



<b>OFFICE USE ONLY</b>	
ACC CODE:	
TERMS:	
APP DATE:	

# APPLICATION FOR CREDIT ACCOUNT

**NOTE:** The attached Superior Food Group Terms and Conditions of Trading Agreement (**Trading Terms**) include definitions of certain terms used in this Application for Credit Account.

## CONTRACT WITH SFG PARTY

The Customer submits to Superior Food Group Pty Ltd ABN 15 607 519 737 (**SFG Party**), and the Customer and the Guarantor request the SFG Party to approve, this Application for Credit Account for supply of goods on a credit account or cash terms. The SFG Party may in its discretion accept this Application for Credit Account by express acceptance in writing, supplying goods (or procuring supply of goods) pursuant to an order by the Customer, granting credit (or procuring the grant of credit) to the Customer or establishing an account (**Acceptance**). Upon any Acceptance, the Customer, the Guarantor and the SFG Party are bound by and parties to a contract on the terms of this Application for Credit Account including the attached Trading Terms and Guarantee (**Contract**). The Contract is governed by the laws of Victoria.

## DEED POLL IN FAVOUR OF SUBSIDIARIES OF THE SFG PARTY

**Deed Poll By:** The Customer and Each Guarantor

**In favour of:** each subsidiary (as defined in the Corporations Act 2001 (Cth)) of the SFG Party from time to time.  
 At the date of this deed poll, the subsidiaries include:  
 Mooloolah River Fisheries Pty Ltd ACN 091 255 131,  
 Global Meats (Australia) Pty Ltd ACN 622 779 186,  
 Global Meats Pty Ltd ACN 162 812 357 and  
 Sealanes (1985) Pty Ltd ACN 009 121 331.

## This deed poll witnesses as follows:

- Upon Acceptance of this Application for Credit Account by the SFG Party, the Customer and each Guarantor make, give and agree (a) to all covenants, undertakings, warranties and other obligations of the Customer and the Guarantor (or either of them, respectively) in this Application for Credit Account including the attached Trading Terms and Guarantee, and (b) to give the rights and permissions given by the Customer and the Guarantor (or either of them, respectively) in this Application for Credit Account including the attached Trading Terms and Guarantee, (**Promises**) to and for the benefit of each subsidiary of the SFG Party, including in respect of amounts payable to a subsidiary of the SFG Party and the grant of security interests to each subsidiary of the SFG Party, and each subsidiary of the SFG Party may enforce the Promises in its own right and on its own behalf.
- This deed poll is governed by the laws of Victoria.

<b>A</b>	<b>TYPE OF ACCOUNT SOUGHT</b> (The final account type may differ based on our assessment criteria)
<input type="checkbox"/> COD - PAYMENT ON RECEIPT OF GOODS <input type="checkbox"/> 7 DAY EOW - PAYMENT ON OR BY FRIDAY OF THE WEEK FOLLOWING PURCHASE <input type="checkbox"/> 14 DAY EOW - PAYMENT ON OR BY THE SECOND FRIDAY OF THE WEEK FOLLOWING PURCHASE <input type="checkbox"/> MONTHLY - ALL ACCOUNTS ARE PAYABLE BY THE 15TH DAY OF THE FOLLOWING MONTH.	
<b>B</b>	<b>APPLICANT DETAILS</b>
Trading Name: ..... ABN: ..... Legal/Company Name: ..... ACN: ..... Date Applicant Commenced in this Business: ..... Estimated Monthly Spend: ..... No of Employees: .....	
<b>C</b>	<b>IF YOUR BUSINESS IS RUN BY A TRUST, PLEASE PROVIDE DETAILS</b>
Name of Trust: ..... ABN: ..... Name of Trustee: ..... ACN: .....	

Continue to next page...



Please Initial:
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<b>D</b>	<b>SITE DETAILS</b>
Postal Address: .....	
Delivery Address: .....	
Phone: .....	Statement Email: .....
Orders Contact: .....	Ph: ..... E: .....
Accounts Contact: .....	Ph: ..... E: .....

<b>E</b>	<b>PLEASE PROVIDE DETAILS FOR EACH DIRECTOR, PROPRIETOR OR TRUSTEE</b>
Full Name: ..... Phone: .....	
Address: ..... Driver License: .....	
Email: ..... D.O.B: .....	
Full Name: ..... Phone: .....	
Address: ..... Driver License: .....	
Email: ..... D.O.B: .....	
Full Name: ..... Phone: .....	
Address: ..... Driver License: .....	
Email: ..... D.O.B: .....	
Full Name: ..... Phone: .....	
Address: ..... Driver License: .....	
Email: ..... D.O.B: .....	

<b>F</b>	<b>SIGNATURES OF APPLICANTS AS NAMED IN SECTION E</b>
I/We (Personal Name) declare that: -	
<ol style="list-style-type: none"> <li>1. all of the information supplied herein is true in every detail and I/We acknowledge that if credit is given this will be done in reliance upon the information supplied by me/us hereon</li> <li>2. This paragraph 2 only applies if the SFG Party opens a trading account for the applicant for recording credit to be allowed or otherwise grants credit or procures the grant of credit to the applicant pursuant to this application for credit account. I/We being individual applicants, hereby charge all of the applicants' interest in real property both present and future in favour of SFG Members as security for all monies owing by me/us to SFG Members from time to time.</li> </ol>	
<b>The Customer executes this Application for Trading Account:</b>	
<ul style="list-style-type: none"> <li>• for the purpose of making this Application for Credit Account on the terms of this document, including the Trading Terms;</li> <li>• for the purpose of, subject to Acceptance, forming a Contract with the SFG Party; and</li> <li>• as a deed poll in favour of the subsidiaries of the SFG Party.</li> </ul>	

<b>A1</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
<b>A2</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
<b>A3</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
<b>A4</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....

