

TERMS AND CONDITIONS

1. The **Supplier**, Big Michael's Fruit and Vegetables Pty Ltd ACN 163 192 621 as trustee for the PMM Family Trust ABN 26 429 090 875, where appropriate, includes the employees, agents, subcontractors, successors, assignees of and any entity claiming through or under the Supplier.

The **Customer** means the legal entity purchasing or agreeing to purchase goods or services of the Supplier and includes the employees, agents, subcontractors, successors, assignees of and any entity claiming through or under the Customer.
2. **Scope.** All quotations made by the Supplier and all orders accepted for the supply of Goods will be subject to these terms and conditions, unless otherwise agreed in writing and notwithstanding anything to the contrary in the Customer's enquiries or orders.
3. **Customer to Satisfy Itself From Its Own Enquiries.** Any statements as to suitability, quality, fitness for purpose, capacity or otherwise in relation to the Goods in any documents issued by the Supplier do not form part of any contract between the Customer and the Supplier unless specifically agreed to in writing by the Supplier. The Customer warrants that it was satisfied by means other than information received from the Supplier as to the quality and fitness for purposes of the Goods offered before it placed any order in respect of them.
4. **Quotations, Contract.** Supplier's quotations are valid only if in writing and only for one (1) day or any shorter period stated in the quotation. No order, whether resulting from a prior quotation or not, will result in a binding contract until the order is accepted in writing by the Supplier or by delivery of the Goods to the Customer.
5. **Bulk Goods.** Unless otherwise stated, the place for delivery of Goods delivered in bulk is the nominated premises of the Customer, and the price of Goods includes delivery to the Customer's nominated premises and the price may increase by any increase in the cost of freight or delivery after the date of quotation. If the place for delivery of Goods is the nominated premises of the Supplier, then the Customer shall pay the costs of handling, freight, and delivery to the Customer or the Customer's agent.
6. **Packaged Goods.** Unless otherwise stated, the place for delivery of Goods delivered in packages is the nominated premises of the Supplier, and the Customer shall pay the costs of handling, freight, and delivery to the Customer or the Customer's agent.
7. **Minimum Order.** The Supplier may from time to time set a minimum price for any one order. The Supplier reserves the rights to, at its discretion, charge the Customer a \$9.00 delivery fee where an individual order is less than \$30.00.
8. **Taxes and Charges.** Unless otherwise stated, the price of Goods is the price set out in a Supplier's quotation and may or may not include goods and services tax (GST) and any other taxes and statutory charges levied in relation to the Goods.
9. **Credit.** The Supplier may in certain circumstances require payment of a deposit or prepayment, particularly as regards special orders. The Supplier may in its discretion supply Goods on a cash on delivery basis or Goods on credit to the Customer with payment due strictly within seven (7) days after the date of a statement or tax invoice being issued. The Supplier may charge interest at the bank overdraft rate charged by its bankers plus an account keeping fee of not more than 2% per month in respect of amounts not paid by that due date until the date of payment. The Supplier may by notice in writing at any time withdraw or vary the terms on which credit is given. The Supplier reserves the right to place all orders on a cash on delivery basis.
10. **Cancellation.** The Customer must pay all costs incurred by the Supplier on cancellation of any order by the Customer.
11. **Transport.** The Supplier may use any vehicle or mode of transport to carry the Goods, may substitute one vehicle or mode of transport for another, and may use any subcontractor or agent.
12. **Place of Delivery.** If the place of delivery is other than that at the Supplier's premises and the Customer is not present at the premises at the time for delivery, the Supplier may proceed to unload the Goods.
13. **Demurrage.** If the place of delivery is other than that at the Supplier's premises, the Supplier may charge demurrage for time lost in idle standing of the carrier at the delivery site, caused by circumstances outside the Supplier's control.
14. **Additional Transport Costs.** The Supplier may agree to deliver Goods elsewhere as specified by the Customer, in which case the Customer shall pay all associated charges. If, in the opinion of the Supplier, the Goods cannot be delivered at the delivery site, or if the Goods are returned or redirected, the Customer must pay the Supplier such transport costs as the Supplier may specify and the delivery of the Goods may be suspended. That suspension will not be a breach of, or invalidate, the contract and the time or period for delivery will be extended accordingly.
15. **Safety, Environment.** If the place of delivery is other than that at the Supplier's premises, the Customer must provide safe access to and on the delivery site and the Customer must comply with all applicable regulation as to the storage and disposal of the Goods.
16. **Delivery.** Due delivery of Goods is deemed to be made, the Customer is deemed to accept Goods, and the risk in Goods will pass to the Customer upon loading onto the Customer's transport (in the case of delivery at the Supplier's premises) and upon discharge from the Supplier's transport at the Customer's specified delivery point (in all other cases).
17. **Title to Goods.** The Goods remain the property of the Supplier until paid for in full. Until that time:
 - (a) the Customer may sell the Goods in the ordinary course of its business as agent for the Supplier and will hold the proceeds of sale on trust for the Supplier;
 - (b) the Customer must, until any sale by the Customer and the passing of property:
 - (i) possess the Goods as bailee for the Supplier and, if the Goods are incorporated into other goods, those other goods are, if possible, held by the Customer on trust for the Supplier; and
 - (ii) return the Goods to the Supplier on demand.
18. **Weight.** Where products are sold in bulk, weights registered on the Supplier's weighbridge or on any other certified weighbridge are binding on the Customer. Where products are sold in packages, the sale will be on the basis that the net weight of the contents of such packages will be as specified on the Supplier's package marking, which is binding on the Customer.
19. **Inspections.** It is the responsibility of the Customer at the time of delivery to make inspections to determine the quantity of the Goods delivered, to confirm the description given in the delivery docket, and to satisfy itself of the general condition of the Goods delivered.
20. **Defects etc.** If the Customer detects any alleged defect or irregularity whether with respect to quantity, description, faulty condition or otherwise, the Customer must give telephone or email notice within 48 hours to the Supplier containing particulars sufficient to inform the Supplier of the alleged defect or irregularity. The Supplier will only consider claims made after those times in its absolute discretion and its decision will be final and binding on the Customer. Any packaged goods can be returned only in their original and complete packaging. The liability of the Supplier, if any, for defective goods will be the replacement of such defective goods, the supply of equivalent goods, or the cost of replacing any defective goods, at

