



OFFICE USE ONLY	
Account Open	
Sales Rep	
Trading As	
Customer No.	

### APPLICATION FOR COMMERCIAL CREDIT

Trading Terms:  COD  7 DAYS  Payment by Credit Card Authority or EFT

To: **CITY FINE FOOD SERVICES PTY LTD ABN 97 164 356 923 (Supplier)**

The Customer named below agrees, declares and acknowledges:

- (a) if this Application for Commercial Credit (**Application**) is accepted by the Supplier, the provisions of the Credit Agreement and the Terms and Conditions (as may be amended by the Supplier from time to time) (**T&Cs**), all of which are attached to and form part of this Application, will be binding on the Customer;
- (b) the Customer has reviewed the Credit Agreement and the T&Cs; and
- (c) the provision of credit pursuant to this Application may, at the Supplier's discretion, be subject to and conditional on one or more persons executing the Deed of Guarantee, Indemnity and Charge which is also attached to this Application.

#### Details of Customer

Legal Structure (tick box)	Pty Ltd Company <input type="checkbox"/>	Sole Trader <input type="checkbox"/>	Partnership <input type="checkbox"/>	Public Company <input type="checkbox"/>	Trust <input type="checkbox"/>
Date				ABN	
Legal Name				ACN	
Trading Name					
Type of Business				Date Business Commenced	

Business Address					
Postal Address					
Business Telephone	( )		Mobile		
After Hours Telephone	( )		Facsimile	( )	
Email					
Estimated Monthly Purchases	\$		Credit Limit Requested (Subject to Approval)	\$	
Purchase Orders	Yes <input type="checkbox"/>		No <input type="checkbox"/>		

If you ticked the box for "Trust" above, please provide the following details:

Name of Trust		ABN	
Name of Trustee		ACN	

#### Details of Directors, Partners or Proprietors

[Tick appropriate box]

**Directors**  **Partners**  **Proprietors**

Full Name		Date of Birth		Driver Licence No.	
Residential Address incl Postcode					
Home Ph				Mobile	
Full Name		Date of Birth		Driver Licence No.	
Residential Address incl Postcode					
Home Ph				Mobile	
Full Name		Date of Birth		Driver Licence No.	
Residential Address incl Postcode					
Home Ph				Mobile	

**Financial Details**

Bank		Branch	
BSB No		Account No	

Does the Customer own business premises?	(tick box)	Owned <input type="checkbox"/>	Leased <input type="checkbox"/>
If owned, are the premises subject to any mortgage or charge?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details			

Is there any other charge or mortgage on the business assets?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details			

Does any financial institution, company or person hold any security (including a personal guarantee) in relation to the Customer?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details			

Has the Customer or anyone acting as a guarantor for the Customer:			
- been bankrupt or used Part IX or Part X of the Bankruptcy Act?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
- owned, controlled or operated a business that has been wound up, had receivers appointed, had a voluntary administrator appointed, or entered into a scheme for the benefit of creditors?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details			
- had legal proceedings commenced against them for the recovery of a debt?	(tick box)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If yes, provide details			

**Trade References (Major Suppliers)**

Supplier Name		Contact Name	
Years of Trading		Type of Goods Purchased	
Telephone No.		Email	

Supplier Name		Contact Name	
Years of Trading		Type of Goods Purchased	
Telephone No.		Email	

Supplier Name		Contact Name	
Years of Trading		Type of Goods Purchased	
Telephone No.		Email	

**Declaration****Must be signed by Directors, Partners, Proprietors or Trustees whose details are on the first page**

I/We, the undersigned, declare that:

- 1) I am/we are authorised to sign this Application on behalf of the Customer;
- 2) All of the information supplied in this Application is true and correct;
- 3) I/We acknowledge that, if credit is given by the Supplier, it will be given by the Supplier in reliance upon the information supplied by me/us herein; and
- 4) I/We agree that any supply of goods or services by the Supplier to the Customer is upon the terms set out in the Credit Agreement and the T&Cs which accompany this Application.

Print Name		Position	
Signature		Date	
Print Name		Position	
Signature		Date	
Print Name		Position	
Signature		Date	

## CREDIT AGREEMENT

### 1. Terms

The Customer agrees the Customer will be bound by the provisions of this Credit Agreement and the T&Cs and acknowledges the Customer has received and reviewed a copy of this Credit Agreement and the T&Cs.

### 2. Grant of Credit

2.1 The Supplier may grant, vary or withdraw credit at any time, without prior notice, for any reason, in the Supplier's absolute discretion.

2.2 The Supplier may require the Customer to provide security in a form acceptable to the Supplier as a condition for a grant of credit, a further grant of credit or continuance of a grant of credit.

### 3. Price and Description

3.1 The price and description of the Goods or Services supplied by the Supplier is described in the Supplier's price list. All prices are expressed in Australian Dollars. The Supplier may change the prices in the price list at any time without any prior notice to the Customer. Any description of Goods is given by way of identification only and the description used does not constitute a sale by description.

### 4. Payment Terms

(a) Unless the Customer is on COD terms, the Customer must make full payment of the Supplier's invoices within 7 days from the date that the Goods and/or Services are supplied to the Customer (or such alternative period agreed by the Supplier in writing).

(b) If the Customer is on COD terms, the Customer must pay for any Goods and/or Services by cash, credit card or cleared funds either when an order is made or prior to or upon collection or delivery of the Goods and/or Services.

(c) The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.

(d) Where the Customer is paying by credit card or has completed a Credit Card Authorisation, the Customer authorises and directs the Supplier to charge the relevant credit card for all amounts owing for the supply of the Goods and/or Services to the Customer, including any fees, charges, GST and a credit card fee of 1.5%. For the purposes of charging the nominated credit card for the amounts owing to the Supplier, the Customer consents to and authorises the Supplier to use a third-party payment processing platform.

### 5. Action

If the Customer does not strictly comply with the terms of this Credit Agreement or the T&Cs, the Supplier may take immediate action to cease further supply to the Customer and recover any money owed by the Customer to the Supplier.

### 6. Expenses

6.1 The Customer must pay any credit card surcharge incurred by the Supplier from time to time, if the Customer makes any payment to the Supplier using a credit card.

