

**OFFICE USE ONLY (V0818)**

ACC. CODE:

TERMS:

APP. DATE:



SUPERIOR FOOD GROUP P/L

ABN 15607519737

www.superiorfs.com.au

PLEASE SEE OVERLEAF FOR YOUR SPECIFIC BRANCH DETAILS

(ALL INFORMATION WILL BE TREATED AS CONFIDENTIAL)

**APPLICATION FOR CREDIT ACCOUNT**

**A TYPE OF ACCOUNT SOUGHT (Please Tick)**

- COD ACCOUNT - PAYMENT ON RECEIPT OF GOODS.
- 7 DAY ACCOUNT - PAYMENT ON OR BY FRIDAY OF THE WEEK FOLLOWING PURCHASE.
- MONTHLY ACCOUNT – ALL ACCOUNTS ARE PAYABLE BY THE 15<sup>TH</sup> DAY OF THE FOLLOWING MONTH.

**B APPLICANT DETAILS: Trading Name**

ACN

Legal/Company Name

ABN:

Date Applicant Commenced in this Business : \_\_\_\_\_ Estimated Monthly Spend: \_\_\_\_\_ No of Employees: \_\_\_\_\_

**C**

Postal Address: ..... PC: .....

Delivery Address: ..... PC: .....

Phone: ..... Fax: ..... Statement Email: .....

Orders Contact: ..... Ph: ..... Mob: ..... E: .....

Accounts Contact: ..... Ph: ..... Mob: ..... E: .....

**D THIS SECTION MUST BE COMPLETED**

PLEASE CIRCLE APPROPRIATE TO YOUR BUSINESS STRUCTURE:- A, B, C, D or E

IF YOUR BUSINESS IS RUN:

- (a) BY A COMPANY - PLEASE PROVIDE DIRECTOR DETAILS
- (b) BY A SOLE TRADER - PLEASE PROVIDE PROPRIETOR DETAILS
- (c) BY A PARTNERSHIP - PLEASE PROVIDE PARTNER DETAILS

- (d) BY A TRUST - PLEASE PROVIDE TRUSTEE DETAILS
- (e) BY A TRUST AND THE TRUSTEE OF THE TRUST IS A COMPANY - PLEASE PROVIDE DIRECTOR DETAILS OF THAT COMPANY

**E IF YOU HAVE CIRCLED (d) or (e) PLEASE PROVIDE THE FOLLOWING DETAILS**

Name of Trust  ACN

Name of Trustee  ABN

**F PLEASE PROVIDE DETAILS FOR EACH DIRECTOR, PROPRIETOR OR TRUSTEE**

Full Name: ..... D.O.B: ..... Drivers Licence No: .....

Current Residential Address: ..... PC: ..... Home Ph: .....

Previous Residential Address: ..... PC: ..... Mob: .....

Full Name: ..... D.O.B: ..... Drivers Licence No: .....

Current Residential Address: ..... PC: ..... Home Ph: .....

Previous Residential Address: ..... PC: ..... Mob: .....

Full Name: ..... D.O.B: ..... Drivers Licence No: .....

Current Residential Address: ..... PC: ..... Home Ph: .....

Previous Residential Address: ..... PC: ..... Mob: .....

Full Name: ..... D.O.B: ..... Drivers Licence No: .....

Current Residential Address: ..... PC: ..... Home Ph: .....

Previous Residential Address: ..... PC: ..... Mob: .....

**G** IF YOU ARE NEW OWNERS WITH NO CREDIT HISTORY TO PROVIDE PLEASE TICK THIS BOX   
IF YOU HAD A PREVIOUS OR OTHER BUSINESS NAME PLEASE PROVIDE THE FOLLOWING DETAILS:

Business Name: \_\_\_\_\_ Period of ownership-Start: \_\_\_\_\_ Finish: \_\_\_\_\_ Type of Business: \_\_\_\_\_

**H** Has the applicant or anyone associated with the applicant been -

1. Bankrupt or used "Part X" of the Bankruptcy Act? YES / NO
2. Involved with the management or control of a business which has been wound up, had a receiver, administrator or liquidator appointed or entered into scheme  
For the benefit of creditors YES / NO

If yes, give details: .....

**I** **Must be signed by Directors or Proprietor**

I/We (Personal Name) declare that:-

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
2. I/We being individual applicants, hereby charge all of the applicants' interest in real property both present and future in favour of Superior Food Services as security for all monies outstanding to Superior Food Services from time to time.

PRINT NAME:: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME:: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME:: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINT NAME:: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

**ORIGINAL COMPLETED CREDIT APPLICATION MUST BE RETURNED TO THE MELBOURNE OFFICE WITHIN 7 DAYS.**

**MELBOURNE (HEAD OFFICE):** 33-59 Clarinda Road, South Oakleigh VIC 3167 (PO Box 329) Mulgrave Vic 3170 Ph: (03) 9538 0800 Fax: (03) 9538 0899  
**ADELAIDE:** 5-7 Acorn Road, Dry Creek SA 5094 Ph: (08) 8359 7813 Fax: (08) 8349 9728  
**ALBURY:** 238A Kiewa Street (PO Box 197) Albury NSW 2640 Ph: (02) 6021 4745 Fax: (02) 6021 7661  
**BRISBANE:** Unit 1B, 60 Enterprise Place Tingalpa QLD 3417 Ph: (07) 3390 6387 Fax: (07) 3348 9523  
**CENTRAL COAST NSW:** 7 Burnet Road, Warnervale NSW Ph: (02) 4393 5305 Fax: (02) 4392 4997  
**WOLLONGONG:** 17 Resolution Drive Unanderra NSW Ph: (02) 4271 1855 Fax: (02) 4272 5012  
**SYDNEY:** Warehouse 3, 4 Inglis Rd Ingleburn NSW 2565 (PO Box 92 Ingleburn NSW 1890 Ph: (02) 9609 5522 Fax: (02) 9609 6408  
**WAGGA WAGGA:** 14-18 Baretta Lane Wagga Wagga NSW 2650 Ph: (02) 6931 0700 Fax: (02) 6931 9999  
**PERTH:** 24 Pavers Circle Malaga WA 6090 Ph: (08) 9209 2470 Fax: (08) 9209 2061



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

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 Privacy 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 each 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 Superior Food Group in the form of a Trading Account and/ or
- b) been asked to provide a Guarantee in relation to an application for credit from Superior Food Group in the form of a Trading Account.

I / We hereby consent to Superior Food Group 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 Superior Food Group 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 Superior Food Group.
8. **Disclosure of Personal Information:** Disclose personal information about me/us to any parent or affiliate company, associate, contractor or agent of Superior Food Group involved in the day to day assessment and/or monitoring of the commercial credit trading account provided to me/us.

I/We authorise Superior Food Group, 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 Superior Food Group may not be able to provide me/us with the commercial credit trading account if I/we do not supply/consent to Superior Food Group 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)**

1.	Print Name:	Signature:	Date
2.	Print Name:	Signature:	Date
3.	Print Name:	Signature:	Date
4.	Print Name:	Signature:	Date

## SUPERIOR FOOD GROUP TERMS AND CONDITIONS OF TRADING AGREEMENT

Superior Food Group Pty Ltd (15 607 519 737) and each subsidiary, affiliate, associated company and related entities

These Trading Terms shall govern the sale and delivery of goods by Superior Food Group to its Customers ("the Customer").

### **Application of Terms and Account Procedures**

1. These terms and conditions shall apply to the exclusion of all other terms and conditions including but not limited to any terms and conditions of the Customer. If the Customer does not wish to receive goods on the terms and conditions set out in this Agreement (as amended from time to time), the Customer must notify Superior Food Group and return the goods to Superior Food Group within 48 hours of receipt or the date of amendment of this Agreement, otherwise the Customer will be deemed to have accepted the goods on the terms of this Agreement.
2. No Goods will be supplied by Superior Food Group to the Customer on any other terms or conditions other than those set out in this document.
3. Superior Food Group will only offer goods on credit and credit terms once a completed official Superior Food Group "Application for Commercial Credit Account" has been completed and subsequently approved by Superior Food Group as notified to the customer in writing.
4. Any subsequent store locations must also be approved by Superior Food Group before Superior Food Group products can be distributed from another outlet.
5. The granting of credit terms for new or existing accounts is entirely at Superior Food Group' discretion and Superior Food Group may withdraw or vary credit terms upon 48 hours written notice to the Customer.
6. Superior Food Group reserves the right to refuse or cease supply to any Customer or prospective Customer for any reason and such reason will be notified to the Customer in writing.

### **Payment Terms**

7. All accounts are due and payable within the given terms stated on the relevant invoice or statement or as otherwise notified by Superior Food Group on approved credit trading terms.

### **Defaults**

8. Should the Customer fail to pay an account by the due date:
  - (a) Superior Food Group may charge interest on any overdue invoice at the rate of 18% per annum calculated and payable daily, compounded from the due date until the invoice is paid in full;
  - (b) Any discounts that apply (including but not limited to off-invoice discount and settlement discount) will be disallowed if payment is not received on or before the date required in accordance with these terms. Any disallowed discounts will be due and payable immediately;
  - (c) 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;
  - (d) The Customer's account may at Superior Food Group' discretion be subject to suspension of supply of goods or permanent closure upon the provision of 48 hours' notice;
  - (e) Superior Food Group may take legal action to recoup any debt which is likely to result in the closure of the account;
  - (f) The Customer shall also be liable to pay all reasonable costs and expenses to Superior Food Group on demand (including without limitation all legal costs and disbursements on a solicitor/own client basis) and all mercantile agents fees incurred by Superior Food Group in recovering any amounts outstanding;
  - (g) The Customer agrees to provide full details of its credit card account to Superior Food Group. If the Customer's account is not paid in full by the due date, Superior Food Group reserves the right to debit this amount to the Customer's credit card together with any credit card fees that may be charged to Superior Food Group in respect 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 and agrees to Superior Food Group charging 1.4% on account of fees if such payments are received using Visa / MasterCard, 2.5% on account of fees if such payments are received using American Express, and that such charges will be taken at time of processing.
9. Where any person has a financial interest in two or more Superior Food Group 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 and invoices rendered to all inter-related accounts shall become immediately due and payable.
10. An account may be subject to suspension or closure if the Customer breaches these Trading Terms or where any other guidelines or policies issued from time to time are not observed.
11. Any account together with any inter-related account will be immediately and permanently closed if in Superior Food Group' sole opinion the Customer:
  - (a) sells or offers to sell or purchases counterfeit Superior Food Group products;
  - (b) engages in deceptive or illegal conduct that has an adverse effect on Superior Food Group; or
  - (c) on-sells or supplies Superior Food Group products to or purchases Superior Food Group products from non-approved outlets.
12. Should an account be closed, Superior Food Group may immediately reclaim any advertising or point-of-sale material incorporating Superior Food Group Trade Marks or other Superior Food Group intellectual property that has previously been supplied and the Customer irrevocably grants permission for Superior Food Group 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 Superior Food Group prior to delivery of products being made. Superior Food Group shall at all times and at its sole discretion have the right to supply goods on a Payment Before Delivery basis and not offer credit irrespective of whether credit has been previously provided.

### **Payment On Delivery**

14. For Payment On Delivery Sales, full payment must be received and verified by Superior Food Group drivers at the time of delivery for products being supplied. Superior Food Group shall at all times and at its sole discretion have the right to refuse to supply goods if Payment On Delivery basis is not made and not offer credit irrespective of whether credit has been previously provided.

### **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 piece in effect at the time of order. All prices are subject to change without notice.

### **Freight and Administrative Charges**

- 16.
- (a) Superior Food Group 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 Superior Food Group by our nominated freight company.
  - (b) Deliveries to non-metro stores shall incur a delivery fee per delivery as advised by Superior Food Group to the Customer from time to time.
  - (c) Superior Food Group shall not be liable for freight costs on any goods returned to it 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 Superior Food Group then Superior Food Group will also levy an administration fee for each delivery. The minimum commercial value and administration fee will be advised by Superior Food Group and may be varied from time to time with prior written notice to the Customer.

### **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 Superior Food Group 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 (including faulty product) by contacting the Customer Service Department on 03 9538 0800 within 24 hours after delivery of the goods to the Customer;
  - (b) Returns of unpacked goods will not be accepted;
  - (c) Returns of Special Orders will not be accepted;
  - (d) Returns of goods received by Superior Food Group after the period specified by Superior Food Group when granting authorisation for the goods to be returned will not be accepted;
  - (e) In the event that Superior Food Group authorises a return of goods, no claim for the same shall be considered unless:
    - i. the goods are returned in the original packaging and in good order and condition;
    - ii. All price stickers, security devices or other non-Superior Food Group labelling or items must be removed otherwise returns will not be accepted or a 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.);
      - E. Unauthorised or unacceptable returns may be returned to the Customer at the Customer's expense;
      - F. Special Make-Up Orders and Custom Product Orders may not be returned;
      - G. Customers must return goods only by Superior Food Group' nominated carriers (approved by Superior Food Group prior to the goods being freighted), otherwise freight will not be paid by Superior Food Group;
      - H. All returned goods shall be subject to an inspection by Superior Food Group or an authorised agent of Superior Food Group, before any claim will be considered;
      - I. Acceptance of the returned goods by Superior Food Group shall not constitute any acceptance of any claim; and
      - J. Superior Food Group reserves the right to raise credits at the lowest invoiced prices if original invoice details are not provided.

### **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 Superior Food Group failing which all short delivery claims are time barred.
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. Incorrect pricing claims relating to either price, freight or administration charges, must be advised by the Customer to Superior Food Group within 24 hours of the invoice date in order for these claims to be considered.
22. All claims will be subject to investigation before a decision is made and any rejections by Superior Food Group will be communicated to the Customer. For the avoidance of doubt, non-compliance by the Customer with this Agreement will be considered in any investigation and may cause the claim to be rejected.

### **Cancellation of Orders**

23. The following shall apply in relation to the cancellation of orders:
- (a) Orders placed with Superior Food Group by the Customer shall not be cancelled without prior written approval of Superior Food Group;
  - (b) A request for cancellation will not be considered unless made in writing by the Customer to Superior Food Group and received by Superior Food Group 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 Superior Food Group accepts the cancellation of an order, Superior Food Group shall be entitled to charge any reasonable fees for the cost of work and materials and/or any administration costs incurred by Superior Food Group in preparing and cancelling the order.
  - (e)

### **Limitation of Liability**

#### **Loss or Damage in Transit**

24. Superior Food Group is not responsible to the Customer or for any loss or damage to goods during transit caused by any event of any kind by any person (whether or not Superior Food Group is legally responsible for the person who caused or contributed to that loss or damage). Superior Food Group may provide the Customer with such assistance as may be necessary to press claims on carriers provided that the Customer:
- (a) has notified Superior Food Group and the carriers in writing immediately after loss or damage is discovered on receipt of goods; and
  - (b) lodges 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, all express and implied warranties as to the supply of goods are expressly excluded. Superior Food Group is not liable to the Customer for any physical or financial injury, loss or damage or for direct, indirect or consequential loss or damage of any kind arising out of or in relation to the supply of the goods by Superior Food Group or arising out of any act or omission by Superior Food Group, its employees, servants and agents. Notwithstanding anything to the contrary contained in these terms, Superior Food Group' liability is expressly limited to, at Superior Food Group' absolute discretion, 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 Superior Food Group to the Customer shall remain the property of Superior Food Group and property in all goods supplied shall not pass to the Customer until such time as Superior Food Group has:
- been paid in full for all goods supplied;
  - received payment of all other sums that are owing by the Customer to Superior Food Group; and
  - the moneys owing referred to in (a) and (b) above have been collected and cleared by Superior Food Group.
27. Where Superior Food Group 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 Superior Food Group, then:
- the Customer shall hold any such goods which it has been supplied by Superior Food Group upon trust and as a fiduciary for Superior Food Group and shall store and identify all such goods in a manner that clearly shows Superior Food Group' ownership thereof;
  - the Customer must not sell any goods supplied without the prior written consent of Superior Food Group 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 Superior Food Group 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 Superior Food Group; and
  - without prejudice to Superior Food Group' rights as an unpaid Seller or any of its other rights or remedies to retake possession of Superior Food Group goods from the Customer, the Customer hereby agrees to deliver up goods to Superior Food Group upon demand by Superior Food Group and otherwise agrees that Superior Food Group may recover possession of the goods at any site owned, possessed or controlled by the Customer and the Customer agrees that Superior Food Group has an irrevocable licence to do so.
28. Where:
- title has not passed to the Customer in goods supplied by Superior Food Group to the Customer; and
  - those Goods are sold to a third party by the Customer, 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 Superior Food Group on any account at the time of receipt of such proceeds, shall be held upon trust by the Customer for Superior Food Group in a separate account until such time as full payment is made of all amounts owing by the Customer to Superior Food Group.
29. The Customer agrees to indemnify and hold Superior Food Group harmless against all loss and damage incurred or sustained by Superior Food Group as a result of or in relation to the exercise of Superior Food Group' retention of title rights.
30. Clauses 26 to 29 above shall apply in respect of any goods supplied by Superior Food Group to an inter-related account of a Customer where the inter-related account is in default (see clause 9).

### **Force Majeure**

31. If for any reason beyond the control of Superior Food Group including without limitation as a result of any strike, trade dispute, fire, tempest, theft or breakdown, orders cannot be filled at the time stipulated by the Customer, Superior Food Group shall (at its sole discretion and without prejudice to the rights of Superior Food Group to recover any sums owing to it in respect of deliveries made or provided prior to the date of such determination) be entitled to either:
- cancel any order for goods placed by the Customer with Superior Food Group; or
  - determine any contract between Superior Food Group and the Customer that may have arisen by reason of the operation of these terms; or
  - determine any trading account.
- The Customer shall have no claims for damages arising out of any such cancellation and/or determination whether or not the Customer receives notice of any such cancellation and/or determination.

### **Change of Ownership**

32. The Customer shall give written notice to Superior Food Group within seven (7) days of any change of ownership or control of the Customer. The Customer hereby agrees to indemnify and keep indemnified Superior Food Group against any loss, damage, cost or expense incurred by Superior Food Group as a result of the Customer's failure to notify Superior Food Group of any such change of ownership and/or control. Superior Food Group reserves the right to vary any Customer order or terms of credit or hold or discount entitlements upon any change of ownership or control of the Customer.

### **Lien**

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

### **General**

34. A Certificate signed by an authorised representative of Superior Food Group and an authorised representative of the Customer will be prima facie evidence of the Customer's liability to Superior Food Group as at the date of the Certificate.

### **Variation of Terms**

35. Superior Food Group reserves the right to vary all or any of these terms upon 7 days notice to the Customer. Clerical errors are subject to correction without notification. The Customer will be deemed to accept the variation if no dispute is raised within 7 days of the date of the notice.

### **Notices**

36. 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) 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 Superior Food Group.

### GST

38. Unless otherwise agreed by Superior Food Group 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, Superior Food Group and the Customer acknowledge that these terms and conditions constitute the entire agreement between them and that the only enforceable obligations and liabilities of Superior Food Group and the Customer in relation to its subject matter. All representations, communications and prior agreements are superseded by these terms and conditions. Where previous terms and conditions have been entered into between the Customer and Superior Food Group, the parties agree that this Agreement shall not act as a merger of their rights but that the terms contained under such previous Agreement shall be amended by the terms contained herein to the extent of any inconsistency.

### Jurisdiction

41. These trading terms shall be governed by the laws in force in the State of Victoria and the parties agree that all claims and disputes shall be determined in the Court of competent jurisdiction nearest Courts in Melbourne.

### PPSA, PMSI and APAAP

42. . The Customer hereby grants a charge to Superior Food Group overall and any of your present and after acquired property (“**APAAP**”) and any interest in real property (current or future) as security for your 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 Superior Food Group agreeing to sell or continue to sell to the Customer and at the request of and for the benefit of such trust . The Customer (in their own capacity and/ or as trustee as previously described) hereby and by way of security irrevocably appoints every officer and legal practitioner of Superior Food Group jointly and each of them severally as the Customer’s lawful attorney (“attorney”) with the power and for the purpose of executing (including as a deed) a mortgage or other instrument of security in any form determined in the absolute discretion of the attorney over any interest in real property of the Customer (in their own capacity and/ or as trustee as previously described) to secure the monies and obligations herein, if the Customer fails within a reasonable time of demand being made upon the Customer to execute such mortgage or other instrument, and to procure the registration of such mortgage or other security.
43. For the purposes of section 20(1) and (2) of the PPSA, and to ensure maximum benefit and protection for Superior Food Group under the PPSA, you confirm and agree that you intend to and do grant to Superior Food Group, as security for your indebtedness and obligations, a charge over all of your present and after-acquired property.
44. You agree to do anything that Superior Food Group reasonably requires to ensure that Superior Food Group has at all times a continuously perfected security interest over all of your present and after-acquired property and agree and acknowledge that Superior Food Group may register its security interest on the register established pursuant to the PPSA.
45. . Superior Food Group may allocate amounts received from you in any manner it determines, but in default will apply same first to payment of any unsecured amount owing to Superior Food Group, next as to any reasonable enforcement expenses and then as to any secured balance owing to Superior Food Group.
46. You agree to reimburse Superior Food Group for all reasonable costs and/or expenses incurred or payable by Superior Food Group in relation to registering, maintaining or releasing any financing statement or financing change statement under this Agreement or complying with any requirement under the PPSA (including but not limited to complying with any request for information from third parties if required).
47. You will not (except with the written consent of Superior Food Group) 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 payable to Superior Food Group (if any) or otherwise, and whether to a provider of new value or otherwise).
48. You will not (as against any person who is a “related entity “ of you for the purposes of the *Corporations Act 2001*) without the prior written consent of Superior Food Group, before or until all money payable to Superior Food Group in connection with the Agreement is paid in full:
- (a) exercise a right of contribution or indemnity;
  - (b) claim the benefit of (for example, by subrogation), or seek priority ahead of, the transfer of or the benefit of a security Superior Food Group holds in connection with this Agreement;
  - (c) try to reduce its liability to Superior Food Group through set off or counterclaim; or
  - (d) prove in competition with Superior Food Group if you are unable to pay your debts when due.
  - (e) seek to perfect or attach in favour of you or another (either jointly or severally) a security interest in any of your present or after acquired property which would rank in priority to the entitlements of Superior Food Group.
49. You waive 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.
50. You agree that you and Superior Food Group contract out of and nothing in the provisions of Sections 95, 96, 117, 118, 121(4), 130, 132(3)(d), 132(4), 142 and 143 of the PPSA shall apply to this Agreement.
51. You and Superior Food Group acknowledge that you are the grantor and Superior Food Group is the holder of a Purchase Money Security Interest (“**PMSI**”) by virtue of this Agreement and/ or the PPSA.
52. You and Superior Food Group agree that the terms of this Agreement may be altered unilaterally by Superior Food Group
53. You hereby consent and appoint Superior Food Group to be an interested person and your authorized representative for the purposes of section 275(9) PPSA.

### General

54. Superior Food Group may assign or transfer this Agreement and/ or any security under the PPSA to a related body corporate 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 Superior Food Group, which Superior Food Group will not unreasonably withhold.





**GUARANTEE**

IN CONSIDERATION OF Superior Food Group Pty Ltd ("SFG") agreeing 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 SFG to the Applicant described in the attached Application for credit account as the Applicant the Guarantor described in this Guarantee as the Guarantor HEREBY GUARANTEES COVENANTS and binds myself jointly and severally with the Applicant in favour of SFG for the payment of any amount which is now due or owing or which may hereafter become due or owing by the Applicant to SFG.

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

1. that the Applicant will pay to SFG all monies payable by the Applicant to SFG 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 SFG the whole of such monies due or payable to SFG and the Guarantor will on demand pay and make good all losses damages claims costs charges and expenses sustained or incurred by SFG 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 SFG from and against all loss of monies and all losses damages claims costs charges and expenses whatsoever that SFS may incur by reason of any such default on the part of the Applicant its successors or assignees;
2. That no time or other indulgence granted to the Applicant nor any variation in the terms of any contract, agreement or arrangement between SFG and the Applicant nor the release by SFG of any guarantee of security held by SFG shall in any way affect the liability of the Guarantor and that as between SFG and the Guarantor no cheque, bill of exchange or promissory note received by SFG 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. SFG shall be at liberty to act as though the Guarantor was the principal debtor and the Guarantor hereby waives all or any of his rights and sureties which may at any time be inconsistent with any provision hereof;
5. 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;
6. The discharge, extinguishment or postponement by bankruptcy, operation of law, act of parties or otherwise of any part of the indebtedness of the Applicant shall not impair or affect the liability of the Guarantor hereunder;
7. If any payment made to SFG by or on behalf of the Applicant or the Guarantor shall subsequently be avoided by any Statutory Provision or otherwise howsoever such payment shall be deemed not to have discharged the Guarantor's liability and in such event SFG and the Guarantor shall be restored to the position in which they would have been if such payment had not been made;
8. 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 SFG;
9. That SFG in accordance with the Privacy Act and Privacy Amendment 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;
10. SFG 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 drivers licence number, your application for credit or commercial credit, the fact that you have applied for credit and the amount, the fact that SFG 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 SFG 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.
11. That SFG approves the applicant's application for credit this agreement remains in force until the credit facility covered by the applicants application ceases;
12. In the interpretation of the Guarantee the masculine shall include the neuter and/or feminine genders as the context requires.
13. (a) 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 as security for credit provided to the Applicant by SFG.  
The Guarantor undertakes to keep the credit provider informed of any change in ownership of  
(i) the Guarantor real property recorded hereon: and  
(ii) any property not recorded hereon that becomes registered in the name of the Guarantor

Dated This ..... day of ..... / .....

**SCHEDULE - GUARANTORS DETAILS (Note - Signature only valid if Witnessed)**

GUARANTOR - PRINT NAME	GUARANTOR - RESIDENTIAL ADDRESS		
GUARANTOR - SIGNATURE	WITNESS - PRINT NAME	WITNESS - SIGNATURE	
GUARANTOR - PRINT NAME	GUARANTOR - RESIDENTIAL ADDRESS		
GUARANTOR - SIGNATURE	WITNESS - PRINT NAME	WITNESS - SIGNATURE	
GUARANTOR - PRINT NAME	GUARANTOR - RESIDENTIAL ADDRESS		
GUARANTOR - SIGNATURE	WITNESS - PRINT NAME	WITNESS - SIGNATURE	
GUARANTOR - PRINT NAME	GUARANTOR - RESIDENTIAL ADDRESS		
GUARANTOR - SIGNATURE	WITNESS - PRINT NAME	WITNESS - SIGNATURE	

**OFFICE USE ONLY** Account Manager Name: \_\_\_\_\_ CATEGORY: \_\_\_\_\_

**Account Managers Please provide Trading Name:** \_\_\_\_\_ TYPE OF BUS: \_\_\_\_\_

Notes: \_\_\_\_\_