**PRIVACY & PROTECTION OF INFORMATION - PRIVACY ACT 1988**

Superior Food Group is committed to protecting the privacy and confidentiality of information it collects from retailers. Superior Food Group is also bound by the *Privacy Act 1988* (as amended) and therefore must comply with the Australian Privacy Principles (“APP”) which govern the collection, use, handling and disclosure of personal and sensitive information. Superior Food Group requires information from you, the guarantors and directors to properly assess your application for a commercial credit trading account and/or to assess the credit worthiness of any guarantor. If Superior Food Group is unable to obtain all the relevant information it requires it may not be able to approve your application for a trading account. Accordingly, Superior Food Group asks you, the guarantors and directors to provide your consent for Superior Food Group to obtain information about you, the guarantors and directors and about each of your credit history and for Superior Food Group to use and/or disclose such information for the purposes of assessing your application and, if approved, for monitoring your account. Superior Food Group may, in the course of assessing your trading account application and/or monitoring your account if approved, obtain information about you, the guarantors and directors & disclose information about you, the guarantors and directors to a Credit Reporting Agency, credit providers whom may have provided credit to you, the guarantors and directors and other suppliers whom may have supplied goods to you, the guarantors and directors on credit. The information obtained by Superior Food Group with each of your consent will be held by Superior Food Group, and each of you can obtain details of the information about each of you held by Superior Food Group by contacting the Chief Financial Officer, Superior Food Group Pty Ltd. Under the *Privacy Act 1988* (as amended); each of you have the right:

- a) to have access to your personal information except in certain circumstances where denial of access to your information is allowed under the *Privacy Act 1988* (as amended);
- b) to have any amendment made to your information so that such information is complete, accurate and up-to-date; and
- c) where Superior Food Group denies any of you access to your information, to receive a reason for any such denial.

**CONSENTS**

I / We acknowledge that I / We have:

- a) made an application for credit from SFG Members in the form of a Trading Account and/ or
- b) been asked to provide a Guarantee in relation to an application for credit from SFG Members in the form of a Trading Account.

I / We hereby consent to an SFG Member undertaking any of the following at any time:

1. **Commercial Credit Information:** seek & use commercial credit information about me/us to assess an application for a commercial credit trading account and monitor any such account.
2. **Consumer Information:** seek & use consumer credit information about me/us to assess an application for a commercial credit trading account and monitor any such account.
3. **Collection of Overdue Payments:** seek & use a credit report about me/us provided by a credit reporting agency to collect overdue payments from me/us.
4. **Exchange Information between Trade Suppliers:** Seek from & use or give to another Trade Supplier any information about my/our credit worthiness, credit standing, credit history and/or credit capacity.
5. **Exchange of Information with Advisers:** Seek from & use or give to any financial consultant, finance broker, accountant, lawyer or other adviser acting in connection with any application by me/us for a commercial credit trade account or the monitoring of the same any personal or commercial information regarding me/us or the credit trade account.
6. **Provide Information to Credit Reporting Agencies:** Give to a Credit Reporting Agency personal or commercial information about me/us. The information may include (but is not limited to) identity particulars, the fact that I/we have made an application for a commercial credit trading account, the fact that an SFG Member is a current creditor to me/us, details of any payments which have become overdue by more than sixty (60) days, details of any payments which are overdue and for which action has been commenced, details of any payments made and/or which are no longer overdue, advice that cheques drawn by you have been dishonoured more than once.
7. **Provision of Information to Guarantors:** Provide information to any person who proposes to guarantee or who has guaranteed the payment of any amounts to an SFG Member.
8. **Disclosure of Personal Information:** Disclose personal information about me/us to any parent or affiliate company, associate, contractor or agent of an SFG Member involved in the day to day assessment and/or monitoring of the commercial credit trading account provided to me/us.

I/We authorise SFG Members, their servants & agents to make enquiries and obtain references as they consider necessary or desirable in relation to my/our application. I/We understand and agree that the SFG Party may not be able to provide me/us with the commercial credit trading account if I/we do not supply/consent to SFG Members obtaining personal information about me/us. This privacy consent applies to the applicant for commercial credit plus directors or officers or other persons signing the attached guarantee. **Therefore this consent must be signed by or for the applicant as well as being signed by any person providing a guarantee.**

**Note: Must be acknowledged by all guarantors and applicants (being Directors, Partners, Trustees and Sole Traders)**

<b>P1</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
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<b>P2</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
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<b>P3</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
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<b>P4</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
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**Note: Must be signed by the same person(s) as named in Section E (page 1).**



Please Initial:

**SUPERIOR FOOD GROUP TERMS AND CONDITIONS OF TRADING AGREEMENT (TRADING TERMS)**

Superior Food Group Pty Ltd (15 607 519 737) and each of its subsidiaries (each an SFG Member)

These Trading Terms shall govern the sale and delivery of goods by an SFG Member to its Customers (“the Customer”, “the Applicant”, or “you”).