6.2 The Customer must pay the Supplier, on a full indemnity basis as a liquidated debt:

(a) the full amount of any bank fees or other expenses associated with any dishonoured payments or cheques; and

(b) any legal, debt recovery or other expenses incurred by the Supplier associated with any action by the Supplier to exercise any right or remedy under this Credit Agreement or the T&Cs.

### 7. Interest

The Supplier may charge monthly compound interest on any overdue amounts owed by the Customer at a rate of 5% per annum above the Reserve Bank of Australia's cash target rate.

### 8. Retention of Title

8.1 Notwithstanding delivery of the Goods to the Customer, until the Customer has paid for the Goods supplied by the Supplier in full:

(a) legal title to the Goods will remain with the Supplier;

(b) the risk in the Goods will pass to the Customer on delivery to the Customer or its agent;

(c) the relationship between the Supplier and the Customer will be fiduciary;

(d) the Customer:

(i) holds the Goods as bailee for the Supplier;

(ii) must keep these Goods separate from other goods; and

(iii) must label the Goods so that they are identifiable as the goods of the Supplier;

(iv) must return any Goods to the Supplier immediately on request;

(v) must not grant any charge over, or interest in, the Goods to any third party

(e) with the Supplier's consent (which is given), the Customer is at liberty to sell the Goods, in the ordinary course of the Customer's business, provided that the money resulting from the sale will:

(i) be held in a separate account in trust for the Supplier;

(ii) not be mingled with other money; and

(iii) not be placed into an overdrawn account; and

(f) in the event that the Customer uses the Goods in some manufacturing or production process of its own or of some third party then the Customer will hold such part of the proceeds of such manufacturing or production process as relates to the Goods in trust for the Supplier. Such part will be deemed to equal in dollar terms the amount owing by the Customer to the Supplier at the time of receipt of such proceeds.

8.2 The Customer is not an agent of the Supplier in any sale of the Goods by the Customer.

8.3 After the happening of an Event of Default, the Supplier may, without demand, retake possession of the Goods and may without notice sell the Goods on such terms and in such manner as the Supplier determines and will be entitled to deduct all expenses incurred including legal, debt recovery or other expenses on a full indemnity basis. For the purposes of recovering possession and without limiting the generality of the foregoing, the Customer irrevocably authorises and licenses the Supplier and its servants and agents to enter any premises where any Goods may be stored and to take possession of the Goods.

### 9. Security Interest

9.1 To secure the punctual payment of all amounts owed by the Customer to the Supplier, the Customer grants to the Supplier:

(a) a purchase money security interest (PMSI) over all Goods supplied by the Supplier to the Customer;

(b) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act);

(c) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA; and

(d) a charge over the whole of the Customer's present and future property and assets, including, without limitation, all of the Customer's legal and beneficial interests in freehold and leasehold land.

9.2 The Customer agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under this Credit Agreement, at law or otherwise) lodge caveats over the Customer's real property and take any other action to secure and enforce the Supplier's security under clause 9.1.

9.3 The Supplier's security under clause 9.1 may become enforceable without the need for any demand or notice to the Customer.

9.4 If the Supplier's security under clause 9.1 has become enforceable, the Supplier may appoint a Receiver of secured property or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.

9.5 The Customer agrees on demand, and irrevocably appoints the Supplier, each director and secretary of the Supplier and any Receiver (as independent and several appointments) as the Customer's agent and attorney, to execute any document (including, without limitation, any mortgage or transfer) or undertake any act, at the Customer's cost, that the Supplier considers necessary or desirable to:

(a) better secure the security under clause 9.1 in a manner consistent with any Document; or

(b) assist in the completion, execution of, or exercise of any power under, any Document.

## 10. Personal Property Securities

10.1 The Customer agrees that funds received by the Supplier will be applied, after satisfaction of any claim that the Supplier or Receiver is aware ranks in priority, in the following order:

- (a) first in payment of all expenses that the Supplier or Receiver incurs in the exercise of a power or otherwise in relation to any Document;
- (b) then in payment of any other outgoings that the Supplier or Receiver considers appropriate to pay;
- (c) then in payment to the Receiver of any remuneration;
- (d) then in payment to the Supplier or Receiver of any amount necessary to give effect to any indemnity under any Document; and
- (e) then in payment to the Supplier of all amounts owed by the Customer to the Supplier.

10.2 The Customer:

- (a) agrees with the Supplier that neither the Customer, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
- (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
- (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
- (d) acknowledges that the Supplier may, at the Customer's cost, register one or more financing statements in relation to any security under any Document;
- (e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
- (f) will not, without prior written notice to the Supplier, change the Customer's name or initiate any change to any documentation registered under the PPSA.

## 11. Release and Indemnity

11.1 Neither the Supplier nor any person appointed by the Supplier under any Document will be liable for any loss that the Customer suffers as a direct or indirect result of:

- (a) the exercise or attempted exercise of, or failure to exercise, any rights under any Document; or
- (b) any release or dealing with any security interest.

11.2 The Customer indemnifies the Supplier, each member of the Supplier's Personnel and each Receiver or any other person appointed by the Supplier in relation to any losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with:

- (a) the exercise or attempted exercise of any powers, rights, discretions or remedies vested in the person under any Document or the Corporations Act;
- (b) any proceedings, claims or demands in relation to any secured property; or
- (c) any negligence, breach of this Credit Agreement or Event of Default by the Customer or any member of the Customer's Personnel.

## 12. Customer's Obligations

12.1 If, at any time;

- (a) the Customer is unable to pay the invoices from the Supplier as and when they are due;
- (b) a payment, cheque or bill of exchange received from the Customer is dishonoured;
- (c) the Customer is or becomes insolvent or an Insolvency Event arises in respect of the Customer;
- (d) the Customer sells its business, ceases to trade or there is a change of its control or shareholding; or
- (e) the Customer's account is overdue and is not settled within the Supplier's trading terms, the Customer agrees that:
- (f) the Customer will immediately notify the Supplier that one or more of the above notifiable events has occurred and the

Customer will keep the Supplier notified on a weekly basis until such notifiable event no longer exists;

- (g) the Supplier has no obligation to continue supplying the Customer and will cease to deliver Goods purchased while a notifiable event exists;
- (h) the Supplier may suspend or close the Customer's account;
- (i) the Supplier may request payment in advance for all Goods the Customer may have ordered; and
- (j) the Supplier has no obligation to respond to any offer the Customer makes to purchase any Goods while a notifiable event exists.