the Supplier's option. To the full extent allowed by law, all other guarantees, warranties, undertakings or representations express or implied and whether arising by statute or otherwise are expressly excluded. The Supplier accepts no responsibility for changes in quality arising after the sale of the Goods.

21. **Testing.** Where Goods are subject to testing, the Supplier's Certificate of Test will be final and binding.
22. **Exclusion of Liability.** To the extent permitted by law, the Supplier will not be liable in any way (including for negligence) for loss of or damage to or misdelivery of, or failure to deliver or delay in the delivery of the Goods through any reason whatsoever.
23. **Indirect and Consequential Loss.** The Supplier will not in any circumstance be liable for any indirect or consequential loss or damage of any nature whatsoever.
24. **Pallets.** All pallets (other than disposable pallets) issued by the Supplier remain the Supplier's property. The Customer shall not use the pallets provided by the Supplier for any purposes whatsoever other than for the storage or handling of the Goods or other goods purchased from the Supplier. The Customer shall not part with possession of the pallets except to return them to the Supplier. The Customer shall pay the Supplier any deposit charged by the Supplier and shall pay the Supplier for all damaged or missing pallets. The Supplier's records will be conclusive evidence of the number of pallets in the Customer's possession.
25. **Indemnity.** To the full extent allowed by law, the Customer shall indemnify and keep indemnified the Supplier against all and any liabilities and claims of whatsoever kind that arise out of or in relation to any use made of the Goods by or on behalf of the Customer.
26. **Change in Circumstances.** The customer must advise the Supplier in writing of any change in its business structure shown in this application within 7 days of the change.
27. **Non-payment, Breach etc.** If the Customer:
 - (a) makes any representation to us or gives us information that is untrue;
 - (b) does not pay the Supplier for Goods when payment is due;
 - (c) defaults in its performance of these terms and conditions;
 - (d) becomes bankrupt, insolvent or subject to any administration, or proposes or threatens to become so;
 - (e) ceases to conduct its business, or ceases to conduct its business in the normal manner, or proposes or threatens to do so, or
 - (f) advises the Supplier of a Change in Circumstances that, in the Supplier's opinion, materially affects its ability to perform its obligations under these terms and conditions,

then the Supplier may at its discretion suspend further performance by it under any contract with the Customer or any related corporation of the Customer for such time as it determines, or it may terminate any such contract. In the event of default by the Customer, all amounts payable by it to the Supplier will automatically and immediately become due and owing to the Supplier. The Supplier may, for the purpose of recovering possession of the Goods enter onto the premises where the Goods are located without notice. The Customer shall pay all legal expenses (as assessed on a solicitor and client basis) and any other expenses incurred by the Supplier in collecting overdue moneys or in the enforcement of these terms and conditions or any contract with the Customer.

28. **Non-waiver of Breach.** If the Supplier does not act in relation to a breach by the Customer of these terms and conditions or of any contract, this does not waive the Supplier's right to act with respect to subsequent or similar breaches.

29. **Preservation of Rights.** The termination of any contract between the Supplier and the Customer on any account whatsoever does not in any way prejudice or affect the rights, duties or obligations of the parties under any such contract that may have arisen before the date of termination.
30. **Intellectual Property.** The Supplier reserves the rights to all copyrights, trade marks, industrial design, patents and any other industrial and intellectual rights on all the Supplier drawings, designs, diagrams, schemes, plans, publications and other documents, ideas, discoveries, improvements and inventions. The Customer shall not copy, use or allow any third party to use any of the foregoing without the Supplier's prior written consent.
31. **Instalments.** If performance of a contract by the Supplier is, or is to be, by instalments, then that contract shall be read as providing a severable contract with respect to the obligations of the Supplier in relation to each instalment.
32. **Force Majeure.** If by reason of any fact, circumstance, matter or thing beyond the reasonable and practical control of the Supplier, the Supplier is unable to perform in whole or in part any of its obligations to the Customer, then the Supplier will be relieved of that obligation to the extent and for the period that it is unable to perform and will not be liable to the Customer in respect of such inability.
33. **Additional Information, Bank Guarantee.** The Supplier may from time to time reasonably require information concerning the ongoing creditworthiness of the Customer and the Customer must promptly supply that information. Immediately upon the written request of the Supplier, the Customer must provide to the Supplier an unconditional and irrevocable written undertaking (**Bank Guarantee**):
 - (i) issued by a bank or financial organisation (**Issuer**) approved by the Supplier;
 - (ii) in an amount that the Supplier considers is reasonable based on the forecast payments by the Customer to the Supplier for the following three (3) month period; and
 - (iii) securing all amounts due and payable by the Customer to the Supplier, including all costs and expenses incurred by the Supplier as a result of any default by the Customer under these terms and conditions or any contract.Each Bank Guarantee must oblige the Issuer to pay to the Supplier in full and immediately upon demand any amount the Customer fails to pay to the Supplier on or before the due date for payment.
34. **Time of the Essence.** Where an obligation is imposed by these terms and conditions, or a contract, on the Customer, time is of the essence.
35. **Contract Severable.** If any of these terms and conditions or of any contract is invalid or unenforceable, it will be struck out and the remaining terms and conditions will remain in force.
36. **Variations to Terms and Conditions.** The Supplier may vary any of these terms and conditions at any time by notice in writing to the Customer. The Customer's continued placing of orders after such notice will constitute acceptance of the variation.
37. **Applicable Laws, Courts.** The laws of the State of Queensland shall govern these terms and conditions and any contract between the Supplier and the Customer. The Supplier and the Customer irrevocably submit to the exclusive jurisdiction of the Courts of that State.

GUARANTEE AND INDEMNITY

TO: the Supplier, Big Michael's Fruit and Vegetables Pty Ltd ACN 163 192 621 as trustee for the PMM Family Trust ABN 26 429 090 875, identified in the Credit Application to which this Guarantee and Indemnity is attached.

38. At the request of the Guarantors described below (**the Guarantor**), the Supplier may make available to the Customer certain financial accommodation.
39. In consideration of any financial accommodation that the Supplier may make available to or for the benefit of the Customer, the Guarantor unconditionally and irrevocably guarantees the due and punctual payment by the Customer to the Supplier of all moneys owing by the Customer to the Supplier now or in the future, including any interest accruing on any moneys owing and enforcement expenses, for any reason, in any capacity, and whether the Customer is liable alone or jointly and/or severally (**Guaranteed Moneys**). This guarantee and Indemnity is made by the Guarantor both in its personal capacity and as trustee of each and every relevant trust of which it is trustee and that, in the Supplier's bona fide opinion, is carrying on or associated with any business or activity with respect to which the financial accommodation is given either wholly or in part.
40. The Guarantor unconditionally and irrevocably charges in favour of the Supplier all its estate and interest in any land in which it has any legal or beneficial interest (or in which it later acquires any such interest) and any other asset or trust asset for payment of all monies owed to the Supplier by the Customer or the Guarantor. The Guarantor consents to the Supplier lodging a caveat or caveats noting its proprietary interest hereunder. The Guarantor agrees to execute any documents and to do all such things as may be required by the Supplier to register or otherwise record this charge.
41. If the Customer defaults in payment of the Guaranteed Moneys, the Guarantor shall pay those moneys on demand to or as directed by the Supplier. Demand by the Supplier may be signed by any of its managers or other officers or by any of its solicitors and may be served on the Customer at its registered office or on the Guarantor at its address. If posted, with the postage prepaid, the demand will be considered served 2 business days after posting.
42. The Guarantor's obligations under this Guarantee and Indemnity are principal obligations and are not ancillary or collateral to any other right or obligation.
43. This is a continuing guarantee for all moneys that are now or may from time to time be owing or remain unpaid by the Customer. The Guarantor's liability is absolute and unconditional and is not affected by anything at all that, but for this provision, might operate to relieve it of its obligations including, without limitation:
- (a) any transaction or arrangement, including an arrangement which increases the Guaranteed Moneys, any extension of time, waiver or release, or any variation in terms or conditions, which may be made or given between any of the Supplier, the Customer, the Guarantor and anyone else;
 - (b) the bankruptcy, winding up, liquidation or becoming insolvent under administration of, or appointment of an administrator to, the Guarantor, the Customer or any other person;
 - (c) the fact that any other person fails to become bound or ceases to be bound as surety in respect of the Guaranteed Moneys;
 - (d) any failure by the Supplier to give notice, or any other omission, delay or mistake on the part of the Supplier; and
 - (e) any change in the constitution, directors or management of the Customer.
44. A certificate signed by a director, employee or agent of the Supplier for the time being and stating the balance of the moneys due to the Supplier by the Customer will be conclusive evidence of the indebtedness of the Customer at the date of the certificate.
45. Until the Guaranteed Moneys have been irrevocably paid in full, the Guarantor may not exercise any right of subrogation to the Supplier and may not exercise any rights as surety in competition with the Supplier.
46. If the Customer is wound up, the Supplier may prove for all moneys that the Guarantor may have paid under this Guarantee and Indemnity and need not apply in discharge of the Guaranteed Moneys, any moneys that it receives.
47. For the consideration mentioned above, the Guarantor unconditionally and irrevocably indemnifies the Supplier against any loss that it may suffer because the whole or part of the Guaranteed Moneys is not recoverable from the Customer, and not recoverable from the Guarantor as a surety.
48. If, after the Supplier applies any amount against any of the Guaranteed Moneys, it forms the view that it is obliged to make a payment in respect of the amount so applied by it to any person under any law relating to bankruptcy, winding up or the protection of creditors, the rights of the Supplier under this Guarantee and Indemnity will be reinstated, and will be the same in respect of that amount as if the application, or the payment or transaction giving rise to it, had not been made.
49. The Guarantor may terminate its obligations under this Guarantee and Indemnity by giving 30 days written notice to the Supplier. The Guarantor's obligations will terminate on the date of expiry of the notice period, but only in respect of financial accommodation (if any) that the Supplier agrees, after that date, to make available to or for the benefit of the Customer.
50. The Guarantor indemnifies the Supplier against, and shall pay the Supplier on demand the amount of, all losses, liabilities, costs, expenses in connection with this Guarantee and Indemnity.
51. If there is more than one Guarantor, a reference to the Guarantor is deemed to be a reference to each Guarantor and the Guarantor's obligations hereunder will be obligations of each Guarantor severally and all the Guarantors jointly.
52. The laws of Queensland govern the construction and interpretation of this Guarantee and Indemnity and each party agrees to irrevocably submit to the exclusive jurisdiction of the courts of Queensland.

IMPORTANT NOTE: YOU MAY WISH TO SEEK INDEPENDENT LEGAL ADVICE BEFORE SIGNING THIS GUARANTEE AND INDEMNITY.

The Guarantee and Indemnity is executed this _____ day of _____ 20____, and in doing so each Guarantor certifies that he or she has read and understood the Guarantee and Indemnity without undue pressure or unfair tactic.

CUSTOMER NAME:	
SIGNED BY GUARANTOR:	NAME:
	ADDRESS:
SIGNED BY GUARANTOR:	NAME:
	ADDRESS:
SIGNED BY GUARANTOR:	NAME:
	ADDRESS:

This credit application can be emailed to peter@bigmichaels.com.au or faxed to 07 3411 2598.

Office use only:

<i>Credit application received</i>	<i>Date:</i>
<i>Credit references checked</i>	<i>Date:</i>
<i>Credit application approved</i>	<i>Date:</i>
<i>Email sent advising customer</i>	<i>Date:</i>