**Application of Terms and Account Procedures**

1. These terms and conditions constitute the entire written agreement between the SFG Party and the Customer in respect of its subject matter (**Agreement**). Any terms and conditions of the Customer do not apply unless the SFG Party agrees in writing. If the Customer does not wish to receive goods on the terms and conditions set out in this Agreement, the Customer must not order goods from an SFG Member and must notify the SFG Party, otherwise the Customer will be deemed to have accepted the goods on the terms of this Agreement. This also applies to any variation of this Agreement made in accordance with this Agreement and any orders placed after that variation comes into effect.
2. No Goods will be supplied by an SFG Member to the Customer on any other terms or conditions other than those set out in this document.
3. No SFG Member will be taken to offer goods on credit and credit terms if an official Superior Food Group “Application for Credit Account” has not been completed and subsequently approved by the SFG Party as notified to the Customer in writing.
4. Any subsequent store locations must also be approved by the SFG Party before the supply of goods by an SFG Member to that location.
5. The granting of credit terms for new accounts is entirely at the SFG Party’s discretion.
6. If the SFG Party has granted (or procured the grant of) credit pursuant to this Agreement, the SFG Party may:
  - (a) if an Event of Default occurs;
  - (b) if the SFG Party reasonably determines it is reasonably necessary to protect an SFG Member’s Legitimate Interests;
  - (c) if this Agreement terminates; or
  - (d) without cause, on 30 days notice to the Customer,
 withdraw (including closing the Customer’s account) or vary credit terms. The SFG Party will give written notice to the Customer as soon as practicable after any decision to take such action.
7. The Customer may in its discretion place orders for goods from time to time, and an SFG Member may in its discretion reject all or part of any order by the Customer for any reason and such reason will be notified to the Customer in writing.

**Payment Terms**

8. If credit has been granted, all accounts are due and payable to the relevant SFG Member within the approved credit terms notified by the SFG Party. If credit has not been granted or is withdrawn in accordance with this Agreement, the Customer must pay all amounts due and payable on a cleared funds basis by the date agreed in writing by the Customer and the SFG Party in respect of the accepted order.

**Defaults**

9. Should the Customer fail to pay an account by the due date:
  - (a) the SFG Member may charge interest on any overdue invoice at the rate of 10% per annum from the due date until and including the date the invoice is paid in full;
  - (b) Where any part of the trading account has not been paid within the time specified in this agreement and has fallen into arrears then the totality of the account whether or not in arrears shall become immediately due and payable;
  - (c) The Customer’s account may at the SFG Member’s discretion be subject to suspension of supply of goods for an accepted order for any period during which any part of the trading account has not been paid within the time specified in this Agreement;
  - (d) An SFG Member may take legal action to recoup any debt not paid on time, including any which is likely to result in the closure of the account;
  - (e) The Customer shall also be liable to pay all reasonable costs and expenses to SFG Members on demand (including without limitation all reasonable legal costs and disbursements on a solicitor/own client basis) and all reasonable mercantile agents fees incurred by SFG Members in recovering any amounts outstanding as a result of the Customer’s failure to comply with this Agreement;
  - (f) The Customer agrees to provide full details of its credit card account to the SFG Party on request. If the Customer’s account is not paid in full by the due date, the SFG Member may debit this amount to the Customer’s credit card, together with the credit card fees that are charged by the card service providers to the SFG Member in respect of the transaction (a percentage of the transaction), upon the provision of 24 hours’ notice in writing to the Customer. The Customer will be notified in writing of any amounts so debited.
10. Where the Customer has a financial interest in two or more SFG Member accounts (“inter-related accounts”) and any one of the inter-related accounts fails to observe these trading terms then all inter-related accounts shall be subject to suspension of supply and account cancellation procedures in accordance with clauses 6 and 9 and invoices rendered to all inter-related accounts shall become immediately due and payable.
11. The Customer must not do any of the following, and any breach of these obligations is deemed to be a material breach that is not capable of being remedied:
  - (a) knowingly sell or offer to sell or purchase counterfeit Superior Food Group products;
  - (b) engage in deceptive or illegal conduct that has an adverse effect on a SFG Member; or
  - (c) in respect of goods supplied by a SFG Member which bear the trade mark of a third party or are proprietary to a third party (for example, goods supplied to businesses according to the specifications of a franchisor) on-sell or supply those goods other than in the ordinary course of carrying on the Customer’s food service business.
12. Should an account be closed in accordance with this Agreement, SFG Members may immediately reclaim any advertising or point-of-sale material incorporating SFG Member trade marks or other SFG Member intellectual property that has previously been supplied by an SFG Member and not purchased for value by the Customer, and the Customer irrevocably grants permission for SFG Members’ servants and agents to enter its premises to reclaim such material.

**Payment Before Delivery Sales**

13. For Payment Before Delivery Sales, full payment in the form of cleared funds must be received and verified by the relevant SFG Member prior to delivery of products being made. An SFG Member shall at all times and at its sole discretion have the right to supply goods on a Payment Before Delivery basis where SFG Party has not offered credit or where credit has been withdrawn in accordance with this Agreement.

**Payment On Delivery**

14. For Payment On Delivery Sales, full payment must be received and verified by the relevant SFG Member’s drivers at the time of delivery for products to be supplied. An SFG Member shall at all times and at its sole discretion have the right to supply goods on a Payment On Delivery basis where SFG Party has not offered credit or where credit has been withdrawn in accordance with this Agreement.