## 13. Customer Claims

13.1 When Goods are delivered to the Customer, the Customer must inspect them immediately. The Customer must report to the Supplier any damaged or incorrect stock supplied within 2 days of delivery otherwise the Supplier may refuse any claim the Customer makes. If any Goods are damaged when delivered by the Supplier, the Supplier may accept their return and replace them with equivalent goods or credit the Customer with the price paid, at the Supplier's absolute discretion. The Supplier will not accept the return of goods unless they are in their original packaging and proof of purchase is supplied.

13.2 The Customer agrees that the Customer will not make any claim against the Supplier for any delay in delivery or any damaged Goods delivered to the Customer as a direct or indirect result of events beyond the control of the Supplier.

## 14. Default

14.1 If an Event of Default occurs, the Supplier may (without limiting the Supplier's other rights under this Credit Agreement, at law or otherwise) demand immediate payment of any money owed by the Customer, retain any money paid by the Customer, cease any further supply of Goods and/or Services to the Customer and take possession of any Goods and/or Services for which the Customer has not paid.

## 15. Application of Money

If the Supplier or Receiver receives money under or because of any Document, and applies the money in payment of monies owing to the Supplier, the Supplier or Receiver may apply different parts of the money received to different parts of the monies owing in the absolute discretion of the Supplier or Receiver regardless of any appropriation by the Customer.

## 16. Purpose

The Customer warrants that any credit provided to the Customer by the Supplier is to be applied wholly or predominately for commercial and/or investment purposes.

## 17. Advice

The Customer acknowledges the Customer has had an opportunity to obtain independent legal and financial advice in relation to this Credit Agreement and the T&Cs.

## 18. Joint and Several

If the Customer consists of more than one person, each person will be jointly and severally bound by the terms of this Credit Agreement.

## 19. Warranty

The Customer warrants that all the information set out in the Customer's Application for Commercial Credit is true and correct and the Customer has disclosed to the Supplier all information relevant to the Customer's application for credit.

## 20. Notice

The Customer must immediately provide written notice to the Supplier if there is any direct or indirect change in the ownership or control of the Customer or any change to the Customer's details set out in the Customer's Application for Commercial Credit.

## 21. Transactions

The Customer will be liable for all transactions by the Customer's employees, contractors or agents or any person who uses the account with the Customer's authorisation or as a result of the Customer's negligence.

## 22. GST

22.1 Save for defined terms in this Credit Agreement, capitalised expressions set out in this clause bear the same meaning as those expressions in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

- 22.2 Except where express provision is made to the contrary, and subject to this clause, any amount that may be payable by the Customer to the Supplier under this Credit Agreement is exclusive of any GST.
- 22.3 If a Taxable Supply is made, the Customer must also pay, at the same time and in the same manner as any other amount is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.
- 23. Privacy**
- 23.1 The Supplier may, before, during or after the provision of credit to the Customer, give the following information about the Customer, to a credit reporting agency:
- identity particulars - name, sex, address (and previous two addresses), date of birth, name of employer, and driver licence number;
  - the Customer's application for credit - the fact that the Customer has applied for credit and the amount;
  - the fact that the Supplier is a current credit provider to the Customer;
  - payments which are overdue by more than 60 days, and for which debt collection action has started;
  - advice that payments are no longer overdue in respect of any default;
  - information that, in the opinion of the Supplier, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with credit obligations); or
  - dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once, for the purpose of obtaining a consumer credit report, or allowing the credit reporting agency to create or maintain a credit information file containing information, about the Customer or for any related purpose.
- 23.2 The Supplier may obtain:
- information about the Customer from a business which provides information about the commercial creditworthiness of persons; and
  - a consumer credit report containing information about the Customer from a credit reporting agency, for the purpose of assessing the Customer's Application for Commercial Credit or a grant of any ongoing credit or for any related purpose.
- 23.3 The Customer must within 7 days, if requested by the Supplier, provide evidence as to its identity or creditworthiness, including but not limited to a driver licence, passport, audited financial statements, management financial statements, tax returns or other information.
- 23.4 The Supplier may, but is not obliged to, give a credit report containing information about the Customer to any person:
- who is currently a guarantor; or
  - whom the Customer has indicated is considering becoming a guarantor, for the purpose of a person deciding whether to act as guarantor or keeping a guarantor informed about any guarantee or for any related purpose.
- 23.5 The Supplier may exchange information about the Customer with those credit providers and suppliers (including trade references):
- named in the Application for Commercial Credit;
  - named in a consumer credit report issued by a credit reporting agency; and
  - of which the Supplier is, or becomes, aware, for the purpose of assessing an application for credit, notifying other credit providers (including trade references) of a default, exchanging information with other credit providers (including trade references) as to the status of credit where the Customer is in default with other credit providers (including trade references), or assessing the Customer's creditworthiness or for any related purpose.
- 23.6 The information obtained or disclosed about the Customer in accordance with this Credit Agreement may include a credit report and anything about the Customer's creditworthiness, credit standing or credit history or any related information.
- 24.1 This Credit Agreement binds the Customer both personally and as trustee of any trust of which the Customer is trustee.
- 24.2 The Supplier may set off any amounts owed by the Supplier to the Customer against any amounts owed by the Customer to the Supplier whether under this Credit Agreement or otherwise.
- 24.3 A certificate signed by a director or secretary of the Supplier stating that an amount of money is payable by the Customer to the Supplier will be prima facie evidence of the fact and the Customer will not object to the admissibility of such a certificate in any legal proceedings.
- 24.4 Nothing in this Credit Agreement creates any relationship of employment, agency or partnership between the Supplier and the Customer.
- 24.5 This Credit Agreement may only be amended with the Supplier's express written agreement.
- 24.6 Any waiver of a right by the Supplier must be express and in writing and will not operate as a waiver in relation to any subsequent matter.
- 24.7 The Supplier's rights arising out of this Credit Agreement do not exclude any other rights of the Supplier.
- 24.8 The actions of any person claiming to have the Customer's authority will bind the Customer to the extent permitted by law.
- 24.9 If any provision of this Credit Agreement is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
- 24.10 The Supplier may assign any rights or benefits under this Credit Agreement to any third party.
- 24.11 The Customer may only assign any rights or benefits under this Credit Agreement with the Supplier's prior written consent.
- 24.12 If there is any inconsistency or ambiguity between the terms of this Credit Agreement and the terms of the T&Cs, the terms of this Credit Agreement will take precedence.
- 24.13 This Credit Agreement will be governed by the laws of New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.
- 25. Definitions**
- In this Credit Agreement:
- "Application for Commercial Credit" means the application for commercial credit of which this Credit Agreement forms part;
- "Corporations Act" means the *Corporations Act 2001* (Cth);
- "Credit Agreement" means this document titled "Credit Agreement" that is attached and forms part of the Application for Commercial Credit;
- "Credit Card Authorisation" means the credit card authorisation form attached to and forms part of the Application for Commercial Credit or such other authorisation given by the Customer to the Supplier for the payment of the Supplier's invoices;
- "Customer" means the applicant named in the Application for Commercial Credit;
- "COD" means cash on delivery;
- "Document" means the Application for Commercial Credit, this Credit Agreement, the T&Cs and any document contemplated by such documents, including any Deed of Guarantee, Indemnity and Charge attached to the Application for Commercial Credit;
- "Event of Default" means any of the following, or any analogous, events:
- the Customer fails to pay any amount due and payable under any Document when the amount is due and payable;
  - the Customer fails to comply with any obligations under any Document;
  - any representation, warranty or statement by the Customer in connection with any Document is untrue or misleading (whether by omission or otherwise);
  - there is any direct or indirect change in the ownership or control of the Customer; or
  - an Insolvency Event arises in relation to the Customer.
- "Goods" means any goods supplied by the Supplier to the Customer in accordance with this Credit Agreement and the T&Cs;
- "Insolvency Event" means any of the following, or any analogous, events:

**24. General**

- (f) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;
  - (g) the Customer ceases, or threatens to cease, carrying on business;
  - (h) the Customer is unable to pay the Customer's debts as the debts fall due;
  - (i) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer's assets, operations or business;
  - (j) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors;
  - (k) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;
  - (l) any person, or agent of a person, who holds any security interest (whether or not under the PPSA) takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA); or
  - (m) a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;
- "Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;
- "PPSA" means *Personal Property Securities Act 2009* (Cth);
- "Receiver" means a receiver or receiver and manager (or an additional receiver or receiver and manager);
- "Services" means any services supplied by the Supplier to the Customer in accordance with this Credit Agreement and the T&Cs;
- "Supplier" means any entity that grants credit to the Customer pursuant to this Credit Agreement; and
- "T&Cs" means the Supplier's terms and conditions as may be amended by the Supplier from time to time and that are

attached and form part of the Application for Commercial Credit.

**26. Interpretation**

In this Credit Agreement:

- (a) headings do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in this Credit Agreement has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Credit Agreement; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

**EXECUTED AS AN AGREEMENT**

**DATE:**

**If the Customer is a natural person:**

Signed by the Customer )  
 Name: )  
 in the presence of: )

\_\_\_\_\_  
 Signature of Witness

\_\_\_\_\_  
 Name of Witness (please print)

**If the Customer is a company:**

Signed by the Customer company )  
 Name: )  
 ACN: )  
 in accordance with section 127 of the *Corporations Act* (Cth)

\_\_\_\_\_  
 Signature of Director

\_\_\_\_\_  
 Name of Director (please print)

\_\_\_\_\_  
 Signature of Customer

\_\_\_\_\_  
 Name of Customer (please print)

\_\_\_\_\_  
 Signature of Director/Secretary

\_\_\_\_\_  
 Name of Director/Secretary (please print)

## DEED OF GUARANTEE, INDEMNITY AND CHARGE

In consideration of the Supplier agreeing to supply goods and/or services and/or provide credit to the Customer, at the request of each Guarantor, each Guarantor enters into this Guarantee in favour of the Supplier in the following terms:

### 1. Request

Each Guarantor requests the Supplier to supply goods and/or services to the Customer in accordance with the Credit Agreement and the T&Cs.

### 2. Guaranteed Money

Each Guarantor guarantees to the Supplier the due and punctual payment by the Customer of the Guaranteed Money and the Guaranteed Money will be payable by the Guarantor to the Supplier immediately on demand by the Supplier.

### 3. Performance

Each Guarantor unconditionally and irrevocably guarantees the Customer's due and punctual performance of all of the Customer's Obligations.

### 4. Release and Indemnity

4.1 Neither the Supplier nor any person appointed by the Supplier under any Document will be liable for any loss that any Guarantor suffers as a direct or indirect result of:

- (a) the exercise or attempted exercise of, or failure to exercise, any rights under any Document; or
- (b) any release or dealing with any security interest.

4.2 Each Guarantor indemnifies the Supplier, the Supplier's Personnel and each Receiver or any other person appointed by the Supplier in relation to any losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with:

- (a) the exercise or attempted exercise of any powers, rights, discretions or remedies vested in the person under any Document or the Corporations Act; or
- (b) any proceedings, claims or demands in relation to any secured property.

4.3 Each Guarantor indemnifies the Supplier in relation to any direct and indirect losses, damages or expenses which the Supplier suffers as a result of:

- (a) the Customer's failure to perform, or delay in performing, any of the Customer's Obligations; and
- (b) the Guarantor's failure to perform, or delay in performing, any of the Guarantor's obligations under this Guarantee.

### 5. Expenses

Each Guarantor must pay the Supplier, on a full indemnity basis as a liquidated debt:

- (a) the full amount of any bank fees or other expenses associated with any dishonoured payments or cheques; and
- (b) any legal, debt recovery or other expenses associated with any action by the Supplier to exercise any right or remedy under this Guarantee.

### 6. Continuing Guarantee

6.1 This Guarantee is a continuing guarantee and will not be satisfied or discharged until the Guaranteed Money has been paid and the Guarantor's obligations under this Guarantee have been performed.

6.2 This Guarantee will not be affected by:

any variation to the terms of the Credit Agreement or the T&Cs whether with or without the knowledge or consent of any Guarantor;

- (a) any event of insolvency affecting a person or the death of a person;
- (b) any change in the constitution, membership, or partnership of a person;
- (c) the partial performance of the Customer's Obligations;
- (d) any of the Customer's Obligations being invalid or unenforceable at any time;
- (e) the Supplier refusing any credit to the Customer;
- (f) the Supplier granting any time, further credit or other indulgence or concession to the Customer; or
- (g) the release of any Guarantor (if there is more than one Guarantor).

6.3 No Guarantor will be released from this Guarantee unless the Guarantor provides a written request for a release to the Supplier and the Supplier provides a written agreement to the release which the Supplier may provide or withhold in the Supplier's absolute discretion.

### 7. Enforcement

The Supplier may enforce this Guarantee without first having to enforce any of the Supplier's rights against the Customer or having resort to any other guarantee or security in relation to the Customer's Obligations.

### 8. Principal Obligation

This Guarantee is a principal obligation and is not ancillary or collateral to any other right or obligation.

### 9. Independent

This Guarantee is independent of any other guarantee or security in relation to the Customer's Obligations.

### 10. Security Interest

10.1 To secure the punctual payment of all amounts owed by the Customer and/or the Guarantor to the Supplier, each Guarantor grants to the Supplier:

- (a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Guarantor in relation to which the Guarantor can be a grantor of a security interest under the PPSA, whether or not the Guarantor has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the Corporations Act);
- (b) a fixed charge over all present and after-acquired property of the Guarantor in relation to which the Guarantor cannot be a grantor of a security interest under the PPSA; and
- (c) a charge over the whole of the Guarantor's present and future property and assets, including, without limitation, all of the Customer's legal and beneficial interests in freehold and leasehold land.

10.2 Each Guarantor agrees and acknowledges the Supplier may (without limiting the Supplier's other rights under this Guarantee, at law or otherwise) lodge caveats over the Guarantor's property and take any other action to secure and enforce the Supplier's security under clause 10.1.

10.3 The Supplier's security under clause 10.1 may become enforceable without the need for any demand or notice to the Guarantor.

10.4 If the Supplier's security under clause 10.1 has become enforceable, the Supplier may appoint a Receiver of secured property or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.

10.5 Each Guarantor agrees on demand, and irrevocably appoints the Supplier, each director and secretary of the Supplier and any Receiver (as independent and several appointments) as the Guarantor's agent and attorney, to execute any document (including, without limitation, any mortgage or transfer) or undertake any act, at the Guarantor's cost, that the Supplier considers necessary or desirable to:

- (a) better secure the security under clause 10.1 in a manner consistent with any Document; or
- (b) assist in the completion, execution of, or exercise of any power under, any Document.

### 11. Personal Property Securities

11.1 Each Guarantor agrees that funds received by the Supplier will be applied, after satisfaction of any claim that the Supplier or Receiver is aware ranks in priority, in the following order:

- (a) first in payment of all expenses that the Supplier or Receiver incurs in the exercise of a power or otherwise in relation to any Document;
- (b) then in payment of any other outgoing that the Supplier or Receiver considers appropriate to pay;
- (c) then in payment to the Receiver of any remuneration;
- (d) then in payment to the Supplier or Receiver of any amount necessary to give effect to any indemnity under any Document; and
- (e) then in payment to the Supplier of all amounts owed by the Customer or Guarantor to the Supplier.

11.2 Each Guarantor:



- (a) agrees with the Supplier that neither the Guarantor, nor the Supplier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
- (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;
- (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following sections of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
- (d) acknowledges that the Supplier may, at the Guarantor's cost, register one or more financing statements in relation to any security under any Document;
- (e) waives, if permitted under the PPSA, the Guarantor's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
- (f) will not, without prior written notice to the Supplier, change the Guarantor's name or initiate any change to any documentation registered under the PPSA.

20.2 The Supplier may obtain:

- (a) information about the Guarantor from a business which provides information about the commercial creditworthiness of persons; and
- (b) a consumer credit report containing information about the Guarantor from a credit reporting agency, for the purpose of assessing whether to accept the Guarantor as a guarantor for credit applied for by, or provided to, the Customer or for any related purpose.

20.3 The Guarantor must within 7 days, if requested by the Supplier, provide evidence as to its identity or creditworthiness, including but not limited to a driver licence, passport, tax returns or other information.

20.4 The Supplier may, but is not obliged to, give a credit report containing information about the Guarantor to any person:

- (a) who is currently a guarantor; or
- (b) whom the Customer or the Guarantor have indicated is considering becoming a guarantor, for the purpose of a person deciding whether to act as guarantor and/or keeping a guarantor informed about any guarantee or for any related purpose.

20.5 The Supplier may exchange information about the Guarantor with those credit providers and suppliers (including trade references):

- (a) named in the Application for Commercial Credit;
- (b) named in a consumer credit report issued by a credit reporting agency; and
- (c) of which the Supplier is, or becomes, aware, for the purpose of assessing an application for credit, notifying other credit providers (including trade references) of a default, exchanging information with other credit providers (including trade references) as to the status of credit where the Customer or the Guarantor are in default with other credit providers (including trade references) or assessing the Guarantor's creditworthiness or for any related purpose.

20.6 The information obtained or disclosed about the Guarantor in accordance with this Guarantee may include a credit report and anything about the Guarantor's creditworthiness, credit standing and credit history or any related information.

**21. General**

- 21.1 This Guarantee binds the Guarantor both personally and as trustee of any trust of which the Guarantor is trustee.
- 21.2 The Supplier may set off any amounts owed by the Supplier to the Guarantor against any amounts owed by the Guarantor to the Supplier whether under this Guarantee or otherwise.
- 21.3 A certificate signed by a director or secretary of the Supplier stating that an amount of money is payable by the Customer or Guarantor to the Supplier will be prima facie evidence of the fact and the Guarantor will not object to the admissibility of such a certificate in any legal proceedings.
- 21.4 This Guarantee may only be amended with the Supplier's express written agreement.
- 21.5 Any waiver of a right by the Supplier must be express and in writing and will not operate as a waiver in relation to any subsequent matter.
- 21.6 The Supplier's rights arising out of this Guarantee do not exclude any other rights of the Supplier.
- 21.7 The actions of any person claiming to have the Guarantor's authority will bind the Guarantor to the extent permitted by law.

**12. Application of Money**

When the Supplier or Receiver receives money under or because of any Document, and applies the money in payment of monies owing to the Supplier, the Supplier or Receiver may apply different parts of the money received to different parts of the monies owing in the absolute discretion of the Supplier or Receiver regardless of any appropriation by the Customer or the Guarantor.

**13. Administration**

Until this Guarantee is released by the Supplier, the Guarantor will not prove in any Administration of the Customer in competition with the Supplier.

**14. Voluntary**

Each Guarantor acknowledges that the Guarantor has read and understands this Guarantee, enters into this Guarantee voluntarily and not as a result of any representation of the Supplier or duress by any person.

**15. Legal Advice**

Each Guarantor acknowledges that the Guarantor has had an opportunity to obtain independent legal and financial advice in relation to this Guarantee.

**16. Joint and Several**

If there is more than one Guarantor, each Guarantor will be jointly and severally bound by the terms of this Guarantee.

**17. Information**

Each Guarantor warrants that all the information set out in this Guarantee is true and correct and the Guarantor has disclosed to the Supplier all information relevant to this Guarantee.

**18. Notice**

Each Guarantor must immediately provide written notice to the Supplier if there is any change in the ownership or control of the Guarantor or to the Guarantor's details set out in this Guarantee.

**19. Administration**

If any payment by the Guarantor to the Supplier is avoided as a result of, or the Supplier settles any claim in relation to, any statutory provision arising as a result of any Administration, the payment will be taken not to have been made and the Supplier will be entitled to recover the amount of the payment from the Guarantor.

**20. Privacy**

20.1 The Supplier may, before, during or after the provision of credit to the Customer, give the following information about each Guarantor to a credit reporting agency:

- (a) identity particulars - name, sex, address (and previous two addresses), date of birth, name of employer, and driver licence number;
- (b) the Customer's application for credit - the fact that the Customer has applied for credit and the amount;
- (c) the fact that the Supplier is a current credit provider to the Customer;
- (d) payments which are overdue by more than 60 days, and for which debt collection action has started;

- 21.8 If any provision of this Guarantee is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
- 21.9 The Supplier may assign any rights or benefits under agreement under this Guarantee to any third party.
- 21.10 The Guarantor may only assign any rights or benefits under any agreement under this Guarantee with the Supplier's prior written consent.
- 21.11 Time is of the essence in respect of the Guarantor's obligations in this Guarantee.
- 21.12 This Guarantee will be governed by the laws of the state of New South Wales, Australia, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

**22. Definitions**

In this Guarantee:

"Administration" means the following, or any analogous, events:

- (a) any step is taken to appoint an administrator, Receiver, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;
- (b) any person, or agent of a person, who holds any security interest (whether or not under the PPSA) takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA); or
- (c) a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;

"Application for Commercial Credit" means the application for commercial credit of which this Guarantee forms part;

"Corporations Act" means the Corporations Act 2001 (Cth);

"Credit Agreement" means the credit agreement that forms part of the Application for Commercial Credit;

"Customer" means the customer named in the Application for Commercial Credit of which this Guarantee forms part;

"Customer's Obligations" means the Customer's obligations to the Supplier under the Credit Agreement, the T&Cs or otherwise (including but not limited to the obligation to pay the Guaranteed Money);

"Document" means the Application for Commercial Credit, the Credit Agreement, this Guarantee, the T&Cs and any document contemplated by such documents;

"Guarantee" means this deed of guarantee, indemnity and charge;

"Guaranteed Money" means all money which is, or may be in future, be owed by the Customer to the Supplier for any reason;

"Guarantor" means each person who executes this Guarantee;

"PPSA" means Personal Property Securities Act 2009 (Cth);

"Receiver" means a receiver or receiver and manager (or an additional receiver or receiver and manager);

"Supplier" means any entity that grants credit to, or supplies goods and/or services to, the Customer pursuant to the Credit Agreement; and

"T&Cs" means the Supplier's terms and conditions of sale as may be amended by the Supplier from time to time and that are attached and form part of the Application for Commercial Credit.

**23. Interpretation**

In this Guarantee:

- (a) headings do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) any other grammatical form of a word or expression defined in this Guarantee has a corresponding meaning;
- (d) a reference to a document includes the document as novated, altered, supplemented or replaced;
- (e) a reference to a party includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, body corporate, partnership, trust, association or any other entity;
- (g) a reference to a statute, ordinance, code or law includes regulations, rules and other instruments under the statute, ordinance, code or law and any consolidations, amendments, re-enactments or replacements;
- (h) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
- (i) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (j) any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally;
- (k) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (l) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Guarantee; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on or by the next business day.

**EXECUTED AS A DEED POLL**

**DATE:**

**Guarantor 1**

SIGNED, SEALED & DELIVERED )  
 by the Guarantor in the presence of: )  
 )

\_\_\_\_\_  
 Signature of Witness

\_\_\_\_\_  
 Name of Witness (please print)

\_\_\_\_\_  
 Date

**Guarantor 2**

SIGNED, SEALED & DELIVERED )  
 by the Guarantor in the presence of: )  
 )

\_\_\_\_\_  
 Signature of Witness

\_\_\_\_\_  
 Name of Witness (please print)

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Signature of Guarantor 1

\_\_\_\_\_  
 Name of Guarantor 1 (please print)

\_\_\_\_\_  
 Position of Guarantor 1

\_\_\_\_\_  
 Signature of Guarantor 2

\_\_\_\_\_  
 Name of Guarantor 2 (please print)

\_\_\_\_\_  
 Position of Guarantor 2

# CREDIT CARD AUTHORISATION FORM

ALL INFORMATION ENTERED ON THIS FORM WILL BE KEPT STRICTLY CONFIDENTIAL

## CUSTOMER INFORMATION

First Name and Surname			
Company Name			
Street Address		City	
Postcode		State	
Telephone		Mobile	
Email			

## CREDIT CARD INFORMATION

Visa	<input type="checkbox"/>																				
MasterCard	<input type="checkbox"/>																				
American Express	<input type="checkbox"/>																				
Cardholder Name (EXACTLY HOW IT APPEARS ON THE CARD)																					
Credit Card No.																					
	<table border="1"><tr><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>																				
Expiry																					
	<table border="1"><tr><td></td><td></td><td>/</td><td></td><td></td></tr></table>			/																	
		/																			
CVC/CVV (CARD VALIDATION CODE/VALUE BEING THE LAST 3 DIGITS IN THE SIGNATURE PANEL ON THE REVERSE SIDE OF THE CARD OR THE 4 DIGITS ON THE FRONT OF AMEX CARDS ABOVE THE CARD NUMBER)																					
	<table border="1"><tr><td></td><td></td><td></td><td></td></tr></table>																				

By signing below, I declare that the information given on this form is true and correct. I authorise and direct City Fine Food Services Pty Ltd to charge my above credit card for the relevant charges incurred relating to the supply of goods and/or services to the Customer, including a 1.5% credit card fee. For the purposes of charging the above credit card, I consent to and authorise City Fine Food Services Pty Ltd to use a third-party payment processing platform.

