



**Delicious Dairies Pty Ltd**

ABN: 73 125 166 574

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## CREDIT ACCOUNT APPLICATION

**To Be Completed By Applicants** - Please complete all sections and read the Terms and Conditions of Trade overleaf or attached.

<b>Customer's Details:</b> <input type="checkbox"/> Individual <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Other:			
Full or Legal Name:			
Trading Name (if different from above):			
Physical Address:		State:	Postcode:
Billing Address:		State:	Postcode:
Email Address:			
Phone No:	Fax No:	Mobile No:	
<b>Personal Details:</b> <i>(please complete if you are an Individual)</i>			
D.O.B.:		Driver's Licence No:	
<b>Business Details:</b> <i>(please complete if you are a Sole Trader, Trust, Partnership, Company or Other – as specified)</i>			
ABN:	ACN:	Date Established <i>(current owners)</i> :	
Nature of Business:			
Paid Up Capital: \$	Estimated Monthly Purchases: \$	Credit Limit Required: \$	
Principal Place of Business is: <input type="checkbox"/> Rented <input type="checkbox"/> Owned <input type="checkbox"/> Mortgaged <i>(to whom)</i> :			
Directors / Owners / Trustee <i>(if more than two, please attach a separate sheet)</i>			
(1) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
(2) Full Name:		D.O.B.:	
Private Address:		State:	Postcode:
Driver's Licence No:	Phone No:	Mobile No:	
<b>Account Terms:</b> <input type="checkbox"/> COD <input type="checkbox"/> 7 Days from Invoice Date <input type="checkbox"/> 14 Days from Invoice Date			
Accounts to be emailed? <input type="checkbox"/> YES <input type="checkbox"/> NO			
Accounts Email Address:			
Accounts Contact:		Phone No:	
Bank and Branch:		Account No:	
<b>Trade References:</b> <i>(please provide companies that are willing to do trade references)</i>			
Name:	Address:	Phone (No Mobile Numbers) / Fax / Email:	
1.			
2.			
3.			
<b>DD IS TO BE NOTIFIED OF ANY DISCREPANCIES IN ORDERS WITHIN 24 HOURS OF DELIVERY.</b>			

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf or attached) of Delicious Dairies Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Customer I shall be personally liable for the performance of the Customer's obligations under this contract.***

SIGNED (CUSTOMER): \_\_\_\_\_ SIGNED (DD): \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Position: \_\_\_\_\_ Position: \_\_\_\_\_

**WITNESS TO CUSTOMER'S SIGNATURE:**

Signed: \_\_\_\_\_ Name: \_\_\_\_\_ Date: \_\_\_\_\_

**OFFICE USE ONLY**

Account / Ref. No.	CREDIT LIMIT	APPROVED BY	DATA INPUTTED	DATE
	\$			/ /

## Personal/Directors Guarantee and Indemnity

IN CONSIDERATION of Delicious Dairies Pty Ltd and its successors and assigns ("DD") at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

\_\_\_\_\_ ("the Customer") [Insert Company Name In Box Provided]

**I/WE (also referred to as the "Guarantor/s") UNCONDITIONALLY AND IRREVOCABLY:**

- GUARANTEE** the due and punctual payment to DD of all monies which are now owing to DD by the Customer and all further sums of money from time to time owing to DD by the Customer in respect of goods and services supplied or to be supplied by DD to the Customer or any other liability of the Customer to DD, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with DD, including but not limited to the Terms & Conditions of Trade signed by the Customer and annexed to this Guarantee and Indemnity. If for any reason the Customer does not pay any amount owing to DD the Guarantor will immediately on demand pay the relevant amount to DD. In consideration of DD agreeing to supply the Goods to the Customer, the Guarantor charges all of its right, title and interest (joint or several) in any land, realty or other assets capable of being charged, owned by the Guarantor now or in the future, to secure the performance by the Guarantor of its obligations under these terms and conditions (including, but not limited to, the payment of any money) and the Guarantor acknowledges that this personal guarantee and indemnity constitutes a security agreement for the purposes of the Personal Property Securities Act 2009 ("PPSA") and unequivocally consents to DD registering any interest so charged. The Guarantor irrevocably appoints DD and each director of DD as the Guarantor's true and lawful attorney/s to perform all necessary acts to give effect to this clause including, but not limited to, signing any document on the Guarantor's behalf which DD may reasonably require to:
  - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - register any other document required to be registered by the PPSA or any other law; or
  - correct a defect in a statement referred to in clause 1(a) or 1(b).
- HOLD HARMLESS AND INDEMNIFY** DD on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees calculated on a solicitor and own client basis) incurred by, or assessed against, DD in connection with:
  - the supply of goods and/or services to the Customer; or
  - the recovery of monies owing to DD by the Customer including the enforcement of this Guarantee and Indemnity, and including but not limited to DD's nominees contract default fee and legal costs; or
  - monies paid by DD with the Customer's consent in settlement of a dispute that arises or results from a dispute between, DD, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by DD to the Customer.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

- I/We have received, read and understood DD's Terms and Conditions prior to entering into this Guarantee and Indemnity and agree to be bound by those Terms and Conditions.**
- This Guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of monies owing to DD by the Customer and all obligations herein have been fully paid satisfied and performed.
- No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on DD's part (whether in respect of the Customer or any one or more of any other Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Customer's obligations to DD, each Guarantor shall be a principal debtor and liable to DD accordingly.
- If any payment received or recovered by DD is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and DD shall each be restored to the position in which they would have been had no such payment been made.
- The term "Guarantor" whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
- I/We have been advised to obtain independent legal advice before executing this Guarantee and Indemnity. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to DD.**
- I/we irrevocably authorise DD to obtain from any person or company any information which DD may require for credit reference purposes. I/We further irrevocably authorise DD to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with DD as a result of this Guarantee and Indemnity being actioned by DD.
- The above information is to be used by DD for all purposes in connection with DD considering this Guarantee and Indemnity and the subsequent enforcement of the same.

**GUARANTOR-1**

SIGNED: \_\_\_\_\_

FULL NAME: \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

SIGNATURE OF WITNESS: \_\_\_\_\_

NAME OF WITNESS: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

EXECUTED as a Deed this            day of            20\_\_\_\_

**GUARANTOR-2**

SIGNED: \_\_\_\_\_

FULL NAME: \_\_\_\_\_

HOME ADDRESS: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

SIGNATURE OF WITNESS: \_\_\_\_\_

NAME OF WITNESS: \_\_\_\_\_

OCCUPATION: \_\_\_\_\_

PRESENT ADDRESS: \_\_\_\_\_

EXECUTED as a Deed this            day of            20\_\_\_\_

Note: 1. If the Customer is a sole trader or partnership the Guarantor(s) should be some other suitable person(s).

2. If the Customer is a club or incorporated society the Guarantor(s) should be the president and secretary or other committee member

**WARNING: THIS IS AN IMPORTANT DOCUMENT. YOU SHOULD SEE YOUR OWN LAWYER OR ADVISOR BEFORE SIGNING IT**

# Delicious Dairies Pty Ltd – Terms & Conditions of Trade

<p><b>Definitions</b></p> <p>1.1 "DD" means Delicious Dairies Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Delicious Dairies Pty Ltd.</p> <p>1.2 "Customer" means the person's buying the Goods as specified in any invoice, document or order, and if there is more than one Customer is a reference to each Customer jointly and severally.</p> <p>1.3 "Goods" means all Goods or Services supplied by DD to the Customer at the Customer's request from time to time (where the context so permits the terms "Goods" or "Services" shall be interchangeable for the other).</p> <p>1.4 "Price" means the Price payable (plus any GST where applicable) for the Goods as agreed between DD and the Customer in accordance with clause 5 below.</p> <p>1.5 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax Act 1999)" (Cth).</p> <p><b>2. Acceptance</b></p> <p>2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.</p> <p>2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and DD.</p> <p>2.3 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with DD and it has been approved with a credit limit established for the account.</p> <p>2.4 In the event that the supply of Goods request exceeds the Customer credit limit and/or the account exceeds the payment terms, DD reserves the right to refuse delivery.</p> <p>2.5 Where DD suspends delivery in accordance with clause 2.4, DD reserves the right to enter into a special arrangement to enable the Customer to pay the outstanding monies payable and to modify the payment terms in any future purchases by the Customer, (including but not limited to a cash on delivery basis as per clause 5.4(a)).</p> <p>2.6 The Customer acknowledges and accepts that:</p> <p>(a) the supply of Goods for accepted orders may be subject to availability and if, for any reason, Goods are not or cease to be available, DD reserves the right to vary the Price with alternative Goods as per clause 5.2, subject to prior confirmation and agreement of both parties;</p> <p>(b) orders of non-stocklist items are subject to DD's Special Order Agreement that must be signed by both parties, prior to the commencement of any production, or order being placed. Repeat orders of non-stocklist items will not be subject to further production until such time as the original order is depleted, unless otherwise agreed. If there are any inconsistencies between this document and DD's terms and conditions contained therein then DD's general terms and conditions shall prevail.</p> <p><b>3. Electronic Transactions Act 2000</b></p> <p>3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.</p> <p><b>4. Change in Control</b></p> <p>4.1 The Customer shall give DD not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's affairs, including but not limited to, changes in the Customer's name, address, contact phone or fax number, or business practice). The Customer shall be liable for any loss incurred by DD as a result of the Customer's failure to comply with this clause.</p> <p><b>5. Price and Payment</b></p> <p>5.1 At DD's sole discretion, the Price shall be either:</p> <p>(a) as indicated on any invoice provided by DD to the Customer; or</p> <p>(b) the Price as at the date of delivery of the Goods according to DD's current price list; or</p> <p>(c) DD's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.</p> <p>5.2 DD reserves the right to change the Price:</p> <p>(a) if a variation to the Goods which are to be supplied is requested; or</p> <p>(b) if during the course of the Services, the Goods are not or cease to be available from DD's third party supplier, then DD reserves the right to provide alternative Goods; or</p> <p>(c) in the event of increases to DD in the cost of Goods to be supplied from their third party supplier.</p> <p>5.3 All variations will be charged for and shown on the invoice/statement given the Customer by DD and will become due and payable in accordance with the payment terms agreed to between both parties.</p> <p>5.4 Time for payment for the Goods being of the essence, the Price will be payable by the Customer on the date determined by DD, which may be:</p> <p>(a) on delivery of the Goods;</p> <p>(b) by way of instalments/progress payments in accordance with DD's payment schedule, unless otherwise agreed, payments received will be allocated to the oldest monies owed;</p> <p>(c) the date specified on any invoice or other form as being the date for payment; or</p> <p>(d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given/delivered to the Customer by DD.</p> <p>5.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and DD.</p> <p>5.6 At DD's sole discretion, a discount of the Price of Goods may apply. Any discounts applicable to the Price shall become null and void if payment is not received in accordance with the payment terms agreed upon by both parties.</p> <p>5.7 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or to be owed by the Customer by DD nor to withhold payment of any invoice because of part of that invoice is in dispute.</p> <p>5.8 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to DD an amount equal to any GST DD must pay for any supply by DD under this or any other agreement for the sale of the Goods. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.</p> <p><b>6. Delivery of Goods</b></p> <p>6.1 Delivery ("Delivery") of the Goods is taken to occur at the time that:</p> <p>(a) the Customer or the Customer's nominated carrier takes possession of the Goods at DD's address; or</p> <p>(b) DD (or DD's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.</p> <p>6.2 At DD's sole discretion, the cost of delivery is included in the Price.</p> <p>6.3 Any time specified by DD for delivery of the Goods is an estimate only. The Customer must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. DD will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Goods as arranged then DD shall be entitled to charge a reasonable fee for redelivery and/or storage.</p> <p><b>7. Risk</b></p> <p>7.1 Risk of damage to or loss of the Goods passes to the Customer on Delivery and the Customer must insure the Goods on or before Delivery.</p> <p>7.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, DD is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by DD is sufficient evidence of DD's rights to receive the insurance proceeds without the need for any person dealing with DD to make further enquiries.</p> <p>7.3 If the Customer requests DD to leave Goods outside DD's premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Customer's sole risk.</p> <p><b>8. Out of Stock/Substitution</b></p> <p>8.1 DD will use its reasonable endeavours to ensure that all Goods ordered by the Customer are supplied to the Customer. If the Goods ordered are not available in stock, DD shall work with the Customer on a case by case basis.</p> <p><b>9. Title</b></p> <p>9.1 DD and the Customer agree that ownership of the Goods shall not pass until:</p> <p>(a) the Customer has paid DD all amounts owing to DD; and</p> <p>(b) the Customer has met all of its other obligations to DD.</p> <p>9.2 Receipt by DD of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.</p> <p>9.3 It is further agreed that, until ownership of the Goods passes to the Customer in accordance with clause 9.1:</p> <p>(a) the Customer is only a bailee of the Goods and must return the Goods to DD on request;</p> <p>(b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for DD and must pay to DD the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed;</p> <p>(c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for DD and must pay or deliver the proceeds to DD on demand;</p> <p>(d) the Customer should not convert or possess the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of DD and must sell, dispose of or return the resulting product to DD as it so directs.</p> <p>(e) the Customer irrevocably authorises DD to enter any premises where DD believes the Goods are kept and recover possession of the Goods.</p>	<p>(f) DD may recover possession of any Goods in transit whether or not delivery has occurred;</p> <p>(g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of DD.</p> <p>(h) DD may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.</p> <p><b>Personal Property Securities Act 2009 ("PPSA")</b></p> <p>10. In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.</p> <p>10.1 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to DD for Services – that have previously been supplied and that will be supplied in the future by DD to the Customer.</p> <p>10.2 The Customer undertakes to:</p> <p>(a) register any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which DD may reasonably require to;</p> <p>(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;</p> <p>(ii) correct any other document required to be registered by the PPSA; or</p> <p>(iii) register a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);</p> <p>(b) DD for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;</p> <p>(c) not register a financing change statement in respect of a security interest without the prior written consent of DD;</p> <p>(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of DD;</p> <p>(e) immediately advise DD of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.</p> <p>10.4 DD and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.</p> <p>10.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(4) and 132(4) of the PPSA.</p> <p>10.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.</p> <p>10.7 Unless otherwise agreed to in writing by DD, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.</p> <p>10.8 The Customer must unconditionally ratify any actions taken by DD under clauses 10.3 to 10.5.</p> <p>10.9 Subject to any express provisions to the contrary (including those contained in clause 10) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.</p> <p><b>11. Security and Charge</b></p> <p>11.1 In consideration of DD agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged (whether by way of mortgage or otherwise) in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).</p> <p>11.2 The Customer indemnifies DD from and against all DD's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising DD's rights under this clause.</p> <p>11.3 The Customer irrevocably appoints DD and each director of DD as the Customer's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.</p> <p><b>12. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)</b></p> <p>12.1 The Customer must inspect the Goods immediately on delivery and must within twenty-four (24) hours of delivery notify DD in writing of any evident defect/damage, discrepancies, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow DD to inspect the Goods.</p> <p>12.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (<b>Non-Excluded Guarantees</b>).</p> <p>12.3 DD acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.</p> <p>12.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, DD makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. DD's liability in respect of these warranties is limited to the fullest extent permitted by law.</p> <p>12.5 If the Customer is a consumer within the meaning of the CCA, DD's liability is limited to the extent permitted by law and is not to be taken to be excluded, modified or restricted.</p> <p>12.6 If DD is required to replace the Goods under this clause of the CCA, but is unable to do so, DD may refund any money the Customer has paid for the Goods.</p> <p>12.7 If the Customer is not a consumer within the meaning of the CCA, DD's liability for any defect or damage in the Goods is:</p> <p>(a) limited to the value of any express warranty or warranty card provided to the Customer by DD at DD's sole discretion;</p> <p>(b) limited to any warranty to which DD is entitled, if DD did not manufacture the Goods; and</p> <p>(c) otherwise negated absolutely in relation to the claim.</p> <p>12.8 Subject to this clause 12, returns will only be accepted provided that:</p> <p>(a) the Customer has complied with the provisions of clause 12.1; and</p> <p>(b) DD has agreed that the Goods are defective; and</p> <p>(c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and</p> <p>(d) the Goods are returned in as close a condition to that in which they were delivered as is possible.</p> <p>12.9 Notwithstanding clauses 12.1 to 12.8 but subject to the CCA DD shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:</p> <p>(a) the Customer failing to properly maintain or store any Goods;</p> <p>(b) the Customer using the Goods for any purpose other than that for which they were designed;</p> <p>(c) the Customer continuing the use of any Goods after any defect became apparent or should have been apparent to a reasonably prudent operator; or</p> <p>(d) the Customer failing to follow any instructions or guidelines provided by DD;</p> <p>(e) fair wear and tear, any accident, or act of God.</p> <p>12.10 Notwithstanding anything contained in this clause if DD is required by a law to accept a return then DD will only accept a return on the conditions imposed by that law.</p> <p><b>13. Compliance Laws</b></p> <p>13.1 DD warrants that its Products manufactured on its registered premises, and supplied to all Customers, shall meet all safety regulations and standards as defined by the Hazard Analysis and Critical Control Points (HACCP), Food Safety Programme, and is eminently suitable for public consumption and therefore compliant with the Australia New Zealand Food Standards Code.</p> <p>13.2 Any alleged claims of contamination, accidental inclusion or food borne illnesses must be reported to DD management in writing as soon as reasonable practicable. DD reserves the right to request any information relevant to the claim to be provided by the independent laboratory before any public claims, statements or dissemination of information in any format including social media.</p> <p><b>14. Dispute Resolution</b></p> <p>14.1 If a dispute arises between the parties to this contract, then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:</p> <p>(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and</p> <p>(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.</p> <p>14.2 Where there is any dispute between the parties, whether relating to overdue payment, suspension of the Services, or otherwise, then the Customer agrees that they shall not contract any third party to replace DD as their provider of the Goods and Services which will be supplied under this agreement until the arbitration process in clause 14.1 has been completed, and then only if the arbitrator has found against DD in its determination, and DD is unable or unwilling to resolve, rectify or correct the issues that have led the arbitrator to find against DD.</p> <p><b>15. Intellectual Property</b></p> <p>15.1 Where DD has designed, drawn or developed Goods for the Customer, then the copyright in any designs and drawings and documents shall remain the property of DD. Under no circumstances may such designs, drawings and documents be used without the express written approval of DD.</p> <p>15.2 The Customer warrants that all designs, specifications or instructions given to DD will not cause DD to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify DD against any action taken by a third party against DD in respect of any such infringement.</p>	<p>15.3 The Customer agrees that DD may (at no cost) use for the purposes of marketing or entry into any competition, any documents, designs, drawings or Goods which DD has created for the Customer.</p> <p><b>16. Default and Consequences of Default</b></p> <p>16.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at DD's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.</p> <p>16.2 If the Customer owes DD any money the Customer shall indemnify DD from and against all costs and disbursements incurred by DD in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, DD's contract default fee, and bank disbursement fees).</p> <p>16.3 Further to any other rights or remedies DD may have under this contract, if a Customer has made payment to DD, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by DD under this clause 16 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.</p> <p>16.4 Without prejudice to DD's other remedies at law DD shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to DD shall, whether or not due for payment, become immediately payable if:</p> <p>(a) any money payable to DD becomes overdue, or in DD's opinion the Customer will be unable to make a payment when it falls due;</p> <p>(b) the Customer owes DD any money and any applicable credit limit provided by DD;</p> <p>(c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or</p> <p>(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.</p> <p><b>17. Cancellation</b></p> <p>17.1 Without prejudice to any other remedies DD may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions DD may suspend or terminate the supply of Goods to the Customer. DD will not be liable to the Customer for any loss or damage the Customer suffers because DD has exercised its rights under this clause.</p> <p>17.2 DD may cancel any contract to which these terms and conditions apply or cancel delivery of Goods to the Customer if the Goods are delivered by giving written notice to the Customer. On giving such notice DD shall repay to the Customer any money paid by the Customer for the Goods. DD shall not be liable for any loss or damage whatsoever arising from such cancellation.</p> <p>17.3 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any and all loss incurred (whether direct or indirect) by DD as a direct result of the cancellation (including, but not limited to, any loss of profits).</p> <p>17.4 The Customer agrees that the Customer's specifications, or for non-stocklist items, will definitely not be accepted once production has commenced, or an order has been placed.</p> <p><b>18. Privacy Act 1988</b></p> <p>18.1 The Customer agrees for DD to inform a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by DD.</p> <p>18.2 The Customer agrees that DD may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:</p> <p>(a) to assess an application by the Customer; and/or</p> <p>(b) to notify other credit providers of a default by the Customer; and/or</p> <p>(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or</p> <p>(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.</p> <p>18.3 The Customer consents to DD being given a consumer credit report to collect overdue payment on commercial credit.</p> <p>18.4 The Customer agrees that personal credit information provided may be used and retained by DD for the following purposes (and for other agreed purposes or required by):</p> <p>(a) the provision of Goods; and/or</p> <p>(b) analysing and checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or</p> <p>(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or</p> <p>(d) enabling the collection of amounts outstanding in relation to the Goods.</p> <p>18.5 DD may give information about the Customer to a CRB for the following purposes:</p> <p>(a) to obtain a consumer credit report;</p> <p>(b) allow the Customer to create or maintain a credit information file about the Customer and/or credit history;</p> <p>18.6 The information given to the CRB may include:</p> <p>(a) personal information as outlined in 18.1 above;</p> <p>(b) name of the credit provider and that DD is a current credit provider to the Customer;</p> <p>(c) whether the credit provider is a licensee;</p> <p>(d) type of consumer credit;</p> <p>(e) details of changing of customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);</p> <p>(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and DD has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);</p> <p>(g) information that, in the opinion of DD, the Customer has committed a serious credit infringement;</p> <p>(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).</p> <p>18.7 The Customer shall have the right to request (by e-mail) from DD:</p> <p>(a) a copy of the information about the Customer retained by DD and the right to request that DD correct any incorrect information; and</p> <p>(b) that DD does not disclose any personal information about the Customer for the purpose of direct marketing.</p> <p>18.8 DD will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.</p> <p>18.9 The Customer can make a privacy complaint by contacting DD via e-mail. DD will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at <a href="http://www.oaic.gov.au">www.oaic.gov.au</a>.</p> <p><b>19. Service of Notices</b></p> <p>19.1 Any written notice given under this contract shall be deemed to have been given and received:</p> <p>(a) by handing the notice to the other party, in person;</p> <p>(b) by leaving it at the address of the other party as stated in this contract;</p> <p>(c) by sending it by registered post to the address of the other party as stated in this contract;</p> <p>(d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;</p> <p>(e) if sent by email to the other party's last known email address.</p> <p>19.2 Any notice shall be deemed to have been given and received, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.</p> <p><b>20. General</b></p> <p>20.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce any provision of these terms and conditions if that party is not satisfied with the legal or unenforceable validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.</p> <p>20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales in which DD has its principal place of business, and are subject to the jurisdiction of the Downing Centre Courts in that state.</p> <p>20.3 Subject to clause 12, DD shall be under no liability whatsoever to the Customer for any indirect or consequential loss or damage suffered by the Customer arising out of a breach by DD of these terms and conditions (alternatively DD's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).</p> <p>20.4 Neither party to this contract may assign this contract, any payment or any other right, benefit or interest under this contract without the written consent of the other party (which shall not be unreasonably withheld). DD may elect to subcontract out any part of the Services but shall remain relieved from any liability or obligation under this contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of DD's sub-contractors without the authority of DD.</p> <p>20.5 The Customer agrees that DD may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for DD to provide Goods to the Customer.</p> <p>20.6 Neither party shall be liable for any default or breach of any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.</p> <p>20.7 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.</p>
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