**Prices**

15. The Customer acknowledges and accepts that orders are accepted for immediate shipment with the understanding that the products will be billed at the price in effect at the time of order. The Customer should review the price at the time of ordering as prices are subject to change from time to time without notice.



**Freight and Administrative Charges**

- 16.
- (a) The SFG Party shall bear all freight costs of delivering goods to the Customer where the Customer's place of business is situated within a metropolitan area within Australia. A non-metro store is classed as any store outside of the metropolitan area of all capital cities of the States and Territories of Australia, which is determined by the additional charges passed onto an SFG Member by our nominated freight company.
  - (b) Deliveries to non-metro stores shall incur a delivery fee per delivery as advised by SFG Members to the Customer from time to time, with the fee most recently advised prior to order placement to apply.
  - (c) SFG Members shall not be liable for freight costs on any goods returned to a SFG Member by the Customer where a Return Authorisation Number (RA No.) has not been arranged prior to return (see clause 18 below).
17. Where Customer orders are below a minimum commercial value determined by the relevant SFG Member then the SFG Member will also levy an administration fee for each delivery. The minimum commercial value and administration fee will be advised by SFG Members and may be varied from time to time with prior written notice to the Customer, with the fee most recently advised prior to order placement to apply.

**Customer Returns**

18. The following rules apply in order for Customers returns claims to be accepted:
- (a) The return of goods will not be accepted without prior authorisation from the SFG Party or its authorised representative and for this to occur a Superior Food Group Return Authorisation Number (RA No.) must be obtained before returning any product (such authorisation not to be unreasonably withheld, for example, for faulty product) by contacting the Customer Service Department within 24 hours after delivery of the goods to the Customer;
  - (b) Returns of unpacked goods which comply with the Agreement will not be accepted;
  - (c) Returns of Special Orders which comply with the Agreement will not be accepted;
  - (d) Returns of goods received by an SFG Member after the reasonable period specified by the SFG Member when granting authorisation for the goods to be returned will not be accepted;
  - (e) In the event that an SFG Member authorises a return of goods, the Customer must ensure that on return of the goods:
    - i. the goods are in the original packaging and in the same condition as at the time of delivery;
    - ii. All price stickers, security devices or other non-Superior Food Group labelling or items are removed otherwise returns will not be accepted or a reasonable charge for removal will apply;
    - iii. The goods are accompanied by documentation showing:
      - A. The Customer's name, address and account number/code;
      - B. The respective Superior Food Group invoice number;
      - C. Reason for return; and
      - D. The Superior Food Group Return Authorisation Number (RA No.);
  - (f) Returns not in accordance with this Agreement may be returned to the Customer at the Customer's expense;
  - (g) Special Make-Up Orders and Custom Product Orders which comply with the Agreement may not be returned;
  - (h) Customers must return goods only by SFG Members' nominated carriers (approved by the relevant SFG Member prior to the goods being freighted), otherwise freight will not be paid by the SFG Member;
  - (i) All returned goods shall be subject to an inspection by the relevant SFG Member or their authorised agent, before any claim will be considered;
  - (j) Acceptance of the returned goods by the relevant SFG Member shall not constitute any acceptance of any claim; and
  - (k) If the relevant SFG Member in its discretion accepts a return without original invoice details, the SFG Member may raise credits at the lowest invoiced prices.

**Other Claims**

19. Short Delivery claims (where product is short delivered within the carton/s to the invoiced quantity) must be fully documented quoting the respective Superior Food Group invoice number and forwarded to the Superior Food Group Customer Service Department within 24 hours from the date of delivery of Goods to the Customer by the SFG Member failing which the delivery will be deemed to match the invoiced quantity.
20. Non Delivery claims (when a full or part consignment has not been delivered to the invoiced quantity) must be fully documented quoting the respective Superior Food Group invoice number and forwarded to the Superior Food Group Customer Service Department within 24 hours from the date of invoice.
21. All claims will be subject to investigation before a decision is made and any rejections by the SFG Member will be communicated to the Customer.

**Cancellation of Orders**

22. The following shall apply in relation to the cancellation of orders:
- (a) Orders placed with an SFG Member by the Customer shall not be cancelled without prior written approval of the SFG Member;
  - (b) A request for cancellation will not be considered unless made in writing by the Customer to the relevant SFG Member and received by the SFG Member not less than thirty (30) days prior to the scheduled delivery date;
  - (c) Special Make-Up Orders and Custom Product Orders may not be cancelled; and
  - (d) In the event that the SFG Member accepts the cancellation of an order, the SFG Member shall be entitled to charge any reasonable fees for the cost of work and materials and/or any administration costs incurred by the SFG Member in preparing and cancelling the order. If the SFG Member does propose to charge any such fees and costs, the SFG Member will notify the fees and costs to the Customer for the Customer to accept or alternatively to withdraw the Customer's cancellation.

**Loss or Damage in Transit**

24. For any goods which the SFG Member or the Customer believes were lost or damaged during transit the Customer:
- (a) where it is the Customer's belief, must notify the relevant SFG Member and, if known, the carriers in writing immediately after loss or damage is discovered on receipt of goods; and
  - (b) must on request assist the relevant SFG Member to lodge a claim for compensation on the carrier within three (3) days of the date of receipt of the goods.

