



Full Terms and Conditions with Suppliers

Effective 28 May 2012

Please go to www.mgmarketing.co.nz
for branch and contact details



INTRODUCTION

Market Gardeners Limited ("MG") as part of its business:

- (a) receives produce from Suppliers to be sold on consignment, in an agency capacity, to Buyers;
- (b) purchases produce directly from Suppliers;
- (c) collects or arranges for the collection of produce from Suppliers.
- (d) procures the delivery of produce directly from the Supplier to the Buyer.

These terms and conditions apply to all supplies of produce to MG in New Zealand.

Any person may make an application for the supply of produce in the form or forms prescribed by MG from time to time. MG may in its sole discretion accept or refuse any application for the supply of produce and refuse to accept produce from any Supplier.

Where a person supplies produce to MG but has not signed an application for the supply of produce, they shall be deemed to be a Supplier, and be bound by these terms and conditions by virtue of their providing produce to MG, and the supply of produce to MG shall be deemed to be acceptance of these terms and conditions.

1. MG AS AGENT FOR SUPPLIER

- 1.1. Unless the Supplier has notified MG in writing in relation to a particular supply of produce to MG for sale that the produce is being supplied so as to be offered to MG for purchase, and/or MG has exercised its right to elect to purchase the produce, the Supplier shall be deemed to have supplied the produce to MG for the purposes of MG acting as agent for the Supplier in selling the produce.
- 1.2. In that event the Supplier authorises MG to sell the produce as agent for the Supplier pursuant to MG's standard terms and conditions with Buyers or otherwise on such other terms and conditions as MG may consider desirable and in the best interests of the Supplier.

2. SUPPLY OF PRODUCE

- 2.1. The supply of produce to MG may be physically to MG Premises or direct to Buyers. The Supplier shall at the Supplier's cost, unless agreed otherwise by MG, be responsible for delivery of the produce to the MG Premises or other location as directed by MG.
- 2.2. Where MG arranges for the delivery of the produce to MG Premises or some other location the provisions in clause 12 shall apply.
- 2.3. The Supplier agrees it is supplying the produce:
 - (a) for sale at the relevant MG Premises;
 - (b) for sale in the quantities in the crates, cages, pallets, cartons or bins in which the produce is supplied, and MG may, but shall be under no obligation to, repackage the produce; and
 - (c) MG may, in its sole discretion, repackage and/or freight the produce from the MG Premises the produce was initially delivered to, to alternative MG Premises and all such repacking and freight costs are Direct Selling Costs.

3. SALE PRICE OF PRODUCE

- 3.1. Where produce is supplied to MG for on consignment sales (being sales where title passes directly from the Supplier to the Buyer), MG shall use its reasonable endeavours to sell the produce and to obtain the best price in the circumstances reasonably achievable by MG. MG may, but shall be under no obligation, to transfer the produce between locations, for the purposes of seeking to obtain a higher price.
- 3.2. The Supplier shall not set any reserve price or other terms as a condition of MG's sale of produce on consignment; issue any invoice (including Buyer Created Tax Invoice) to the Buyer for any produce supplied to MG on consignment; or otherwise correspond or liaise with the Buyer without MG's consent. Where MG sells produce on consignment, it acts only as an agent for the Supplier. In the event MG advises the Supplier of a price expected to be achieved for produce, such price is indicative



only, and it is not intended that the Supplier will rely upon the same. MG accepts no liability or responsibility if the produce fails to sell at that indicated price or at all.

- 3.3. The price achieved by MG for any on consignment sales and reported to the Supplier may be the net sales price: after deducting any costs or charges to third parties (including any Direct Selling Costs); and where MG arranges for the delivery at MG's cost, exclusive of any amount charged by MG to the Buyer for delivery.

4. DELIVERY DOCKET FOR PRODUCE

- 4.1. All produce supplied to MG shall be accompanied by an accurately completed delivery docket in a form acceptable to MG.
- 4.2. The Supplier warrants to MG that the information set out in the delivery docket shall be complete, accurate and not misleading or deceptive in any manner.

5. DEALING WITH PRODUCE

- 5.1. MG may, at its sole discretion and without the need to give reason:
- (a) inspect the Supplier's premises and operations, and undertake tests at the Supplier's premises and/or on the produce, at any time and from time to time to determine whether the Supplier and the Supplier's produce complies with the provisions of clauses 6.1 to 6.3. The Supplier grants MG an irrevocable licence to access the Supplier's premises at the times and in the manner determined by MG for the purpose of exercising its rights under this clause; and
 - (b) reject all or some of the produce by notification given to the Supplier at any time within 24 hours of delivery of the produce to the MG Premises or to any Buyer.
- 5.2. MG may in its sole discretion, and at the Supplier's cost, return to the Supplier, dispose of non saleable produce, repackage produce to distinguish between saleable and non saleable produce or differing qualities, or otherwise exercise such other similar discretion to deal with the produce, for the benefit of the Supplier and MG. MG will advise the Supplier of any material quantities of produce that MG considers non saleable.

6. WARRANTIES

- 6.1. The Supplier shall ensure, and warrants, that the produce supplied by the Supplier: is in all respects of good and merchantable quality; is fit for its purpose; is true to description including as to content, species, variety and weight; and complies with all laws (including the Weights and Measures Act 1987), regulations, other lawful requirements and the provisions of these terms and conditions.
- 6.2. In addition to clause 6.1 the Supplier shall ensure it is an Approved Supplier and shall ensure compliance with any quality standard requirement, and other requirements, adopted by MG at any time and notified to the Supplier in advance of any supply of produce. At the date these terms and conditions came into full force and effect, the quality standard requirement adopted by MG was New Zealand GAP and shall remain New Zealand GAP until MG notifies otherwise.
- 6.3. The Supplier further warrants it is the legal and beneficial owner of the produce. Responsibility and risk for the produce remains with the Supplier until sold, provided that MG accepts responsibility to the Supplier for any damage to produce at MG Premises caused directly by MG or its employees. MG shall take all reasonable steps to properly store and care for the produce at MG Premises.
- 6.4. The Supplier indemnifies MG, and shall keep MG indemnified, from all losses, costs or claims incurred or suffered by MG as a result of the Supplier's failure to comply with, or as a result of a breach of, the provisions of clauses 6.1 to 6.3.

7. COMMISSION

- 7.1. MG shall be entitled to a commission on all consignment sales of produce pursuant to MG's standard commission tariff schedule in force at the time of sale. Commission shall be calculated on the sale price of the produce exclusive of GST and any of the costs comprising the Direct Selling Costs or the other costs referred to in clause 7.3 that MG determines from time to time and specifies on the commission tariff schedule.



- 7.2. MG shall be entitled to vary its standard commission tariff schedule by notice in writing to Suppliers and/or through publication of its new tariff schedule on MG's website.
- 7.3. The commission shall be deducted from the sale price achieved for the produce. Further deductions shall also be made for Direct Selling Costs, any royalty or other intellectual property costs payable in respect of the produce and any testing, inspection and/or rejection costs incurred by MG exercising its rights under clause 5.1. The Supplier authorises MG to make such deductions together with any further deductions pursuant to these terms and conditions.

8. PAYMENT

- 8.1. Subject to clause 8.2 MG shall account to the Supplier for the proceeds of on consignment sales of produce (after making all permitted deductions including costs payable by the Supplier) after each Supplier 14 day payment cycle from the date of the sale of the completed line of produce supplied, irrespective of whether the Buyer has paid MG for the same. This is subject to MG's right to deduct: commission (in accordance with the then current commission tariff schedule); the Direct Selling Costs; any royalty or other intellectual property costs payable in respect of the produce; and any testing, inspection and/or rejection costs incurred by MG exercising its rights under clause 5.1. MG shall issue a Buyer Created Tax Invoice to the Supplier for all produce sold on consignment.
- 8.2. The method of payment for any payment by MG to the Supplier shall be determined by MG from time to time and such methods of payment may include, but shall not be limited to, payment by direct credit or cheque.
- 8.3. Where the Buyer has given notice of a claim in relation to a supply of produce, MG shall be entitled to withhold payment for the produce from the Supplier and shall expeditiously investigate the Buyer's claim. In the event MG determines that the Buyer's claim has no merit, it shall make payment to the Supplier in the next Supplier 14 day payment cycle. In the event MG determines that there is some merit to the Buyer's claim, MG shall notify the Supplier. The Supplier irrevocably appoints MG as its agent to settle such claim on such terms as MG considers to be in the best interests of the Supplier and MG having regard to all of the circumstances. Where MG settles a claim, or litigates a claim which reduces the amount payable to the Supplier, the commission payable to MG shall be calculated on the amount paid to the Supplier and not on the original sale price. The Supplier indemnifies MG from all reasonable costs incurred by MG in dealing with such dispute, except where the dispute or claim relates to a matter where MG has been at fault. Where MG settles a claim which reduces the amount payable to the Supplier and MG received notice of the claim after payment had been made to the Supplier, MG shall be entitled to deduct: the amount equal to the reduction in the amount payable to the Supplier in respect of the produce which was subject to the claim; and any other costs for which the Supplier is responsible under this clause, from any future payments payable to the Supplier.
- 8.4. MG, where it is reasonable to do so, may make payment prior to the complete sale of a line of produce if there is a material delay in completing the sale of a line of produce.

9. GST REGISTRATION

- 9.1. Where the Supplier provides the produce to MG to sell on consignment, the Supplier shall be registered for GST and shall notify MG of the Supplier's GST number. MG will prepare a tax invoice for the Supplier in relation to all on consignment sales.

10. HIRE EQUIPMENT, PACKAGING AND LABELLING

- 10.1. The Supplier authorises MG to do all things MG determines necessary and/or appropriate to: utilise and account for Hire Equipment; facilitate the operation of the Hire Equipment system including providing information to the Hire Equipment Company; and obtain packaging and labels for produce including in relation to the design, procurement and/or delivery of packaging and labels.



- 10.2. MG may charge a fee and/or receive income from: any Hire Equipment Company for supplying information, handling Hire Equipment and otherwise facilitating the operation of the Hire Equipment system; and any party that supplies packaging and labels for produce.
- 10.3. MG reserves the right to charge the Supplier a reasonable fee in relation to: handling of Hire Equipment; facilitating the operation of the Hire Equipment system; and obtaining and/or procuring the delivery of packaging and labels. Any such charges may be detailed in the tariff schedule.
- 10.4. Where Equipment is owned by a Supplier, MG shall upon request notify the Supplier where MG has been advised the Equipment has been taken to. MG shall have no responsibility to arrange for the return of the Equipment to the Supplier.
- 10.5. MG shall have no responsibility for the Equipment other than damage to Equipment caused directly by MG and its employees.
- 11.4. The purchase price for the produce shall be a fair price for the produce based on trading conditions at that time in the locality of the relevant MG Premises to which the produce has been supplied. MG shall make payment to the Supplier for produce in accordance with the provisions of clause 8, unless agreed otherwise between the Supplier and MG.
- 11.5. Title and risk in the produce shall pass to MG on the earlier of: delivery of the produce to the MG Premises designated by MG where the Supplier supplies the produce to MG for purchase by MG and not for sale on consignment; or the time that MG purchases the produce from the Supplier.
- 11.6. In all other respects these terms and conditions shall apply to all purchases of produce by MG, with any necessary modification to clauses 1 through 10 to take account of the fact that the sale is to MG and not supplied for an on consignment sale. For the avoidance of doubt where MG purchases produce, the sale will be treated as on consignment sale in that MG will pay the fair market price for the produce applying at the relevant MG Premises at the time, and MG will deduct its standard commission and the other deductions provided for in clauses 7.1 to 7.3 as if the buyer of the produce were a third party from the amount payable to the Supplier.

11. PURCHASE OF PRODUCE BY MG

- 11.1. This clause 11 applies:
 - (a) where the Supplier supplies produce to MG for purchase by MG and not for sale on consignment;
 - (b) where MG purchases the produce supplied to MG, rather than sell on consignment, pursuant to clause 11.2.
- 11.2. The Supplier authorises MG to purchase, as principal and without notice to the Supplier, any produce supplied to MG for on consignment sales as if the Supplier had supplied the produce to MG for purchase by MG and not for on consignment sale. Upon MG purchasing the produce supplied to MG, rather than sell the produce on consignment, MG may dispose of the produce in such manner as it considers fit in its sole discretion.
- 11.3. Where the Supplier supplies produce to MG for purchase by MG, and not for sale on consignment, MG shall be entitled to charge a retail levy. The retail levy may be detailed in the tariff schedule.

12. DELIVERY

- 12.1. For the purposes of this clause 12 "Act" shall mean the Carriage of Goods Act 1979.
- 12.2. If MG is arranging the delivery of the produce it shall charge the Supplier for this service and the cost of the freight. Unless otherwise agreed the Supplier shall pay MG in relation to the delivery of the produce, at the option of MG either:



- or
- (a) within 14 days of the transportation occurring;
 - (b) by deduction from monies to be paid by MG to the Supplier in relation to the sale of the produce, whether to MG by purchase itself or on consignment.
- 12.3. MG shall arrange for the transport of the produce at "limited carrier's risk" as defined in the Act unless the Supplier or its agent signs a document relating to the transportation of the produce containing a statement on the following terms:
"The produce shall be carried at "owner's risk"."
- 12.4. Where produce is carried at "owner's risk" this means that MG will pay no compensation if the produce is lost or damaged unless it is intentionally lost or damaged by MG.
- 12.5. Where produce is transported at "limited carrier's risk":
- (a) MG shall, to the extent permitted by law, not be liable to the Supplier for any damage to, loss of, deterioration, mis-delivery, delay in delivery or non-delivery of the produce whether caused by MG's negligence or otherwise; and
 - (b) only to the extent MG is liable under the Act notwithstanding clause 12.5(a) above, MG shall only be liable to the Supplier up to a maximum amount of \$1,500 or such other amount as may be specified from time to time by Section 15(1) of the Act for each unit of produce (as defined in the Act) lost or damaged by MG, but MG shall not be otherwise liable for any damage to, loss of, deterioration, mis-delivery, delay in delivery or non-delivery of the produce whether caused by MG's negligence or otherwise. Suppliers for their own protection should ensure the freight docket(s) are accurately completed in respect of the number of units supplied.
- 12.6. MG shall not be liable for any consequential or indirect loss suffered by the Supplier relating to the transportation of the produce and shall have no liability for such loss to the Supplier if delivery of the produce is delayed or not made at the agreed time.
- 12.7. The Supplier and MG expressly agree that Sections 18, 19 and 20 of the Act do not apply. Simply by virtue of the collection of the produce for

transportation, MG shall not be deemed to have waived its rights to reject the produce upon delivery of the produce to MG, pursuant to these terms and conditions.

13. LATE PAYMENT

If the Supplier fails to pay any amount payable by the Supplier to MG, including pursuant to clause 12.2, on the due date for payment MG shall be entitled to charge interest on the overdue amount at the Interest Rate compounding daily from the date that the payment was due until the actual date of payment.

14. DISPUTE RESOLUTION

- 14.1. If any dispute arises out of or relating to the terms and conditions (not being a dispute between a Buyer which is not MG and a Supplier), the parties involved in the dispute shall endeavour to resolve the dispute by the use of mediation, without prejudice to any other rights at all.
- 14.2. If the dispute is not resolved within 15 business days (or within such further period agreed) of one party giving notice to the others that they wish to mediate, either party may refer the dispute to arbitration pursuant to the Arbitration Act 1996 and the provisions set out in clause 14.3.
- 14.3. For the purposes of providing a timely and cost efficient resolution of any dispute, and to enable the parties to continue with their ongoing business (if that is appropriate), in respect of any arbitration arising under these terms and conditions, the parties agree that unless all parties to a dispute otherwise agree in writing, the arbitration shall be conducted in the following manner:
- (a) the parties to the dispute shall endeavour to agree on the appointment of an arbitrator within 10 business days of a dispute being referred to arbitration by one party. If the parties are unable to agree on an arbitrator within the 10 business days, either or both parties shall, within 2 business days apply to the President for the time being of the New Zealand Law Society to appoint an arbitrator;



- (b) from the date that the arbitrator is appointed, each of the parties to the dispute shall within 10 business days serve written submissions with accompanying documentary evidence on the other parties to the dispute. In addition, at that time, these submissions shall also be forwarded to the arbitrator;
- (c) each of the parties to the dispute shall then have 5 business days, from the date of service of the last submission, to respond to the submissions of the other parties to the dispute, and serve further written submissions on each of the parties and the arbitrator (“the counter submissions”);
- (d) based on the initial written submissions and accompanying documentation, and the counter submissions of the parties, the arbitrator shall then determine the dispute within 10 business days of receiving the last counter submission or within 15 business days of the last submission if no counter submissions are received. There shall be no formal hearing or any variation to this dispute process unless agreed to by all parties; and
- (e) the arbitration shall otherwise be subject to the provisions set out in the First and Second Schedules of the Arbitration Act 1996 except to the extent that it may be required to be modified to give effect to the provisions of this clause.

15. GENERAL

- 15.1. **Commencement and alteration of terms and conditions:** These terms and conditions come into full force and effect on the date stated on the front page and will replace all existing terms and conditions. MG may alter any of these terms and conditions by giving notice of such alteration to the Supplier either directly and/or by publication on MG’s website. Alteration to or the adoption of quality standards may be notified to Suppliers in the same manner.
- 15.2. **Acceptance of terms and conditions.** The Supplier acknowledges and agrees that: any supply of produce by the Supplier to MG; any sale of produce by MG on consignment on the Supplier’s behalf; and/or the completion of any supplier

application form by the Supplier; will be deemed acceptance of these terms and conditions by the Supplier and these terms and conditions shall prevail over any terms and conditions of the Supplier. If the Supplier obtains goods or services from a subsidiary of, or entity related to or associated with, MG then the supply or provision of those goods or services will be subject to the terms and conditions of the party supplying or providing the goods and services and not these terms and conditions.

- 15.3. **MG Premises rules:** Where the Supplier is at any MG Premises, the Supplier shall:
 - (a) work safely and report any hazards, accidents or injuries to the appropriate MG representative at the MG Premises;
 - (b) comply with MG’s health and safety policies displayed at the relevant MG Premises from time to time and shall ensure that all information on health and safety provided to the Supplier is conveyed to the Supplier’s employees and agents attending the MG Premises; and
 - (c) comply with all reasonable rules relating to conduct at the MG Premises, as displayed at the relevant MG Premises.

Such notifications may be made by MG either directly to the Supplier and/or by the rules being displayed in writing at a prominent place or places at the relevant MG Premises.

- 15.4. **Use of MG equipment:** The Supplier shall only utilize any equipment (“the Equipment”) owned or in the possession of MG with the consent of MG and in accordance with MG’s health and safety policies notified to the Supplier, and any directions or instruction given by MG, from time to time. The Supplier shall ensure that the person operating the Equipment is qualified to do so. The Supplier utilises the Equipment entirely at its risk and indemnifies MG, and shall keep MG indemnified, from all direct or indirect losses, costs or damages incurred or suffered by MG in connection with, or arising from or in relation to, the use of the Equipment by the Supplier however arising.