Signature of Cardholder/Authorised Agent of Customer	Date
Name of Cardholder/Authorised Agent of Customer (please print)	

**Terms and Conditions of CITY FINE FOOD SERVICES PTY LTD  
ABN 97 164 356 923 ("the Supplier")**

**1. Application**

These Terms and Conditions ("T&Cs"), will apply to any supply of Goods and/or Services supplied by the Supplier to the Customer and they override any terms and conditions of the Customer.

**2. Definitions**

In these T&Cs:

"Claim" means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

"Confidential Information" means information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Supplier or any related entity of the Supplier including but not limited to any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;

"Contract" means the contract formed as a result of an acceptance of an Order by the Supplier. It includes these terms, any covering letter, quotation, estimate and any other document that refers to these terms;

"Control" has the meaning set out in the *Corporations Act 2001* (Cth);

"Customer" means the customer set out in any quotation, invoice, application for credit, credit agreement, offer or other document provided by the Supplier (or, in the absence of such information, the customer who placed the Order);

"Delivery Address" means any delivery address in a Contract;

"Delivery Date" means any delivery date in a Contract;

"Goods" means the goods in the Contract;

"Insolvency Event" means any of the following, or any analogous, events:

(a) the Customer disposes of the whole or any part of the Customer's assets, operations or business other than in the ordinary course of business;

(b) the Customer ceases, or threatens to cease, carrying on business;

(c) the Customer is unable to pay the Customer's debts as the debts fall due;

(d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Customer's assets, operations or business;

(e) any step is taken for the Customer to enter into any arrangement or compromise with, or assignment for the benefit of, the Customer's creditors or any class of the Customer's creditors; or

(f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;

"Intellectual Property Rights" means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trademarks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields;

"Liability" means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

"Order" means any written or verbal order by the Customer to the Supplier for Goods and/or Services;

"Personnel" means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

"Price" means the price of the Goods and/or Services (including but not limited to any delivery or other charges);

"Security interest" means a security interest within the meaning of the *Personal Property Securities Act 2009* (Cth), and

"Services" means the services in a Contract and any services associated with the Goods.

**3. Acceptance of terms and placement of orders**

3.1 Any Order by the Customer to the Supplier and/or any acceptance of any Goods and/or Services by the Customer will constitute agreement to these T&Cs by the Customer.

3.2 If the Supplier accepts an Order, the parties will have created a binding Contract and the Supplier will supply the Goods and/or Services to the Customer, and the Customer will pay the Price to the Supplier in accordance with the terms of the Contract (which includes these T&Cs).

3.3 The Customer is not entitled to cancel any Contract and must pay to the Supplier any costs associated with the Customer purporting to cancel a Contract.

3.4 The Customer must provide the Supplier with written details of any required specifications or properties of Goods and/or Services at the time the Customer provides an Order to the Supplier.

3.5 The Customer must ensure the specifications or properties of Goods

and/or Services stated in any Order by the Customer will be fit for the intended purpose of the Goods and/or Services.

3.6 The Supplier will be entitled to rely on the accuracy of any plans, specifications or other information provided by the Customer.

3.7 If there are any errors in any plans, specifications or other information provided by the Customer to the Supplier, the Supplier will be entitled to vary the Price.

3.8 The Supplier may cancel any Contract at any time prior to supply of the Goods and/or Services with no liability other than to repay any amount of the Price paid in advance of the cancellation.

**4. Delivery of Goods**

4.1 If the Supplier agrees to deliver Goods to the Customer, the Supplier:

(a) will endeavour to deliver the Goods to the Delivery Address on the Delivery Date;

(b) the Supplier may charge further delivery charges if the Customer is unable to receive delivery of the Goods at the Delivery Address or on the Delivery Date or in accordance with any other delivery arrangements.

(c) The Supplier may add to the Price any further charges incurred by the supplier including but not limited to storage, transport or delivery costs for any delay caused by the Customer.

(d) The Supplier may vary the Price to include further charges if the Customer varies their instructions. Any variation must be agreed to by the Supplier and confirmed in writing by the Supplier.

4.2 The Supplier will not be liable for any delay in delivery of the Goods at the Delivery Address.

4.3 The Customer will ensure a member of the Customer's Personnel will be at the Delivery Address on the Delivery Date to accept any delivery of Goods and sign the delivery docket on the Customer's behalf.

4.4 The Supplier may deliver any Goods to any person at the Delivery Address who has apparent authority to receive delivery of the Goods.

4.5 The signature of a member of the Customer's Personnel on the Supplier's delivery docket will represent acknowledgement by the Customer that the Goods have been supplied.

4.6 The Customer will inspect any Goods immediately on delivery and will be deemed to have accepted the Goods as is unless the Customer provides immediate written notice to the Supplier that the Customer rejects the Goods.

4.7 The Customer must report to the Supplier any damaged or incorrect stock supplied within 2 days of delivery otherwise the Supplier may refuse any claim the Customer makes. If any Goods are damaged when delivered by the Supplier, the Supplier may accept their return and replace them with equivalent goods or credit the Customer with the price paid, at the Supplier's absolute discretion. The Supplier will not accept the return of goods unless they are in their original packaging and proof of purchase is supplied.

**5. Price**

5.1 The Price is exclusive of GST unless otherwise stated by the Supplier in writing.

5.2 The Customer must not withhold, make deductions from, or set-off, payment of any money owed to the Supplier for any reason.

5.3 The Supplier may charge, in addition to the Price, any other fees and charges that the Supplier notifies to the Customer from time to time.

**6. Deposit and Payment Terms**

6.1 Unless the Customer is on COD terms, the Customer must make full payment of the Supplier's invoices within 7 days from the date that the Goods and/or Services are supplied to the Customer (or such alternative period agreed by the Supplier in writing).

6.2 If the Customer is on COD terms, the Customer must pay for any Goods and/or Services by cash, credit card or cleared funds either when an order is made or prior to or upon collection or delivery of the Goods and/or Services.

6.3 Where the Customer has completed a Credit Card Authorisation, the Customer authorises and directs the Supplier to charge the relevant credit card for all amounts owing for the supply of the Goods and/or Services to the Customer, including any fees, charges, GST and a credit card fee of 1.5%. For the purposes of charging the nominated credit card for the amounts owing to the Supplier, the Customer consents to and authorises the Supplier to use a third-party payment processing platform.