**Exclusion and Limitation of Liability**

25. Except as provided in these terms, and to the extent permitted by law:
- (a) all implied warranties as to the supply of goods are excluded;
  - (b) neither party is liable for any indirect, consequential or special loss or damage in connection with this Agreement; and
  - (c) the SFG Members' liability in respect of the supply of goods is expressly limited to, at the SFG Members' election, either the replacement of the goods or the cost of obtaining equivalent goods.

**Retention of Title**

26. The Customer agrees that all goods supplied by SFG Members to the Customer shall remain the property of the relevant SFG Members and property in all goods supplied shall not pass to the Customer until such time as the SFG Members have:
- (a) been paid in full for all goods supplied;
  - (b) received payment of all other sums that are owing by the Customer to SFG Members; and
  - (c) the moneys owing referred to in (a) and (b) above have been collected and cleared by the SFG Members.



27. Where an SFG Member has not been paid in full for any goods supplied to the Customer and/or in full for any other amounts which are due for payment by the Customer to the SFG Member, then:
- the Customer shall hold any such goods which it has been supplied by the SFG Member as bailee for the SFG Member and shall store and identify all such goods in a manner that clearly shows the SFG Member's ownership thereof;
  - the Customer must not sell any goods supplied without the prior written consent of the SFG Member or except in the ordinary course of the Customer's business;
  - the Customer shall have no right or claim to any right or interest in the goods to secure any liquidated or unliquidated debt or obligation that any SFG Member owes or may owe to the Customer;
  - the Customer may not claim any lien over the goods;
  - the Customer agrees that it shall not create any absolute or defeasible interest in the goods or grant or allow any security interest in the goods or their proceeds in relation to any third party except as may be authorised by the SFG Party; and
  - without prejudice to an SFG Member's rights as an unpaid Seller or any of its other rights or remedies to retake possession of an SFG Member's goods from the Customer, if an Event of Default occurs the Customer hereby agrees to deliver up goods supplied by an SFG Member upon demand by an SFG Member and otherwise agrees that an SFG Member may recover possession of the goods at any site owned, possessed or controlled by the Customer and the Customer agrees that any SFG Member has an irrevocable licence to do so.
28. Where:
- title has not passed to the Customer in goods supplied by an SFG Member to the Customer; and
  - those Goods are sold to a third party by the Customer as permitted by this Agreement, in which case title passes immediately before such sale, then the proceeds of such a sale by the Customer, to the extent that they are deemed to equal in dollar terms the amount owing by the Customer to a SFG Member on any account at the time of receipt of such proceeds, shall be held upon trust by the Customer for the SFG Member in a separate account until such time as full payment is made of all amounts owing by the Customer to the SFG Member.
29. The Customer agrees to indemnify and hold all SFG Members harmless against all loss and damage incurred or sustained by SFG Members as a result of or in relation to the exercise of SFG Members' retention of title rights arising from an Event of Default, and except to the extent that any such loss or damages arises from the breach, negligence or other wrongful act or omission of a SFG Member.
30. Clauses 26 to 29 above shall apply in respect of any goods supplied by an SFG Member to an inter-related account of a Customer where the inter-related account is in default (see clause 10).

#### **Force Majeure**

31. If for any reason beyond the reasonable control of a party, including without limitation as a result of any strike, trade dispute, fire, tempest, theft or breakdown, (**Force Majeure**) a party is prevented or delayed in performing or complying with an obligation under this Agreement (other than an obligation to pay money), that obligation is suspended as long as the Force Majeure continues, and that party is not liable for the non-performance or compliance to the extent that, and for the period of time during which, it is unable to perform or comply as a result of that Force Majeure.

#### **Change of Ownership**

32. The Customer shall give written notice to the SFG Party within seven (7) days of any change of ownership or control of the Customer. The Customer hereby agrees to indemnify and keep indemnified all SFG Members against any loss, damage, cost or expense incurred by SFG Members as a result of the Customer's failure to notify SFG Party of any such change of ownership and/or control, except to the extent that any such loss, damage, cost or expense arises from the breach, negligence or other wrongful act or omission of an SFG Member.

#### **Lien**

33. The Customer hereby irrevocably grants SFG Members a general and specific lien and pledge over any and all goods belonging to the Customer which are in the SFG Member's possession from time to time to secure payment of any amounts due and payable under these terms.

#### **Variation of Terms**

34. SFG Party may vary all or any of these terms upon 3 months notice to the Customer. The Customer may terminate the agreement constituted by these terms at any time before the variation comes into effect. The parties may also agree to any variation in writing.

#### **Notices**

35. You hereby agree:
- Any notice by one party to the other shall be sufficiently served if served personally or by facsimile transmission or if posted by prepaid post to the party to be served at the registered office of such party or its last known place of business and shall be deemed to have been received within two (2) Business Days of the date of posting if served by post and immediately upon transmission if served by facsimile transmission, and
  - That in addition to any other means permitted by law, any documents, notifications or court proceedings may be given or served upon you, your successors and permitted assignees in the same manner as any notice or document may be given under Part 8.5 of the *Personal Property Securities Act (2009)* ("**PPSA**") and shall be deemed so given or served

#### **Waiver**

37. No waiver of these terms shall be valid and operate unless such waiver is in writing and signed by the authorised representative of the party giving the waiver.

#### **GST**

38. Unless otherwise agreed by the SFG Party and the Customer, all amounts payable in relation to goods supplied to the Customer under this Agreement are expressed to be exclusive of GST. If GST is payable on a taxable supply as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) then the amount payable by the Customer for that taxable supply will be the amount expressed plus GST.