- 15.5. **Supply of produce to other than MG Premises:** Where the Supplier is supplying the produce to a Buyer or other location, the Supplier shall ensure it complies with all health and safety policies, all rules issued from time to time by the Buyer or the owner or occupier of the relevant premises as applicable and shall indemnify MG, and keep MG indemnified, from all direct losses, costs or damages incurred or suffered by MG in connection with, or arising from or in relation to, the Supplier's actions while at the Buyer's premises or other location.
- 15.6. **No consequential loss:** Notwithstanding any other provisions in these terms and conditions, in no circumstances will MG have any liability to any Supplier for any consequential loss (including loss of profits) arising from any breach by MG of any provision of these terms and conditions.
- 15.7. **MG's liability:** Without limiting any other provision of these terms and conditions MG's liability to a Supplier or any other person in respect of any event or series of related events arising out of, or in connection with, these terms and conditions, whether in tort (including negligence), contract, equity, or on any other basis, shall be limited, to the extent permitted by law, to an amount equal to the value of the produce supplied to which the event or series of related events relates.
- 15.8. **Indemnity:** The Supplier indemnifies MG, and shall keep MG indemnified, against all direct, indirect and consequential costs, losses, claims, proceedings, expenses and liabilities (including on a solicitor and client basis) arising out of, in connection with, or resulting from, a breach by the Supplier of its obligations and/or warranties under these terms and conditions.
- 15.9. **Produce:** These terms and conditions are intended to cover the supply of all vegetable and fruit produce and other produce or products supplied to MG for resale either on an on-consignment basis or in MG's own name and the term produce used in these terms and conditions will apply to all produce or products so supplied.
- 15.10. **Privacy Issues:** MG may obtain information about the Supplier from the Supplier or any other person (including any credit or debt collection agencies) in the course of MG's business, including credit assessment, debt collecting and direct marketing activities, and the Supplier consents to any person providing MG with such information.
- 15.11. The Supplier agrees that MG may use any information it has about the Supplier relating to the Supplier and give that information to any other person (including any credit or debt collection agency and other members of the MG group of companies or any company related to, or associated with, MG), for credit assessment and debt collection purposes. The Supplier agrees that any other information collected by MG about the Supplier is accessed or collected for the use of any member of the MG group of companies, any company associated with MG, or any marketing or promotions agency engaged by MG, including for direct marketing activities.
- 15.12. The Supplier must notify MG of any change in circumstances that may affect the accuracy of the information provided by the Supplier to MG, any member of the MG group of companies, or any company related to, or associated with, MG. If the Supplier is an individual (i.e. a natural person) the Supplier has rights under the Privacy Act 1993 to access and request the correction of any personal information which MG or any company related to MG holds about the Supplier.
- 15.13. The Supplier consents to the disclosure by MG of information about the Supplier to any Buyer as is necessary for, or ancillary to, MG's provision of services to the Supplier, the supply of produce to a Buyer and/or MG's business.
- 15.14. **Intellectual Property:** The Supplier:
- warrants that the Supplier has not breached any intellectual property rights of any third party in relation to any produce supplied by the Supplier to MG and/or any Buyer pursuant to these terms and conditions;
 - grants MG the right to use any trade mark, brand, logo or other intellectual property right which the Supplier uses in relation to the produce supplied by the Supplier to MG; and
 - acknowledges and agrees that the use of any trade mark, brand, logo or other intellectual



property right which MG or any subsidiary of or entity related to or associated with MG owns or has the right to use ("MG Intellectual Property") by the Supplier and/or in relation to the produce supplied by the Supplier does not give the Supplier any ownership right in the MG Intellectual Property or the right to use the MG Intellectual Property for any purpose other than the purpose that the right to use the MG Intellectual Property was granted.

15.15. **Third parties:** The parties do not intend to create rights and/or grant remedies to any third parties or beneficiary of these terms and conditions and all covenants, stipulations, promises and agreements herein contained shall be for the sole and exclusive benefit of MG, the Suppliers and their successors and permitted assigns.

15.16. **Force majeure:** Notwithstanding any other provision of these terms and conditions, non-performance by either party of any of its obligations (other than to pay money) under these terms and conditions shall be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.

15.17. The party claiming the benefit of clause 15.16 shall promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under these terms and conditions and the likely duration of such non-performance. In the meantime such party shall take all reasonable steps to remedy or abate the Force Majeure.

15.18. No party shall, by virtue of this clause, be required against its will to settle any strike, lockout or other industrial disturbances.

15.19. Performance of any obligation affected by Force Majeure shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure.

15.20. **Personal Property Securities Register:** The Supplier undertakes to:

- (a) sign any further documents and/or provide any further information (which information the Supplier warrants to be complete, accurate and up-to-date in all respects) which MG may reasonably require to enable registration of a

financing statement or financing change statement on the Personal Property Securities Register;

- (b) not register a financing change statement or a change demand in respect of the produce without MG's prior written consent; and
- (c) give MG not less than 14 days prior written notice of any proposed change in the Supplier's name and/or any other change in the Supplier's details (including, but not limited to, changes in the Supplier's address, facsimile number, trading name or business practice).

15.21. **Waiver and contracting out of PPSA**

- (a) Unless otherwise agreed to in writing by MG, the Supplier waives its right to receive a verification statement in respect of any financing statement or financing change statement relating to the security interest created by these terms and conditions.
- (b) The Supplier agrees that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions and, with MG's agreement, contracts out of such sections.
- (c) To the maximum extent permitted by law, the Supplier waives its rights and, with MG's agreement, contracts out of the Supplier's rights under the PPSA to:
 - (i) receive notice of MG's proposal to retain any produce under section 120(2);
 - (ii) object to MG's proposal to retain any produce under section 121; and
 - (iii) redeem any produce under section 132.
- (d) The Supplier and MG agree that section 109(1) of the PPSA is contracted out of in respect of particular Produce if, and only for so long as, MG is not the secured party with priority over all other secured parties in respect of that produce.

15.22. **Set off:** MG shall, prior to paying any monies to the Supplier under these terms and conditions, be entitled to first apply any such monies in reduction of any amounts owing by the Supplier, or any



person related to the Supplier's related companies, to MG, or any of MG's related companies, however arising prior to accounting to the Supplier for any balance. The Supplier grants MG a security interest in and over any MG shares held by the Supplier and/or issued in relation to the transactions under these terms and conditions as security for any monies owing by the Supplier or any person related to the Supplier to MG from time to time. Clauses 15.20 and 15.21 shall apply to any security interest granted to MG under this clause.

15.23. **No waiver:** A failure, delay or indulgence by MG in exercising any power or right under these terms and conditions will not operate as a waiver of that power or right. A single exercise or partial exercise of any power or right under these terms and conditions will not preclude further exercises of that power or right or the exercise of any other power or right.

15.24. **Entire agreement:** These terms and conditions supersede and extinguish all earlier negotiations,

understandings and agreements, unless MG and Supplier have agreed otherwise expressly and in writing.

15.25. **Saving clause:** If any provision of these terms and conditions is or becomes or is declared invalid, unenforceable or illegal such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of these terms and conditions which shall remain in full force and effect notwithstanding such invalidity, unenforceability or legality.

15.26. **No assignment by Supplier:** The Supplier shall not be entitled to assign to any other party any rights a Supplier may have under these terms and conditions.

15.27. **Governing law:** These terms and conditions are governed by New Zealand law and the Courts of New Zealand shall have non-exclusive jurisdiction in any proceedings arising from or in relation to the supply of produce or these terms and conditions.





16. DEFINITIONS AND INTERPRETATION

16.1. In these terms and conditions unless the context requires otherwise:

Approved Supplier means a supplier that is accredited as an approved supplier under New Zealand GAP;

Buyer means any person who purchases produce from MG or from MG as agent for the Supplier;

Direct Selling Costs means all gross costs incurred by MG (whether incurred as an internal cost or incurred to third parties) in achieving the sale of the produce including levies, taxes, hire equipment charges, freight charges and costs, rebates, on time payment discounts, labeling, packaging, repacking and/or handling costs and charges and distribution centre charges;

Equipment means crates, bins, cages, pallets or other equipment associated with the storage or transport of produce;

Force Majeure means any event or circumstance beyond the control of the party claiming the benefit of the force majeure clause in these terms and conditions, which that party is unable to prevent or overcome by the exercise of reasonable care and at a reasonable cost;

Hire Equipment means any Equipment hired from a Hire Equipment Company;

Hire Equipment Company means an entity hiring Hire Equipment to a Supplier and/or Buyer;

Interest Rate means 15% per annum or such other interest rate notified by MG from time to time;

MG Premises means any MG coolstore, warehouses, distribution centre, market or other premises;

New Zealand GAP means the quality assurance programme owned by Horticulture New Zealand and audited by Assure Quality or any other accreditation system notified by MG from time to time as the quality standard requirement adopted by MG;

PPSA means the Personal Property Securities Act 1999; and

Supplier means the person who supplies produce to MG for MG to sell as agent or for MG to purchase.

16.2. In the interpretation of these terms and conditions:

- (a) words importing the singular or plural number shall be deemed to include the singular or plural number respectively;
- (b) words importing the gender shall include every gender and the word "person" shall incorporate incorporation and vice versa;
- (c) referring to anything after the word "including" does not limit what else might be included;
- (d) the headings appearing in these terms and conditions are inserted only as a matter of convenience and in no way define, limit or describe the scope or intent of the clauses of these terms and conditions or in any way effect these terms and conditions;
- (e) all amounts referred to by MG shall be exclusive of GST unless stated otherwise; and
- (f) a reference to an enactment or to any regulations is a reference to that enactment or those regulations as amended, or to any enactment or regulations substituted for that enactment or regulations.