

Original Enterprises Pty Ltd (ACN: 155 331 829) trading as **“Michael Brothers Juice”** [hereinafter referred to as “the Seller”]
Terms of Trade for the Supply of Products to Customers [hereinafter referred to as “Terms”, “Products” and “the Customer”]

Application

Unless otherwise agreed in writing these terms apply to all dealings between the Seller and the Customer.

1. Ordering and Acceptance

- 1.1 Cash sales will be processed upon receipt of cleared funds for the full value of the order plus freight costs (if applicable).
- 1.2 Online/website orders will be processed upon receipt of full payment by credit/debit cards or other methods as may be agreed at the Seller’s sole discretion.
- 1.3 The Seller may at its sole discretion accept verbal or phone or email orders from credit account customers, but to avoid errors orders should be emailed or written.
- 1.4 A binding contract will be established immediately the Customer instructs the Seller to supply Products and/or the Seller ordering supplies or commencing any processes on behalf of the Customer and the Customer may be liable for all costs in the event of cancellation.
- 1.5 “The Customer” in these Terms is the person who places the order.
- 1.6 Any terms or conditions of the Customer’s order deviating from or inconsistent with these Terms are expressly excluded and rejected by the Seller. This exclusion and rejection includes any statement by the Customer that the Customer’s terms and conditions shall prevail.
- 1.7 The Customer agrees that in the event of any dispute concerning an order (including any question of identity or authority or any telephone, facsimile or email order) that the internal records of the Seller will be prima facie evidence of what was ordered.
- 1.8 A quotation, estimate or any other document issued by the Seller (apart from a Confirmation of Order document) is not an offer to supply Products.
- 1.9 Each order placed by credit account Customers shall be deemed to be a representation of solvency and the Customer shall inform the Seller of any factors that could affect the commercial decision by the Seller to accept the order and/or grant credit. Failure to pay the Seller in accordance with these Terms shall be deemed to be prima facie evidence that the Customer had no reasonable grounds for making a solvency representation and that the representation was unconscionable, misleading and deceptive.

2. Price and Payment

- 2.1 The Seller’s price lists are subject to change without notice.
- 2.2 Unless stated otherwise GST and any other taxes shall be payable by the Customer.
- 2.3 Quotations are based on costs at the time of the quotation and are subject to change if the Customer does not accept the quotation within the period specified in the quotation or within one month if no period is shown.
- 2.4 At the Seller’s sole discretion, the Seller may require a non-refundable deposit before manufacturing and/or procuring Products on the Customer’s behalf.
- 2.5 Payment is strictly on the basis of the Seller’s payment terms as introduced from time to time. If no specific payment terms have been agreed, payment must be made immediately upon demand by the Seller, time being of the essence as to this obligation.
- 2.6 If the Seller agrees to accept payment by credit card the Seller reserves the right to recover the credit card commission.
- 2.7 Payment shall only occur when cleared funds from the Customer have been received by the Seller for all amounts outstanding.
- 2.8 The Seller may, at its sole discretion and without prejudice to its other rights and remedies, withhold supply and demand immediate payment of all amounts owing if the Customer’s account is overdue or the Seller is concerned over the Customer’s ability to pay.
- 2.9 The Customer shall not be entitled to set off against any moneys owed (or allegedly owed) to the Customer by the Seller or withhold payment or deduct money from an invoice because a portion of the invoice is disputed by the Customer.
- 2.10 If the Customer is a regular buyer and requests a credit facility (which the Seller is not obliged to provide) the Customer warrants that they shall strictly adhere to the Seller’s payment terms, time being of the essence as to this obligation.
- 2.11 The Seller can demand immediate payment of any or all amounts owed even if they are not currently due if the Customer becomes insolvent, proposes or enters into an arrangement with creditors or an administrator, receiver, liquidator or similar person is appointed in respect of the Customer or any asset of the Customer.

3. Delivery and Delay

- 3.1 Delivery of online/website orders to persons classed as “consumers” as defined by the Australian Competition and Consumer Act shall take place when the Products are delivered to the premises (or left at if they are unattended) specified by the Customer.
- 3.2 The Seller reserves the right to deliver part orders at its entire discretion.
- 3.3 If the Customer, their agent, a transport contractor or courier collects the Products from the Seller’s premises, or the premises of a storage/logistics contractor appointed by the Seller, delivery takes place immediately upon collection of the Products.
- 3.4 For Products delivered directly by the Seller to the Customer’s premises delivery takes place when the Products are delivered to or left at the said premises if the premises are unattended.
- 3.5 Unless otherwise specified in the price or in the Seller’s quotation the Customer is responsible for all delivery costs.
- 3.6 A certificate or delivery docket purporting to be signed by an officer or agent of the Customer confirming delivery shall be prima facie evidence of delivery.
- 3.7 The Customer shall not be relieved from its obligations to the Seller for any delay in delivery.