#### **Severance**

39. If any provision of this Agreement is found to be invalid or unenforceable then it is deemed to be severed and the remainder of this Agreement shall remain valid and in force.

#### **Entire Agreement and No Merger**

40. Unless otherwise agreed in writing, the SFG Party and the Customer acknowledge that these terms and conditions constitute the entire written agreement between them in relation to its subject matter. All prior written agreements are superseded by these terms and conditions. Where previous terms and conditions have been entered into between the Customer and an SFG Member, the parties agree that this Agreement shall not act as a merger so as to extinguish any rights or obligations in existence on entry into this Agreement.

#### **Jurisdiction**

41. These trading terms shall be governed by the laws in force in the State of Victoria.



**PPSA, PMSI and APAAP**

42. Clauses 43 to 51 (inclusive) only apply if the SFG Party opens a trading account for the Customer for recording credit to be allowed or otherwise grants credit to the Customer under this Agreement.
43. The Customer hereby grants a charge to all SFG Members over all and any of its present and after acquired property (“**APAAP**”) and any interest in real property (current or future) as security for its indebtedness and obligations under this Agreement. The Customer agrees that the covenant to repay contained in this Agreement is a charge over any such interest in real property of the Customer and consents to a caveat being lodged against the title to any such real property or any interest in such real property owned by the Customer from time to time, including that where the Customer/s is/ are or becomes a trustee of a trust (whether or not such trust is disclosed herein), the Customer in such capacity hereby charges all such real and personal property of such trust (including all present and after acquired property) with the obligations contained herein and declare that such charge is given in consideration of the terms herein, of the SFG Party agreeing to sell or continue to sell (or to procure the sale) to the Customer and at the request of and for the benefit of such trust.
44. For the purposes of section 20(1) and (2) of the PPSA, and to ensure maximum benefit and protection for SFG Members under the PPSA, the Customer confirms and agrees that it intends to and does grant to SFG Members, as security for its indebtedness and obligations, a charge over all of its present and after-acquired property.
45. The Customer agrees to do anything that SFG Members reasonably require to ensure that SFG Members have at all times a continuously perfected security interest over all of the Customer’s present and after-acquired property and agrees and acknowledges that any SFG Member may register its security interest on the register established pursuant to the PPSA.
46. An SFG Member may allocate amounts received from the Customer in any manner it determines, but in default will apply same first to payment of any unsecured amount owing to a SFG Member, next as to any reasonable enforcement expenses and then as to any secured balance owing to a SFG Member.
47. The Customer agrees to reimburse each SFG Member for all reasonable costs and/or expenses incurred or payable by the SFG Member in relation to registering, maintaining or releasing any financing statement or financing change statement under this Agreement or complying with any request for information from third parties in respect of the security under this Agreement if required by the PPSA.
48. The Customer will not (except with the written consent of the SFG Party) allow to be, or be liable to become, perfected or attached in favour of any person, a security interest or transitional security interest in any of the monies from time to time payable to a SFG Member (if any) or otherwise, and whether to a provider of new value or otherwise).
49. The Customer will not (as against any person who is a “related entity” of the Customer for the purposes of the *Corporations Act 2001*) without the prior written consent of SFG Party, before or until all money payable to SFG Members in connection with the Agreement is paid in full:
- claim the benefit of (for example, by subrogation), or seek priority ahead of, the transfer of or the benefit of a security a SFG Member holds in connection with this Agreement;
  - prove in competition with a SFG Member if the Customer is unable to pay its debts when due.
  - seek to perfect or attach in favour of the Customer or another (either jointly or severally) a security interest in any of the Customer’s present or after acquired property which would rank in priority to the entitlements of a SFG Member.
50. The Customer waives the right to receive a copy of the verification statement confirming registration of a financing statement or financing change statement relating to the security interests under this Agreement.
51. The Customer agrees that it and each SFG Member contracts out of and nothing in the provisions of Sections 95 (notice of removal of an accession), 118 (notice of decision to enforce security interest under land law), 121(4) (enforcement of liquid assets – notice to grantor), 130 (notice of disposal of collateral), 132(3)(d) (statement of account following a disposal showing the amounts paid to other secured parties), 132(4) (statement of account if there is no disposal), 142 and 143 of the PPSA shall apply to this Agreement.
52. The Customer and the SFG Party acknowledge that the Customer is the grantor and each SFG Member is the holder of a Purchase Money Security Interest (“**PMSI**”) by virtue of this Agreement and/ or the PPSA.

**General**

53. The SFG Party may assign or transfer this Agreement and/ or any security under the PPSA to another SFG Member at any time by written notice to you. You must not assign or transfer the benefit or obligations of this Agreement without the prior written consent of the SFG Party, which the SFG Party will not unreasonably withhold.

**Confidentiality**

54. The Customer acknowledges that all pricing information and any other commercially sensitive or confidential information relating to this Agreement is strictly confidential (Confidential Information).
55. Except as stated in this Agreement or where required by the PPSA, the parties to this Agreement are under an obligation to not and must not permit any of their officers, employees, agents, contractors or related bodies corporate to disclose any Confidential Information to any person, without the prior written consent of the party to whom the Confidential Information relates, and SFG Party must procure that other SFG members do not do so, other than:
- to their professional advisers;
  - in the case of an SFG Member, in assigning or enforcing or seeking to assign or enforce this Agreement, in a proceeding arising out of or in connection with this Agreement, including to a ratings agency; or
  - as required by law, a binding order of any government agency or any procedure for discovery in any proceedings.
56. The parties acknowledge and agree, for the purpose of section 275(6)(a) of the PPSA, that neither party may disclose any information or documents supplied by another party of the kind referred to in section 275(1) of the PPSA, except in the circumstances in which disclosure is permitted pursuant to clause 55.
57. This clause, and clause 54, 55 and 56:
- operates for the benefit of all parties; and
  - continues despite the termination of this Agreement.