6.4 The Customer grants the Supplier a charge over the whole of the Customer's present and future property and assets (including, without limitation, all of the Customer's legal and beneficial interests in freehold and leasehold land, and personal property as defined in the *Personal Property Securities Act 2009* (Cth)) as security for any amount owed by the Customer to the Supplier. The Customer acknowledges the Supplier may lodge caveats over land or security interests on the Personal Properties Securities Register, and take any action to enforce the Supplier's security over the charged

- property.
- 6.5 The Customer must reimburse the Supplier for the full amount of any bank or other fees associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses associated with any action by the Supplier to recover money from the Customer.
- 6.6 The Supplier may charge monthly compound interest on any overdue amounts owed by the Customer at a rate of 5% per annum above the Reserve Bank of Australia's cash target rate.
- 7. Risk and Title**
- 7.1 The risk in Goods passes to the Customer, and the Customer must insure the Goods, immediately on the collection of the Goods by the Customer or delivery of the Goods by the Supplier.
- 7.2 The Customer will not receive title to Goods until the Customer makes full payment of the Price and any other amounts payable to the Supplier.
- 7.3 Until title in the Goods passes to the Customer in accordance with these T&Cs, the Customer:
- is only a bailee of the Goods;
  - will ensure the Goods are kept separate and identifiable from other goods;
  - must not grant any charge over, or interest in, the Goods to any third party;
  - must return any Goods to the Supplier immediately on request;
  - authorises the Supplier or any agent of the Supplier to enter any land and premises owned, occupied or controlled by the Customer where the Goods are located and take possession of the Goods; and
  - holds the proceeds from any sale or disposal of the Goods on trust for the Supplier.
- 8. Force Majeure**
- The Supplier will not be liable to the Customer for any failure to perform, or delay in performing, the Supplier's obligations under these T&Cs if the failure or delay is due to any cause beyond the Supplier's reasonable control. If any such failure or delay continues for a period of 14 days the Supplier may terminate any affected Contract.
- 9. Confidential Information and Intellectual Property**
- 9.1 The Customer will not use, or disclose to any third party, any Confidential Information disclosed to the Customer.
- 9.2 No supply of Goods and/or Services to the Customer will grant to the Customer any Intellectual Property Rights in respect of the Goods and/or Services.
- 10. No Warranties**
- 10.1 The Supplier does not warrant the Goods and/or Services are fit for any purpose whether or not made known by the Customer or any third party to the Supplier or any member of the Supplier's Personnel.
- 10.2 The Supplier excludes all express and implied conditions and warranties in relation to the Goods and/or Services, these T&Cs and any Contract, except those conditions or warranties that cannot be excluded by law.
- 10.3 Nothing in these T&Cs are intended to have the effect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* (Cth) or any equivalent Act of any State or Territory of Australia except to the extent permitted by such Acts.
- 11. Liability**
- 11.1 The Supplier's liability for any Liability or Claim in relation to these T&Cs, the Contract, and any supply of Goods and/or Services will be limited to the amount of the Price paid by the Customer to the Supplier.
- 11.2 The Supplier will not be liable to the Customer or any other person for any Liability or Claim of any kind whatsoever arising directly or indirectly (whether under statute, contract, tort, negligence or otherwise) in relation to any indirect or consequential loss (including but not limited to any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, access to markets, goodwill, reputation, publicity, or use) or any other remote, abnormal or unforeseeable loss or any similar loss whether or not in the reasonable contemplation of the parties.
- 12. Indemnity**
- The Customer indemnifies the Supplier and each member of the Supplier's Personnel on a full and continuing indemnity basis from and against any Liability or Claim arising directly or indirectly in relation to:
- the Customer's breach of these T&Cs or any Contract;
  - the negligence or wilful misconduct of the Customer or any member of the Customer's Personnel;
  - damage to the property of the Customer or any third party during any delivery of Goods;
  - any breakage, spillage or contamination of Goods during any transport or delivery;
  - the Goods and/or Services not being fit for any particular purpose;
  - any tests conducted by a third party in relation to Goods and/or Services;
  - the Customer or any member of the Customer's Personnel directly or indirectly causing any delay in the supply of any Goods and/or Services;
  - the Customer or any member of the Customer's Personnel refusing to accept any delivery; or
  - the Customer or any member of the Customer's Personnel purporting to cancel a Contract.
- 13. Termination**
- The Supplier may immediately terminate, or suspend the performance of, any Contract and the Customer must immediately pay any money owed to the Supplier if:
- the Customer breaches a term of these T&Cs or any Contract and does not remedy the breach within 7 days;
  - the Customer breaches a term of these T&Cs or any Contract which is not capable of remedy;
  - there is any direct or indirect change in the Control of the Customer; or
  - an Insolvency Event arises in relation to the Customer.
- 14. Miscellaneous**
- 14.1 These T&Cs or any Contract may only be amended with the Supplier's express written agreement. Any waiver by the Supplier must be express and in writing.
- 14.2 The Supplier's rights under these T&Cs or any Contract do not exclude any other rights the Supplier may have at law.
- 14.3 If any provision of these T&Cs or any Contract is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
- 14.4 The Customer must immediately provide written notice to the Supplier if there is any direct or indirect change in the Control of the Customer.
- 14.5 The Supplier may assign any rights or benefits under any Contract or these T&Cs or any Contract to any third party.
- 14.6 The Customer may only assign any rights or benefits under any Contract or these T&Cs or any Contract with the Supplier's prior written consent.
- 14.7 These T&Cs and any Contract will be governed by the laws of the state of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that state.
- 14.8 In these T&Cs:
- headings do not affect interpretation;
  - the singular includes the plural and vice versa, and a gender includes other genders;
  - a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - a reference to a party to a document includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
  - a reference to a person includes a natural person, body corporate, partnership, trust, association or any governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, corporation or instrumentality or any other entity;
  - a reference to a statute, ordinance, code or other law includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements;
  - a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act;
  - the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
  - any agreement, representation, warranty or indemnity by two or more parties binds those parties jointly and severally; and
  - if a day on or by which an obligation must be performed or an event must occur is not a business day, the obligation must be performed or the event must occur on the next business day.