4. Returns and Claims

- 4.1 No Products will be accepted for return unless agreed to by the Seller prior to return and all such Products must be returned in the original packaging and upon conditions acceptable to the Seller

be accepted by the Seller thereafter.

4.3 Unless the Customer is classed as consumers as defined by the Australian Competition and Consumer Act the Seller shall not be liable for any alleged loss or expense whatsoever and howsoever caused whether direct, indirect or consequential in respect of any alleged defect in the Products.

5. Conversion and Tampering

5.1 Any tampering with the contents and/or misuse of the packaging and/or labelling of brand Products including, but not limited to, reusing or refilling empty or partially empty brand packaging and containers with any other products and/or using any brand labels for any purposes whatsoever is strictly prohibited.

5.2 If the Customer, or any other party authorised by the Customer, converts, transforms or incorporates the Products in whole or in part into other products or otherwise changes the Products, the Customer shall be totally liable for any losses incurred by The Seller, including full legal costs, as a result of any such actions and for any claims from any other parties.

5.3 Any breach by the Customer of the Seller's conversion and tampering requirements contained herein or as stipulated by federal and/or state laws or council regulations shall be regarded as a material breach of these Terms and the Seller may, without notice, impose any or all of the penalties contained in these Terms. These may include, but are not limited to, immediate cessation of deliveries, withdrawal of product guarantees and/or obligations under the Commonwealth Competition and Consumer and all other Acts and the taking of legal action against the Customer and/or any other remedies and to seek financial compensation from the Customer.

5.4 The Products are produced in certified food processing premises and in the event that the Customer is in breach of the conversion and/or tampering prohibitions and/or food safety/storage legislation the Customer may face criminal and civil prosecution for injuries, poisoning or other incidents attributable to all such events and the Customer shall indemnify and keep the Seller indemnified from all and any claims from any parties whatsoever for all damages and/or all fines and/or all compensatory claims of whatever nature.

5.5 The Customer shall not seek any compensation or make any claims on the Seller for any losses or alleged losses that may occur from the Seller exercising its rights herein and shall indemnify and keep the Seller indemnified from all and any claim for damages and/or losses (consequential or otherwise) made by any other parties.

6. Force Majeure

The Seller shall not be liable for any default or delay due to any act of God, war, power, equipment failure, terrorism, strike, lock-out, industrial action, fire, flood, storm, tempest or any other events beyond the Seller's control.

7. Risk and Insurance

7.1 All risks pass to the Customer upon delivery as defined in these Terms and it is the Customer's responsibility to arrange insurance.

7.2 If any Products or other property of the Seller are damaged, destroyed or stolen prior to payment being received by the Seller and ownership passing to the Customer, the Seller is entitled to payment in full.

7.3 If the Products or other property of the Seller are damaged, destroyed or stolen prior to payment being received by the Seller, the Seller is entitled to the insurance proceeds for the Products. Presenting these Terms to the Customer's insurers is sufficient evidence of the Seller's rights to the insurance proceeds.

8. Seller's Liability

The maximum liability of the Seller for any and all claims made by the Customer or any other parties shall not exceed the purchase price received by the Seller for the Products. The Seller shall not be liable for any further payments either to the Customer or to any other parties for any alleged losses, damages, injury, illness, indirect and/or consequential loss and/or expense except where the Customer is defined as a consumer within the meaning of the Commonwealth Competition and Consumer Act 2010.

9. Payment and Default

9.1 If the Seller has granted a credit facility to the Customer (which the Seller is not obliged to provide) the Customer warrants that they shall strictly adhere to the Seller's payment terms as contained herein and as may be amended by the Seller from time to time.

9.2 In the event of default the Customer shall indemnify and reimburse the Seller for all costs and disbursements in collecting outstanding debts from the Customer which shall include dishonour fees, full legal costs on a solicitor-own-client basis, collection agency costs, investigators costs, court, judgement enforcement and bailiff fees, search agent costs, time, travel and all other collection costs.

9.3 If the Customer breaches any of its obligations the Seller may exercise all its rights plus suspend or terminate the supply of Products and the Seller will not be liable for any alleged loss or damage suffered by the Customer or any other parties as a result of the Seller exercising its rights.

9.4 The Seller reserves the right to charge interest at 10% a month from the day the account becomes overdue and compounded monthly until all outstanding moneys have been paid in full.

9.5 If an account is more than 60 days overdue the Seller reserves the right to charge administration costs of \$25 or 10% (whichever is the greater) up to a maximum of \$250.00 shall be charged to the Customer and payable immediately.

10. Security for Payment

10.1 If the Seller allows the Customer extra time to pay moneys or perform obligations for which no guarantees or other securities have been provided, the Seller may require security for payment including a guarantee by a director or other persons connected with the Customer.