**Definitions**

In this Agreement:

58. **Business Day** means a day on which banks are open for business in Melbourne, Australia excluding a Saturday, Sunday or public holiday;
59. **Event of Default** means any of the following events occurring in relation to the Customer or a Guarantor:
- the Customer or a Guarantor is or becomes Insolvent;
  - the Customer fails to pay any amount due to an SFG Member by the due date for payment and does not remedy the non-payment within 2 Business Days of the earlier of:
    - the Customer becoming aware of that failure; and
    - the SFG Member giving the Customer notice requiring the Customer to remedy;
  - the Customer or a Guarantor breaches any other term of this Agreement or any other agreement with a SFG Member and:
    - the breach is material and cannot be remedied;
    - the breach is capable of being remedied and is not remedied within a reasonable period of time stated in a notice by the SFG Member requiring the breach to be remedied (which period need not be longer than 30 days); or
    - the term the subject of the breach, in the SFG Member’s reasonable opinion, is otherwise material to the SFG Member’s Legitimate Interests, and where the breach is capable of being remedied is not remedied within the earlier of 14 days after notice by the SFG Member to remedy it or 21 days of the Customer or a Guarantor (as applicable) becoming aware of it; or



- (d) there is a change in persons entitled to exercise control of the Customer, the Customer ceases to conduct or disposes of all or a substantial part of its business or the Customer materially decreases the size or scope of its business (in each case other than with the SFG Party's prior written consent);
- 60. **Guarantor** means each person who provides a guarantee in respect of the Customer's application for credit.
- 61. **Insolvent** means in respect of a person:
  - (a) an administrator, provisional liquidator, liquidator, receiver or receiver and manager or any similar official is appointed to the person or takes possession or control of any or all of its assets or undertaking;
  - (b) the person enters into (or resolves to enter into) any arrangement, compromise or composition with, or assignment for the benefit of, creditors generally or any class of creditors;
  - (c) as a result of the operation of section 459F(1) of the Corporations Act, it is taken to have failed to comply with a statutory demand;
  - (d) the person is wound up, dissolved or de-registered or passes a resolution to do so;
  - (e) the person is bankrupt or insolvent or otherwise unable to pay its debts as and when they fall due;
  - (f) anything having a substantially similar effect to any of the events specified in above of this definition happens to the person under the law of any jurisdiction; or
  - (g) the person dies, is imprisoned or becomes permanently disabled or incapacitated or of unsound mind or otherwise incapable of managing their own affairs;
- 62. **Legitimate Interests** means:
  - (a) legitimate funding, business risk management or security requirements or requirements for an SFG Member's compliance with any law or regulations; or
  - (b) any other requirements that are reasonably necessary to protect an SFG Member against a material risk that:
    - a monetary default will occur;
    - a security interest is not or ceases to be valid or enforceable in accordance with its terms or applicable law or does not have, or ceases to have, the priority contemplated by its terms;
    - an SFG Member is unable to enforce its rights against the Customer or a Guarantor or the property the subject of a security interest; or
  - (c) there will be a material compromise to the value of the property the subject of a security interest;
- 63. **SFG Member** means any one or more of the SFG Party and its subsidiaries from time to time.
- 64. If the Customer and/or the Guarantor make an application for trading account to Metcash Trading Limited ACN 000 031 569 (or any of its related bodies corporate other than an SFG Member) (**Metcash ATA**), and there is an inconsistency between the Metcash ATA (including trading terms included with the Metcash ATA) and this document, the Metcash ATA will apply to the extent of the inconsistency.

**It will be deemed that the above terms and conditions have been carefully read and agreed to and must be acknowledged by all guarantors and applicants (being Directors, Partners, Trustees and Sole Traders)**

**Executed:**

- for the purpose of making this Application for Credit Account on the terms of this document, including the Trading Terms;
- for the purpose of, subject to Acceptance, forming a Contract with the SFG Party; and
- as a deed poll in favour of the subsidiaries of the SFG Party.

**MUST BE SIGNED BY ALL DIRECTORS, PARTNERS, TRUSTEES AND SOLE TRADERS)**

<b>T1</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
<b>T2</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
<b>T3</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....
<b>T4</b>	PRINT NAME: .....	SIGNATURE: .....	DATE: .....

**Note:** Must be signed by the same person(s) as named in Section E (page 1).



Please Initial:

**PERSONAL GUARANTEE**

IN CONSIDERATION OF the SFG Party considering, at the request of each Guarantor, the Applicant's application for the SFG Party (and any one or more of the other SFG Members) to agree to:

(a) sell goods and/or; (b) provide services and/or; (c) extend credit and/or; (d) provide time for payment of its trading accounts with an SFG Member, the Applicant described in the attached Application for credit account as the Applicant and acceptance by the SFG Party of the Customer's Application for credit account on the terms of the attached Contract and Deed Poll (**Agreement**), the Guarantor described in this Guarantee as the Guarantor HEREBY GUARANTEES to each SFG Member the payment of any amount which is now due or owing or which may hereafter become due or owing by the Applicant to an SFG Member under or in connection with the Agreement.

