably require such disclosure, but only to the extent the disclosure is reasonably necessary:
 - (i) to give effect to, perform or enforce a Supply Document; or
 - (ii) for the purpose (and only for the purpose) for which it was disclosed to that party, and on condition that the party making such disclosure ensures that each person to whom such disclosure is made is informed of the confidentiality of the information and complies with the obligations in this clause 22 as if they were bound by them.
- (b) A party may use, and may make copies of or reproduce (including by developing documents incorporating), the other party's Confidential Information:
- 1) to give effect to, perform or enforce a Supply Document; or
 - 2) for the purpose (and only for the purpose) for which it was disclosed to that party.
- (c) Without limiting clauses 22.2(a) and (b), Metcash may disclose, use and make copies of or reproduce (including by developing documents incorporating) the Supplier Confidential Information to properly conduct its business generally.

22.3 Exclusions

The obligations of confidentiality set out in this clause 22 do not apply to Confidential Information which is:

- (a) publicly known (except by a breach of a Supply Document or any other obligation of confidence);
- (b) disclosed to a party without restriction by a third party and without any breach of confidentiality by the third party; or
- (c) developed independently by a party without reliance on any of the other party's Confidential Information.

23. GST

23.1 Definitions

Words used in this clause 23 that have a defined meaning in the GST Law have the same meanings as in the GST Law unless the context indicates otherwise.

23.2 Consideration GST exclusive

- (a) Unless expressly stated otherwise in the Supply Documents, the consideration for any supply under or in connection with the Supply Documents does not include GST.
- (b) To the extent that any supply made under or in connection with the Supply Documents is a taxable supply, the recipient of the supply must pay, in addition to the consideration provided under the Supply Documents for that supply (unless it expressly includes GST), an additional amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- (c) The recipient of the supply must pay the additional GST amount at the same time as the GST exclusive consideration to which it is referable.

23.3 Invoice

The party making the supply must issue an Invoice to the recipient of the supply at the time of the payment of the GST inclusive consideration or such other time as the parties agree.

23.4 Reimbursements

If a party is entitled under a Supply Document to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with a Supply Document, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

24. Notices

- (a) All notices and other communications under or in connection with a Supply Document:
 - 1) must be in writing and otherwise comply with the Metcash Policies and Procedures; and
 - 2) are taken to have been received at the time specified in the Metcash Policies and Procedures.
- (b) A notice must not be given by electronic means of communication, other than email as permitted by the Metcash Policies and Procedures.

25. General

25.1 Entire agreement

The Supply Documents are the entire agreement of the parties about the subject matter of the Supply Documents and supersede and override:

- (a) all previous terms agreed between the parties and all prior representations, discussions, negotiations, arrangements, understandings, agreements, deeds and communications about that subject matter; and
- (b) any terms of supply used by the Supplier (including terms appearing on or provided with the Supplier's Invoices or acceptances of Orders).

25.2 Assignment

- (a) The Supplier may not assign, transfer, novate, otherwise dispose of or create an interest in any of its rights, title or interest in or under a Supply Document (including assign, discount, factor or insure any debts or other amounts owing by Metcash under the Supply Documents to or in favour of any person) without Metcash's prior written consent (which must not, subject to clause 25.2(c), be unreasonably withheld), and any purported assignment, transfer, novation, disposal or creation of an interest in breach of this clause 25.2(a) is void.
- (b) Metcash may assign, transfer, novate, otherwise dispose of or create an interest in any of its rights, title or interest in or under a Supply Document by notice to the Supplier and, in the case of a novation, the Supplier must enter into a novation agreement or deed in the form Metcash reasonably requests to give effect to the novation.

(c) The Supplier acknowledges and agrees that Metcash may refuse to give any consent to any assignment, discounting, factoring or insuring of any debts or other amounts owing by Metcash under the Supply Documents to or in favour of any person unless and until the Supplier and that person each acknowledge and agree that:

- 1) those debts and other amounts are subject to a right of deduction or set-off under the Supply Documents, including under clause F.2(e), clauses 3(a), 3(c), 4(d), 7(a), 7(b), 10, 11(b), 13(d) and 25.10(a) of these Terms and Conditions;
- 2) that person has been informed of those rights and has had the effect of those rights explained to them;
- 3) the proposed assignment, discounting, factoring or insuring arrangement in no way limits those rights; and/or
- 4) payments Metcash makes to that person will constitute a full and valid discharge of Metcash's obligations to the Supplier under the Supply Documents in respect of those payments.

25.3 Indemnities and other reimbursement obligations

(a) Any indemnity, reimbursement or similar obligation in a Supply Document:

- 1) is a continuing, absolute and unconditional obligation and unaffected by anything that might have the effect of prejudicing, releasing, discharging or affecting in any other way the obligation;
- 2) is a separate and independent obligation from any other obligations under the Supply Documents; and
- 3) survives termination of the Supply Documents.

(b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under or in connection with a Supply Document.

25.4 Severability

If a provision of a Supply Document is invalid or unenforceable in a jurisdiction:

- (a) it must, in that jurisdiction, be read down or severed from the Supply Document to the extent of the invalidity or unenforceability; and
- (b) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions of the Supply Document.

25.5 Inconsistency

If there is any conflict or inconsistency between the terms of any of the Supply Documents, the terms of each of the Supply Documents prevail to the extent of the conflict or inconsistency in the following order of priority:

- (a) first, clause F.1(b) of the Supply Agreement;
- (b) second, the terms of any Supplemental Agreement;
- (c) third, the remaining terms of the Supply Agreement; and
- (d) fourth, the terms of the Metcash Policies and Procedures.

25.6 Waiver

(a) A party waives a right, power or remedy under or in connection with a Supply Document only if it does so in writing and signs the waiver.

A party does not waive a right, power or remedy under or in connection with a Supply Document simply because it fails to exercise the right, delays exercising the right or only exercises part of the right.

25.7 Rights cumulative

The rights, powers and remedies of the parties under the Supply Documents are cumulative and do not exclude any other rights, remedies or powers under law or otherwise.

25.8 Relationship of parties

Nothing in the Supply Documents gives a party authority to bind the other party in any way or imposes any fiduciary duties on a party in relation to the other party.

25.9 Agency and deed poll

- (a) MTL enters into the Supply Agreement in its personal capacity and as agent for each of its Subsidiaries and may enforce the Supply Agreement in its own right and for its own benefit and/or on behalf of any or all of its Subsidiaries.
- (b) If MTL or any of its Subsidiaries requests, the Supplier must execute and deliver to MTL or the Subsidiary (as applicable) a deed poll in the form it reasonably requires under which the Supplier undertakes to comply with its obligations under the Supply Documents for the benefit of MTL's Subsidiaries.

25.10 Withholding

- (a) If the Supplier fails to provide an ABN, Metcash will withhold an amount of tax (at the rate required by the ATO) from any payment it makes to the Supplier for a supply and remit the amount of that tax to the ATO.
- (b) Metcash will not withhold an amount of tax where the Supplier provides a 'Statement by a Supplier' in the ATO prescribed form providing a valid reason why it is not necessary to withhold from a payment for failure to quote an ABN.

25.11 Agent for service

Where the Supplier has no place of business in Australia, the Supplier must, immediately on execution of the Supply Agreement, appoint the Local Agent specified in the "Contract details" section of the Supply Agreement as its agent to receive and acknowledge on its behalf service of any document relating to any legal or administrative proceeding, procedure, suit or action arising out of or in connection with any Supply Document and acknowledges and agrees that service of any such document on the agent will be treated as effective service on the Supplier for all purposes. If for any reason the Local Agent set out in the "Contract details" section of the Supply Agreement ceases to be the Supplier's agent, the Supplier must immediately appoint a replacement agent for service in Australia and give Metcash notice of the agent it has appointed, including their name, address, telephone number and email address.

25.12 Counterparts

The parties may each execute one or more counterparts of a Supply Document. If so, all executed counterparts will be taken to constitute a single document.

25.13 Governing law

- (a) The Supply Documents are governed by the law in force in New South Wales, Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia and courts of appeal from them and waives any objection to the venue of any legal process in these courts on the basis it has been brought in an inconvenient forum.

26. Definitions and interpretation

26.1 Definitions

In the Supply Agreement, unless the context requires otherwise:

ABN means Australian Business Number.

Acceptable Quality has the meaning given in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Anti-Bribery Laws means all laws relating to bribery, corruption, improper payments, money laundering, export control and economic sanctions including the *Criminal Code Act 1995* (Cth), the Foreign Corrupt Practises Act (1977) (USA) and the Bribery Act 2010 (UK).

ATO means the Australian Tax Office.

Authority means any government or any governmental, semi-governmental, administrative, monetary, fiscal, judicial or investigative body, department, commission, authority, tribunal, delegate, agency, board or entity in any part of the world, whether statutory or not, and includes any recognised stock exchange.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in each State or Territory selected in the "Contract details" section of the Supply Agreement.

Chain of Responsibility Laws means national reform and model legislation relating to fatigue management for heavy vehicle drivers, including mass, dimension and load restraint compliance requirements generally referred to as 'Chain of Responsibility' as adopted in legislation in each State and Territory of Australia.

Claim means any claim, allegation, demand, suit, action, cause of action, proceeding or judgment of any kind however arising, and whether present or future, fixed or unascertained, actual or contingent and whether at law or in equity, in contract or in tort, under statute or otherwise.

Commencement Date means the date specified as such in the "Contract details" section of the Supply Agreement.

Confidential Information means:

- (a) in the case of Metcash, Metcash Confidential Information;
- (b) in the case of the Supplier, Supplier Confidential Information; and
- (c) in the case of each party:
 - 1) the content of the Supply Agreement and any Supplemental Agreement; and
 - 2) all matters relating to any Dispute including the existence of a Dispute.

Control has the meaning given in the *Corporations Act 2001* (Cth).

Co-operative Promotional Allowance means an allowance applicable to all Goods supplied to Metcash that comprises the amount the Supplier must contribute towards the promotion of Goods.

Country of Origin Laws means all applicable laws relating to country of origin labelling, including the *Country of Origin Food Labelling Information Standard 2016* (Cth) under the Australian Consumer Law, Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

Customer means a customer of Metcash.

Dispute means a dispute, controversy or claim arising out of, relating to or in connection with a Supply Document, including any question regarding its existence, validity, breach or termination. A Dispute includes a dispute under the Horticulture Code in respect of Horticulture Produce.

Early Payment Discount means a discount applicable to all Goods supplied to Metcash in recognition of Metcash agreeing reduced payment terms for Invoices, evidenced by the inclusion of such a discount in the table in clause A of the Supply Agreement.

Fresh Produce means meat, freshly grown produce (such as fruit, vegetables and other edible plants) (including Horticulture Produce), flowers and plants (including cut flowers and plants).

Goods means any goods supplied by the Supplier.

GST has the meaning given in the GST Law.

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Grower has the meaning given in the Horticulture Code.

Horticulture Code means the Horticulture Code of Conduct in Schedule 1 of the *Competition and Consumer (Industry Codes – Horticulture) Regulations 2017* (Cth), as amended from time to time.

Horticulture Produce means Goods which are fruit, vegetables (including mushrooms and other edible fungi), nuts, herbs, and other edible plants, which are in each case unprocessed, excluding Nursery Products,

Horticulture Produce Specifications means Metcash's specifications from time to time for each type of Horticulture Produce at <https://metcashsuppliers.com/food-safety-standards-compliance/>, and where there is no specification at such website for a type of Horticulture Produce, the produce specification for that type published by Fresh Markets Australia at <https://www.freshmarkets.com.au/fresh-specs/>.

Illegal Logging Laws means all applicable laws relating to illegal logging, including the *Illegal Logging Prohibition Act 2012* (Cth) and the *Illegal Logging Prohibition Regulation 2012* (Cth).

Incoterms means the international commercial terms published by the International Chamber of Commerce.

Industry Codes means all industry codes, policies, procedures, protocols, controls, standards and requirements relevant to or prevailing in the industry in which goods similar to the Goods are manufactured or supplied from time to time, including in particular those relating to safety, quality, content, purity and similar, and includes the Retail Logistics Supply Chain Code of Conduct published by the Australian Logistics Council.

Insolvent means, in respect of a party:

- (a) an administrator, liquidator, receiver or receiver and manager is appointed to the party or takes possession or control of any or all of its assets or undertaking;
- (b) the party enters into (or resolves to enter into) any arrangement, compromise, composition or moratorium with, or assignment for the benefit of, creditors generally or any class of creditors;
- (c) the party is wound up, dissolved or de-registered or passes a resolution to do so;
- (d) the party is bankrupt or insolvent or otherwise unable to pay its debts as and when they fall due; or
- (e) the party dies, is imprisoned or becomes permanently disabled or incapacitated or of unsound mind or otherwise incapable of managing their own affairs.

Insurance Policy means an insurance the Supplier is required to take out and maintain under clause 15(a) of these Terms and Conditions.

Intellectual Property Rights means all intellectual and industrial property rights existing anywhere in the world, including copyright, trade marks, patents, designs, confidential information, inventions and know how, whether or not registered, and all rights to apply to register, revive or extend such rights, and all other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

Invoice has the same meaning as tax invoice in the GST Law.

List Price means the Supplier's price of the Goods (excluding any rebates, discounts and allowances) provided to Metcash.

Loss means any loss, liability, damage, cost (including legal costs on a solicitor and client basis) or expense of any kind however arising, and whether present or future, fixed or unascertained, actual or contingent, direct or indirect, consequential or incidental or economic.

Merchant has the meaning given in the Horticulture Code.

Metcash means MTL and each or any (as applicable) of its Subsidiaries from time to time.

Metcash Confidential Information means all information of any kind in any form or medium in any way relating to Metcash or Metcash's business, Customers or Customers' businesses, Metcash's Product Specifications (if any) and the Metcash IP.

Metcash IP means all Intellectual Property Rights in any Metcash Works.

Metcash Policies and Procedures means Metcash's policies, procedures, codes, protocols, controls, standards and requirements located at the Supplier Portal as at the date of the Supply Agreement and as amended, varied or supplemented from time to time in accordance with clause 20 of these Terms and Conditions.

Metcash Works means any drawings, designs, logos or other artistic or literary works in any format or medium created or developed by or on behalf of the Supplier or its Related Entities for or on behalf of Metcash.

MTL means Metcash Trading Limited (ABN 61 000 031 569).

National Rebate means a rebate applicable to all Goods supplied to Metcash in recognition of the benefit to the Supplier of ranging Goods with all or some of Metcash's network of Customers.

Nursery Products means nursery products including 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.

Order means any order in any form or medium for the supply of Goods.

Overseas Goods means Goods manufactured and/or supplied at any stage from a location outside Australia.

Product Specifications means the Supplier's specifications for the Goods and Metcash's specifications for the Goods (if any) provided to the Supplier from time to time, including any standards and labelling and packaging requirements, and where there is a conflict or inconsistency between the Supplier's specifications and Metcash's specifications, Metcash's specifications will apply to the extent of the conflict or inconsistency. The Product Specifications in respect of Horticulture Produce include the Horticulture Produce Specifications.

Receiving Limit means the minimum period of time from the date the Goods are delivered until the use by or best before date stamped or otherwise embossed on the Goods that is specified in the Order for those Goods or, if not so specified, applicable in accordance with the Metcash Policies and Procedures.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Related Entity means each of the Supplier's Related Bodies Corporate and each of the Supplier's and each of its Related Bodies Corporate's respective directors, officers, employees, independent contractors, consultants and agents.

Relevant Goods means the Goods supplied to Metcash in response to an Order issued by Metcash or a Customer, including all labelling and packaging for the Goods.

Representative means, in respect of a person, each of the directors, officers, employees, independent contractors, agents, advisers, and service providers of that person and of each of its Related Bodies Corporate.

Security Interest means a right, interest, power or arrangement in relation to any property which provides security for, or protects against default by a person in, the payment or satisfaction of a debt, obligation or Liability, including a mortgage, charge, bill of sale, pledge, deposit, lien, encumbrance or hypothecation and a security interest as defined in sections 12(1) and 12(2) of the *Personal Property Securities Act 2009* (Cth).

Subsidiary has the meaning given in the *Corporations Act 2001* (Cth).

Supplier means the supplier named in the "Contract details" section of the Supply Agreement.

Supplier Confidential Information means all information of any kind in any form or medium relating to the Supplier or the Supplier's business, including the Supplier's Product Specifications.

Supplier Portal means the site located at www.metcashsuppliers.com or such other site Metcash notifies to the Supplier as the Supplier Portal from time to time.

Supplemental Agreement means any written agreement or deed entered into by Metcash and the Supplier from time to time relevant to the supply of Goods to Metcash other than the Supply Agreement and the Metcash Policies and Procedures:

- (a) the entry into which has been duly authorised by Metcash; and
- (b) which expressly states that it supplements and varies, and takes precedence in accordance with the order of priority set out in clause 25.5 of these Terms and Conditions in the event of any conflict or inconsistency with, the other Supply Documents.

Supply Agreement means the agreement for the supply of goods between Metcash and the Supplier (including, to avoid doubt, the Schedule) as amended, varied or supplemented from time to time in accordance with clause 20 of these Terms and Conditions.

Supply Documents means:

- (a) the Supply Agreement;
- (b) the Metcash Policies and Procedures; and
- (c) any Supplemental Agreement.

Terms and Conditions means the Terms and Conditions set out in the Schedule to the Supply Agreement.

Third Party Claim means any Claim made or brought by any person (other than Metcash) against the Supplier arising out of or in connection with the manufacture, importation and/or supply of Goods that:

- (a) will or may adversely affect the supply of Goods to Metcash or the performance of or compliance with the Supplier's other obligations under or in connection with the Supply Documents; or
- (b) gives or may give rise to a Claim by Metcash against the Supplier under or in connection with a Supply Document.

Trading Terms means the rebates, allowances and discounts applicable to those Goods set out in clause A of the Supply Agreement.

Warehouse means any distribution centre or warehouse owned or used by Metcash in operating its business.

26.2 Interpretation

- (a) In each Supply Document:
 - 1) a reference to:
 - (i) a document (including a Supply Document) is to that document (including any schedules and annexures) as amended, consolidated, supplemented, novated or replaced;

- (ii) a recital, clause, paragraph, schedule, annexure or party is to a recital, clause or paragraph of, or schedule, annexure or party to, the Supply Document;
 - (iii) a person (including a party), includes any company, corporation, other body corporate, association, partnership, firm, joint venture, trust and Authority as well as an individual, and that person's heirs, executors, successors, substitutes (including persons taking by novation), administrators and permitted assignees;
 - (iv) "\$" and "AUD" is to the lawful currency of Australia;
 - (v) any thing (including any right) includes a part of that thing;
 - (vi) a law or to law or laws generally:
 - includes any constitutional provision, treaty, decree, convention, statute, legislation, judgment, rule of common law or equity and rule of any recognised stock exchange and any subordinate or delegated legislation, regulation, rule, ordinance, proclamation or by-law made under that law; and
 - is to that law as amended, consolidated, supplemented, replaced or re-enacted,and a reference to any applicable laws includes Chain of Responsibility Laws, Country of Origin Laws and Illegal Logging Laws; and
 - (vii) any representation or warranty made or given under or in connection with a Supply Document includes, in the case of the Supplier, any representation, warranty, guarantee or term implied or provided by law in connection with the Goods;
- 2) the singular includes the plural and the plural includes the singular;
 - 3) headings are for convenience only and do not affect interpretation of the Supply Document;
 - 4) other parts of speech and grammatical forms of a word or phrase defined in the Supply Document have a corresponding meaning; and
 - 5) specifying anything after the words 'include', 'including' or 'for example' or similar expressions does not limit what else is included.
- (b) If a period occurs from, after, until or before a day or the day of an act or event, it excludes that day.
- (c) A provision of a Supply Document may not be construed adversely to a party solely on the ground that the party was responsible for the preparation of the Supply Document or that provision.