10.2 Any requirement for security or guarantees is without prejudice to other rights or remedies the Seller may have and does not affect the reservation of title in Products/Services supplied to the Customer.

11. Personal Property Securities Act 2009 ("PPSA") and Personal Property Securities Register ("PPSR")

11.1 If the Customer has been granted a credit facility or otherwise owes the Seller moneys or other obligations for Products or services provided by the Seller then the Customer consents to the Seller registering a Security Interest on the PPSR in a manner the Seller deems appropriate for Products sold to or otherwise provided to the Customer in accordance with these

- 11.2 The Customer acknowledges and agrees that these Terms create a Security Interest in the Secured Products, and to avoid doubt, the proceeds of sale of the Secured Products for the purposes of the PPSA.
- 11.3 The Customer acknowledges and agrees that if any part of the Secured Products becomes the inventory of the Customer, the Customer will not permit any other security interest (including, but not limited to, floating or other charges, liens or pledges) to be raised in respect of the Secured Products unless the Seller has perfected the Security Interest prior to the Customer's possession of the Secured Products.
- 11.4 The Seller may have a "Purchase Money Security Interest" ("PMSI") and/or other security interests on the PPSR and in the event that the Seller has not registered a perfected PMSI on the PPSR the Customer consents to the Seller registering a PMSI on the PPSR.
- 11.5 To avoid doubt, the following definitions of the PPSA apply to the Seller's Terms: Financing Statement, Financing Change Statement and Security Interest have the same meaning as defined by the PPSA and a Security Agreement is a security agreement created between the Customer and The Seller in the PPSA.
- 11.6 The Customer acknowledges and agrees that by placing orders for Products the Seller's Terms constitute a Security Agreement for the purposes of the PPSA in such Products and create a Security Interest in Products previously supplied which have not been fully paid for and for Products to be supplied in the future, and to avoid doubt, the sale proceeds of the Secured Products.
- 11.7 The Customer agrees to do everything the Seller requests including, but not limited to, signing and completing documents without delay to register and/or perfect any Security Interest and for the Seller to exercise its rights in connection with the Secured Products and proof that the Customer has complied with these Terms.
- 11.8 The Customer agrees to indemnify and reimburse the Seller on demand for any losses and costs incurred by the Seller in relation to the PPSA, including any registration, or any response to an amendment, demand or a request under section 275 of the PPSA.
- 11.9 The Customer agrees not to register or permit a third party to register a Financing Statement, a Financing Change Statement or any other document in respect of a Security Interest on Products supplied by the Seller that have not been fully paid for without the prior written consent of the Seller being obtained beforehand.
- 11.10 The Customer agrees to promptly tell the Seller of any material change in its methods and policies of selling and/or reselling Products supplied by the Seller which would change the nature of proceeds of such sales.
- 11.11 With regard to sections 95, 96, 115, 125 and any other parts of the PPSA and amendments thereto, the Seller and the Customer agree that, to the extent allowed by the PPSA, these do not apply to any Security Interests created by these Terms. Furthermore, the Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) together with verification statements unless all such notices are a requirement of the PPSA in which case all notices or documents must be given in accordance with the PPSA.
- 11.12 To the extent permitted by the PPSA the provisions of sections 127, 129(2) and (3), 132, 134(2), 135, 136(3), (4) and (5) and 137 will not apply to the enforcement of the Seller's Security Interests
- 11.13 With regard to sections 142 and 143 of the PPSA the Customer waives its rights as a grantor and/or a debtor under the PPSA.
- 11.14 The Customer shall unconditionally approve any actions taken by the Seller under clauses 11.1 to 11.13.

12. The Commonwealth Competition and Consumer Act 2010 ("CCCA")

These Terms are not intended to have the effect of contracting out of any provisions of the CCCA except where permitted by law. If the Customer buys Products as a consumer, these Terms shall be subject to protection of consumers' rights legislation and shall not affect the consumer's statutory rights.

13. Passing of Title/Reservation of Title

- 13.1 Notwithstanding the delivery of Products title remains with the Seller until all moneys have been paid in full and the Customer has fulfilled all its obligations to the Seller.
- 13.2 Until all events in 13.1 occur title in the Products and other property of the Seller that may be in Customer's possession remains with the Seller as unpaid vendor and the Customer may only hold the Products as bailee for the Seller's benefit. Whilst holding the Products of the Seller as bailee, the Customer shall ensure they remain identifiable as the Seller's Products/other property and safely store and insure them for loss or damage for the Seller's benefit.
- 13.3 The Customer holds and agrees to hold the proceeds of any sale of the Products on trust for the Seller in a separate account into which no other money shall be paid; however failure to deposit the proceeds of sale into a separate account or to keep the money separate will not affect the Customer's obligation to deal with the proceeds as trustee of the proceeds for the Seller.
- 13.4 For Products on which title has not passed to the Customer, the Seller can instruct the Customer to return them (or any part of them) to the Seller if the Customer's obligations under these Terms have not been fulfilled.
- 13.5 The Customer will not charge the Products or the Seller's in any way or grant or otherwise give any interest in the Products/other property until clean title passes to the Customer.
- 13.6 If the Seller becomes aware of a breach of these Terms or of an insolvency event (or likelihood of such an event) the Seller and/or any representative of the Seller may as the invitee of the Customer enter upon or into the premises where the Seller may believe the Products and are stored to inspect and/or remove them and the Seller shall not be liable for any alleged loss or damage as a consequence of such inspection and/or removal and without being exposed to any claim by the Customer or any other parties for trespass, detinue, conversion, or for any other reasons.
- 13.7 The Seller can issue proceedings to recover the price of the Products even if ownership has not passed to the Customer.

14. Intellectual Property and Brand Protection

Ownership of all intellectual property owned by and/or developed by the Seller including (but not limited to) the brands, trademarks, recipes, copyright, formulae and all other property and/or information remain with the Seller and the Customer will promptly advise the Seller of any breach or infringement of its rights by any party.

15. Set Off and Application

15.1 The Seller may set off any amount due to the Seller from the Customer against any amount due from the Seller to the Customer.

by the Customer as it sees fit and the Customer waives any rights of notification of any such allocation.

16. No Waiver

No waiver by the Seller of any rights or provisions of these Terms shall at any time be deemed or implied to limit or exclude any of the Seller's rights against the Customer under these Terms.

17. Privacy Act

Credit account Customers and/or the guarantor/s agree and consent to the Seller obtaining and exchanging credit information from the Customer's suppliers or other parties nominated by the Customer and for the Seller to obtain reports and other information from credit reporting agencies and other sources on credit information about the Customer in relation to credit provided by the Seller and the ability of the Customer to pay its bills as and when they fall due.

18. Termination/Cancellation

The Seller can cancel orders from credit account Customers without notice if the Customer breaches any conditions of these Terms or becomes or is in jeopardy of becoming insolvent (or dies if the Customer is a natural person) and all outstanding moneys owing to the Seller shall be payable immediately together with moneys owing to third parties for contracts entered into for the Customer's benefit.

19. Credit Account Customer Restructure

19.1 Credit account Customers shall notify the Seller in writing of any change in their structure, including any change in ownership or sale of any material part of their business within 7 days of any such change. The Customer will be liable to the Seller for any purchases from the Seller until such notice is given.

19.2 The Seller reserves the right to review or withdraw any credit facilities granted to the Customer and to review or cancel any orders upon any change in the Customer's structure, change in ownership or sale of any material part of its business.

20. Notices

Notices from the Seller to the Customer are served when delivered by hand, sent by mail, document exchange, facsimile or email and shall be treated as given when: if delivered by hand when delivered; if sent by mail or document exchange, 48 hours after posting; if sent by fax, and/or email when the fax machine confirms transmission or when the email system confirms transmission. A notice given after 5pm and/or on a day which is not a Business Day is treated as given on the next following Business Day.

21. Disputes

If a dispute arises between the Seller and the Customer and a solution thereto is contained in these Terms then such solution shall be a binding full and final settlement of the dispute. If no solution to the dispute exists in these Terms and the dispute cannot otherwise be resolved within 30 days from the date of the dispute then either party can refer the matter to an independent party or mediator. If neither party can agree on the proposed party or mediator the dispute shall be referred to a party/mediator in accordance with the 'Governing Law and Changes to Terms of Trade' clause in these Terms. The Customer shall be liable for the full resolution costs and if this contravenes the Governing Law the parties will equally contribute to the resolution costs.

22. Validity

Should any clause, clauses or parts thereof of these Terms be invalid for any reason then such clause or clauses or parts thereof shall be deleted without affecting the validity of the remaining portions of these Terms.

23. Governing Law and Changes to Terms of Trade

23.1 The laws of Australia apply to these Terms and to all contracts or other agreements between the Seller and the Customer and are subject to the jurisdiction of the courts and tribunals of Western Australia.

23.2 These Terms can only be amended with the written consent of the Seller.

23.3 The Seller reserves the right to alter these Terms and such changes will be effective from the date these changes are notified to the Customer. The Customer will be deemed to have accepted these Terms and any changes thereto upon placing further orders with the Seller.

23.4 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.

24. Director/Shareholder Guarantee

It is agreed that a director/shareholder of the customer (owning at least 15% of the shares) of the customer and all co-directors/shareholders shall be jointly and severally liable for the performance of the customer's obligations under this contract. By allowing the Credit Application Form that is associated with this document to be signed the said director/shareholder understands his/her obligations and has taken whatever advice he/she thinks appropriate in providing the Guarantee.