And the Guarantor HEREBY FURTHER GUARANTEES COVENANTS AND AGREES to and with the SFG Members as follows:

1. That the Applicant will pay to the SFG Members all monies payable by the Applicant to the SFG Members on that trading account as and when they fall due for payment and if at any time default shall be made in the punctual payment of any monies for the time being payable by the Applicant on that trading account the Guarantor will on demand pay to the SFG Members the whole of such monies due or payable to the SFG Members and the Guarantor will on demand pay and make good all losses, damages, claims, costs, charges, and expenses sustained or incurred by the SFG Members by reason or in consequence of such default by the Applicant and that in the event of any default as aforesaid the Guarantor will indemnify and keep indemnified the SFG Members from and against all loss of monies and all losses, damages, claims, costs, charges, and expenses whatsoever that the SFG Members may incur by reason of any such default on the part of the Applicant, except to the extent that any such loss, damages, claims, costs, charges, and expenses arise from the breach, negligence or other wrongful act or omission of an SFG Member;
2. That no time or other indulgence granted to the Applicant nor any variation in the terms of any contract, agreement, or arrangement between an SFG Member and the Applicant nor the release by an SFG Member of any guarantee or security held by an SFG Member shall in any way affect the liability of the Guarantor and that as between the SFG Members and the Guarantor no cheque, bill of exchange or promissory note received by an SFG Member in respect of the Applicant's indebtedness to it shall be regarded as whole or part satisfaction of the obligations in respect of which it is given unless and until the same shall have been met;
3. This Guarantee is a continuing one and shall not be determined or discharged by reason of the liquidation (voluntary or otherwise) or of the reconstruction or of the amalgamation with any other company or the death or bankruptcy of the Guarantor or the Applicant or their successors and assigns;
4. Where the Guarantor comprises two or more parties the covenants and obligations on the part of the Guarantor herein contained shall bind such parties and any two or more of them jointly and each of them severally;
5. Any notice or demand shall be deemed to be duly made and given if it is forwarded in writing and posted to the Guarantor at the address of the Guarantor shown in the schedule of the Guarantee or any other address given by the Guarantor to the SFG Party;
6. That an SFG Member in accordance with the Privacy Act may seek from a credit reporting agency a credit report containing personal information about me/us to assess whether to accept me/us as a Guarantor for credit applied for or provided to the applicant whose name appears below;
7. An SFG Member may give information about you to a credit reporting agency for the following purposes: to obtain a consumer credit report about you, and/or allow the credit reporting agency to create or maintain a credit information file containing information about you. This information is limited to: identity particulars - your name, sex, address (and the previous two addresses), date of birth, name of employer, and driver's licence number, your application for credit or commercial credit, the fact that you have applied for credit and the amount, the fact that an SFG Member is a current credit provider to you, loan repayments which are overdue by more than 60 days and for which debt collection action has started, advice that your loan repayments are no longer overdue in respect of any default that has been listed, information that in the opinion of an SFG Member you have committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with your credit obligations), dishonoured cheques - cheques drawn by you for \$100 or more which have been dishonoured more than once. **Period to which this understanding applies.** This information may be given before, during or after the provision of credit to you.
8. That if the SFG Party approves the applicant's application for credit this agreement remains in force until the credit facility covered by the applicant's application ceases;
9. In the interpretation of the Guarantee the masculine shall include the neuter and/or feminine genders as the context requires.
10. (a) This clause 10(a) applies if the SFG Party opens a trading account for the Applicant for recording credit to be allowed to the Applicant or otherwise grants (or procures the grant of) credit to the Applicant under the agreement between the Applicant and the SFG Party relating to this guarantee. The Guarantor acknowledges that upon the execution of this Guarantee he/she is simultaneously charging his/her present and future properties in favour of SFG Members as security for credit provided to the Applicant by SFG Members. The Guarantor undertakes to keep the credit provider informed of any change in ownership of:
  - (i) the Guarantor's real property recorded hereon; and
  - (ii) any property not recorded hereon that becomes registered in the name of the Guarantor.
 (b) The Guarantor acknowledges that in the event that he/she defaults on this clause that will constitute an Event of Default under the Agreement which may result in credit provided by the credit provider to the Applicant to be withdrawn at any time following the Event of Default and all outstanding monies in the name of the Applicant will become due and payable immediately.

The Guarantor executes this Guarantee as part of this Application for Credit Account:

- for the purpose of the SFG Party considering the Customer's Application for Credit Account on the terms of this document, including the Trading Terms, at the request of the Guarantor;
- for the purpose of, subject to Acceptance, forming a Contract with the SFG Party; and
- as a deed poll in favour of the subsidiaries of the SFG Party.

**Note:** Guarantor(s) must be the same person(s) as named in Section E (page 1).

<b>Guarantor Name:</b> .....	<b>Guarantor Signature:</b> .....
<b>G1 Guarantor Residential Address:</b> .....	
<b>Witness Name:</b> .....	<b>Witness Signature:</b> .....

<b>Guarantor Name:</b> .....	<b>Guarantor Signature:</b> .....
<b>G2 Guarantor Residential Address:</b> .....	
<b>Witness Name:</b> .....	<b>Witness Signature:</b> .....

**Date:** .....

Please Initial: