



APPLICATION FOR COMMERCIAL CREDIT ACCOUNT

["this Application"]

To: Marsh Dairy Products Pty Ltd A.C.N. 005 086 288 and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns whether trading as "Marsh's" and/or otherwise ["Marsh's"]:

1. APPLICANT: [Form box for applicant name and A.C.N.]

2. APPLICATION: The Applicant as set out in item 1. above together with all related and/or associated companies, trusts and/or other entities, all successors and/or assigns and each trust of which the Applicant is Trustee (unless specifically excluded) ["the Customer"] HEREBY APPLIES for a credit account and AGREES in all dealings with Marsh's to be bound by the GENERAL TERMS AND CONDITIONS OF TRADE for the time being used by Marsh's (as set out in this Application and as amended from time to time). The Customer ALSO AGREES that any obligations of Marsh's in any way associated with the provision of credit shall in each instance be limited to the legal entity which invoices the Customer.

3. CREDIT LIMIT REQUESTED: \$.00 4. EXPECTED MONTHLY PURCHASES: \$.00

5. ACCEPTANCE: Marsh's shall be deemed to have accepted this Application if it allows the Customer to trade with Marsh's or any division or part of Marsh's on credit.

6. MEANS AND ABILITY: The Customer WARRANTS that he/she/it is solvent and has the present and future ability to pay all debts as and when all debts fall due.

7. PURPOSE: The Customer DECLARES AND WARRANTS that all goods and/or services supplied by Marsh's shall be used by the Customer predominately for commercial and/or business purposes (and not for any personal, domestic and/or household purpose).

8. OTHER DIVISIONS: The Customer AGREES that this Application relates to all dealings with Marsh's.

9. ACCOUNTS PAYABLE CONTACT: Tel:

10. PRIVACY ACT: The Customer in its own right and on behalf of any interested person(s) HEREBY CONSENTS to Marsh's (subject to its obligations under the Privacy Act 1988 (Cth)) at any time collecting, using and/or disclosing commercial and/or consumer information about the Customer and/or any interested person(s): (i) which relates to but is not limited to identity, credit history and/or solvency; (ii) for the purpose(s) of assessing creditworthiness, risk and/or solvency and/or enforcing any rights of Marsh's; and/or (iii) by arrangement with any authorised agent(s), credit provider(s) and/or reporting service(s) and the like (including any banker(s), the ASIC, ITSA etc.). Marsh's may refuse to grant credit if any information to which it is entitled is inaccurate or not provided and otherwise agrees to allow the Customer access to all such information. This Application may be produced as conclusive evidence of the Customer's consent.

11. PERSON COMPLETING THIS APPLICATION [if not the Customer - "the Agent"]:
* IMPORTANT NOTICE: Prior to signing below you should first read and understand all terms as set out in this Application (in particular the General Terms and Conditions of Trade for the time being used by Marsh's). If necessary seek independent legal advice.

Name:

Position:

SIGNATURE*: Date:/...../.....
(Signed by the Customer or by the Agent for and on behalf of the Customer)

The Agent HEREBY REPRESENTS AND WARRANTS that: (i) the Customer has authorised the signing of this Application; and (ii) all information provided to Marsh's in this Application is true and correct. The Customer HEREBY ACKNOWLEDGES that Marsh's will rely upon and be induced by each representation of the Customer in deciding whether or not to grant credit to and/or to deal with the Customer (any and all such dealings being at all times subject to the GENERAL TERMS AND CONDITIONS OF TRADE for the time being used by Marsh's and as amended from time to time).

To the fullest extent legally permissible all dealings between the Customer and Marsh Dairy Products Pty Ltd A.C.N. 005 086 288 (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as "Marsh's" and or otherwise ["Marsh's"] relating to any goods and/or any services [the "goods" and/or the "services"] are subject to the following terms and conditions ["these Terms"] unless otherwise expressly agreed in writing:

1. Payment: a) Payment shall be made by cash, cheque, bank cheque or EFTPOS, without deduction and within the credit period stipulated in each invoice. b) The Customer otherwise agrees to pay an administration fee of 2% of each amount paid as the liquidated processing cost.

2. Interest: Interest shall be charged on overdue accounts at the *Penalty Interest Rates Act 1983* (Vic) Interest rate plus 2%.

3. Property: a) Property in goods shall not pass until payment in full of all monies owed by the Customer. b) Marsh's reserves the right to take possession and dispose of goods as it sees fit at any time until full payment. The Customer grants permission to Marsh's to enter any property where any goods are stored with force if necessary. c) Immediately on delivery the Customer accepts liability for the safe custody of goods and indemnifies Marsh's for any related losses. d) On sale or disposition of any goods prior to full payment the Customer agrees to deposit all proceeds in a separate bank account and to not mix proceeds with any other monies and shall forthwith account to Marsh's notwithstanding that Marsh's may have granted any credit facility and/or time to pay. e) Until payment in full the Customer agrees: (i) to keep all goods unpaid for as fiduciary for Marsh's and store all goods in a manner which shows Marsh's as owner; (ii) to only sell goods in the usual course of its business on the basis that all proceeds are held in trust for Marsh's; and (iii) that sale on terms, for less than cost and/or to a related entity of the Customer shall not be "in the usual course". f) Without derogating from any rights of Marsh's as a creditor or under these Terms if goods are used in any manufacturing, fabrication, and/or other process ["the Process"] which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any goods used in the Process as invoiced to the Customer by Marsh's UPON TRUST for Marsh's until payment in full for those goods and all monies owed to Marsh's. g) Nothing in this clause is intended to create a charge and this clause shall be read down to the extent necessary to avoid creating any charge. h) The Customer agrees a certificate purporting to be signed by an officer of Marsh's identifying goods as "unpaid for" shall be conclusive evidence of non-payment and the retention by Marsh's of property in and ownership of those goods.

4. Limitation of Liability: a) The Customer agrees to limit any claim to the cost of replacement goods or supply of equivalent goods and/or services. b) Marsh's shall not be liable for: (i) any claim, loss or expense which is made after 7 days from the date of delivery of goods and/or services (or at all once goods have been unpacked or otherwise used, applied or installed) – after which there shall be deemed to have been unqualified acceptance; (ii) any claim or loss in respect of any property and/or premises; (iii) any consequential loss and/or any special and/or punitive damages through any fault of Marsh's or otherwise; and/or (iv) any claim in any way caused and/or contributed to by the Customer and/or any third party. c) These Terms shall prevail to the extent of any inconsistency with any other agreement, representation and/or warranty.

5. Cancellations and Returns: The Customer agrees: a) not to cancel any order without Marsh's prior approval; b) not to return goods without Marsh's prior approval and if goods are not in brand new and unused condition with undamaged packaging and if 1 week or more has passed since delivery; c) that Marsh's may take back goods in saleable condition on such terms as Marsh's considers to be reasonable; d) to pay Marsh's on request a restocking fee of 15% of the gross invoice value of all returns; e) not to return goods without first providing Marsh's an original invoice as proof of purchase; f) not to return any goods which have been custom made, custom processed or custom acquired; g) that Marsh's does not give cash refunds.

6. Quotations: The Customer agrees that: a) quotations must be in writing; b) Marsh's shall not be bound by any quotation if an order is not placed within 14 days from the date of quotation; c) Marsh's may prior to receipt of any order amend any quotation and notify the Customer accordingly without ramification; d) Marsh's shall not be bound by any quotation if it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and if Marsh's also forms the view that those circumstances have substantially and/or materially changed; e) the Customer shall pay any additional charges Marsh's levies for holding any goods referred to in any quotation pending placement of an order.

7. Placement of Orders: The Customer agrees that: a) if any dispute arises concerning any order (including any question of identity, authority or any phone, fax or computer generated order) the internal records of Marsh's shall be conclusive evidence of what was ordered; b) each order placed shall be and be deemed to be a representation by the Customer made at the time that it is solvent and able to pay all of its debts as and when they fall due; c) when placing any order the Customer shall inform Marsh's of any facts which might reasonably affect acceptance of the order by Marsh's and/or any grant of credit and any failure to do so by or on behalf of the Customer shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of Marsh's and to be unconscionable, misleading and deceptive.

8. Supply and Delivery: a) Marsh's may supply by instalments and/or withhold or cancel supply without ramification where: (i) Marsh's has insufficient goods to fulfil orders; (ii) goods are not available to supply; (iii) the Customer is in breach of these Terms; (iv) Marsh's has any safety concerns; and/or (v) Marsh's considers it appropriate whether because of any minimum invoice policy or otherwise. b) The Customer agrees that: (i) Marsh's may elect to arrange delivery at its discretion and without any liability and at the cost and responsibility of the Customer in all things; (ii) the Customer shall be deemed to have accepted delivery and liability for goods on being notified by Marsh's that goods are ready for collection and/or on goods being delivered to a carrier or to the Customer's business premises or nominated site whether attended or not; (iii) a certificate purporting to be signed by an officer of Marsh's confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and (iv) Marsh's shall not be liable for delay, failure or inability to deliver any goods. c) The Customer agrees: (i) to pay for so much of any forward order as Marsh's invoices from time to time; (ii) that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment; and (iii) to pay Marsh's for any demurrage or other costs and expenses in handling and/or holding any goods once ready for delivery and/or collection.

9. Purchase Price: a) In the absence of a binding quotation all sales are made at the price nominated by Marsh's at the time of delivery. b) All government imposts (including any GST or equivalent) shall be to the Customer's account. c) Prices exclude government imposts (including any GST or equivalent) and/or any fees and/or fines levied by emergency service providers unless Marsh's otherwise agrees.

10. Variations: To be binding any variation or cancellation of these Terms or any order must be approved by Marsh's in writing.

11. Exclusions: a) No dealing between Marsh's and the Customer shall be or be deemed to be a sale by sample. b) If Marsh's publishes material concerning its goods, services and/or prices anything so published which is incompatible with these Terms is unless otherwise stated expressly excluded. c) The Customer shall rely on its own knowledge and expertise in selecting any goods and/or services for any purpose and any advice and/or assistance given by or for Marsh's shall be at the Customer's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Customer or anyone claiming through the Customer. d) All goods are sold subject to all applicable trading terms, warranties and representations of the manufacturer. e) Marsh's shall not be responsible nor liable for: (i) paying and/or obtaining any necessary judicial, statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences; and/or (ii) any failure to comply with any special requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any goods and/or services or otherwise). f) Marsh's shall not be liable for any goods and/or services: (i) made or performed to designs, drawings, specifications and/or procedures etc. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Customer; (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or (iii) manufactured and/or supplied by any other party. g) The Customer agrees to: (i) check all goods for compliance with all applicable laws, standards and/or guidelines before use, on-sale and/or application; (ii) comply with all applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by Marsh's and/or any manufacturer; and (iii) act in accordance with good practice at all times.

12. Default: a) On default or breach of any part of these Terms by the Customer Marsh's may *inter alia* terminate any contract, retain all monies paid, cease further deliveries and/or provision of services, recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party. b) The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit or action against Marsh's while the Customer is in default under any part of these Terms or in any of its dealings with Marsh's. c) The Customer agrees to indemnify Marsh's for all fees and expenses payable to solicitors, mercantile agents and other parties acting on behalf of Marsh's in respect of anything instituted or being considered against the Customer whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis). d) Marsh's may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as Marsh's in its discretion deems appropriate. e) The Customer irrevocably authorises the payment directly to Marsh's of any debt due to the Customer by any debtor of the Customer in reduction of any amount due to Marsh's under these Terms or otherwise.

13. Indemnity: The Customer fully indemnifies Marsh's against any claim or loss arising from or related in any way to any dealing between Marsh's and the Customer and/or arising under these Terms.

14. Intellectual Property: The Customer agrees that all intellectual property in the creation of any goods and/or services shall be and remain the property of Marsh's notwithstanding any contribution by the Customer.

15. Other Terms and Conditions: No terms and conditions sought to be imposed by the Customer upon Marsh's shall apply.

16. Reconditioned Goods: Marsh's shall not be liable for any reconditioning and/or repair of products made and/or supplied by the Customer and/or by any third party.

17. Customer Restructure: The Customer shall notify Marsh's in writing of any change in its structure or management including any change in director, shareholder and/or management and/or any change in partnership and/or trusteeship within 7 days of each change. Until such notice is received the Customer guarantees the performance of all obligations passing to any third party and fully indemnifies Marsh's against all loss (including legal costs on an indemnity basis).

18. Jurisdiction: The Customer agrees that all dealings with Marsh's shall be governed by the law applicable in the State nominated by Marsh's (or in the absence of any nomination – Victoria) and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by Marsh's in the capital city of that State.

19. Credit Limit: Any credit facility or credit limit is an indication only of the intention of Marsh's at the time. Marsh's may vary or withdraw credit at any time at its discretion and without any liability to the Customer or any other party.

20. Waiver: An election by Marsh's not to exercise any of its rights arising as a result of any breach of these Terms shall not constitute a waiver of any rights of Marsh's relating to any other breach.

21. Notice: The Customer agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by Marsh's and whether or not the Customer has actual notice. The Customer shall be deemed to be bound by any terms and conditions of trade which may be adopted by Marsh's immediately any change is adopted and notwithstanding any other purported or pre-existing terms and conditions which might otherwise have applied.

22. Security For Payment: The Customer hereby grants to Marsh's a general lien over all property of the Customer until payment in full of all monies owing to Marsh's.

23. Force Majeur: Marsh's shall not be in default or in breach of any contract with the Customer as a result of *Force Majeur* including any strike or lock-out.

24. Insolvency: a) If the Customer commits or is involved in any act of insolvency the Customer shall be deemed to be in default under these Terms. b) An act of insolvency is deemed to include the appointment of any insolvency practitioner and the calling of any formal meeting of creditors.

25. Severability: Any part of these Terms shall be capable of severance without affecting any other part of these Terms.

AGREEMENT TO GUARANTEE AND INDEMNIFY [“this Agreement”] (09/05)

To Marsh's:

1. **We guarantee** payment to **Marsh's** of all monies and performance of all obligations including any past, present and/or future indebtedness and/or obligation of the **Customer** and/or any of us arising from any past, present and/or future dealing with Marsh's.
2. **We indemnify** Marsh's against all loss and/or damage arising from any past, present and/or future dealing with the Customer and/or any of us including all legal costs on an indemnity basis.
3. **We jointly and severally agree:** (a) to pay to a stake-holder nominated by Marsh's the amount Marsh's certifies is payable before being entitled to dispute whether or not that amount is payable; (b) that this Agreement shall remain effective notwithstanding any conduct or event (including any arrangement or deed of company arrangement whether or not agreed to by Marsh's) which but for this clause may have released or varied any obligation of the Customer and/or any of us and even if the Customer and/or any of us execute(s) in favour of Marsh's any later agreement, guarantee and/or security; (c) that any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid; (d) that we sign both in our personal capacity and as Trustee of every trust of which we are trustee; and (e) to notify Marsh's within 7 days of any material change in the structure, management and/or position of the Customer including: (i) any sale or disposition of any part of the business of the Customer and/or of any trust of which the Customer is Trustee; (ii) any change in director, shareholder, management, partnership and/or trusteeship; (iii) any new charge, mortgage and/or security given to any supplier and/or financier; and/or (iv) any involvement in any franchised business in any capacity.
4. **Charge:** We charge in favour of Marsh's with payment of all monies owed to Marsh's by the Customer and/or any of us (whether pursuant to this Agreement or otherwise) all our estate and interest in any land and/or in any other assets whether tangible and/or intangible in which we now have any legal and/or beneficial interest and/or in which we later acquire any such interest and we agree to execute on request a registrable mortgage in favour of Marsh's.
5. **Consideration:** Marsh's agrees at its discretion to grant credit from time to time to the Customer and/or to forbear from taking any legal action against the Customer for the time being.
6. **Proper law:** We agree that this Agreement and any claim or dispute between Marsh's, the Customer and/or any of us shall be governed by the law applicable in the State nominated by Marsh's and we agree to submit to the jurisdiction of the appropriate Court nominated by Marsh's in the capital city of that State. If no State is nominated then Victoria shall be deemed to be the nominated State.
7. **Several guarantors:** If more than one **Guarantor** is named and/or intended to sign as guarantor we each agree to be bound and liable for the full amount owed to Marsh's even if all of us don't sign and whether or not any amount is extinguished and/or compromised in any way. Marsh's may make any arrangement and/or compromise with any of us, obtain additional guarantees, indemnities and/or securities from any party and/or release and/or compromise with any of us and/or any other party without affecting our liability to Marsh's. Neither Marsh's nor the Customer is required to sign this Agreement.
8. **Credit limit:** Any credit granted by Marsh's to the Customer is at the discretion of Marsh's and shall not affect our joint and several liability.
9. **Privacy Act:** We hereby consent to Marsh's (subject to its obligations under the *Privacy Act 1988* (Cth)) at any time collecting, using and/or disclosing commercial and/or consumer information about us: (i) which relates to but is not limited to identity, credit history and/or solvency; (ii) for the purpose(s) of assessing creditworthiness, risk and/or solvency and/or enforcing any rights of Marsh's; and/or (iii) by arrangement with any authorised agent(s), credit provider(s) and/or reporting service(s) and the like (including any banker(s), the ASIC, ITSA etc.). Marsh's may refuse to grant credit if any information to which it is entitled is inaccurate or not provided and otherwise agrees to allow us access to all such information. This Agreement may be produced as conclusive evidence of our consent.
10. **Severability:** Any part of this Agreement shall be severable without affecting any other part of this Agreement.
11. **Acknowledgment of liability:** We agree that: (a) the Customer is indebted to Marsh's for an amount which is not less than the sum noted below as at the date noted below; (b) our guarantee is unlimited; and (c) all obligations under this Agreement are additional to and do not (save to the extent of any inconsistency) invalidate any obligations any of us may have under any other agreement with Marsh's.
12. **Definitions:** (a) "Marsh's" means each of **THE PARTIES** listed below as "Marsh's" jointly and severally; (b) "We" and "us" means any and all of the **Guarantors** listed below and if more than one jointly and severally and in any event (to the extent applicable) the joint and several successors and/or assigns of each; and (c) "Customer" means the party entered below as the "**Customer**" (or if there is no entry the party described on Page 1. of the applicable Application for Commercial Credit Account), all related and/or associated companies, trusts and/or other entities, all successors and/or assigns, each trust of which the Customer is Trustee (unless specifically excluded), any party or parties who acquire, have any beneficial interest in and/or conduct any part of the business of the Customer or any trust in which the customer is Trustee (until notice is given pursuant to sub-clause 3(e) of this Agreement) and each member of any franchise/network group of which the Customer is a member (whether as franchisee, franchisor or otherwise).
13. **Demand:** We agree that our liability to Marsh's arises without any demand by Marsh's upon the Customer and/or any of us.
14. **Stamp duty:** We agree to pay any stamp duty applicable to this Agreement and/or to any document created pursuant to clause 4. of this Agreement.
15. **Attornment:** To give effect to our obligations arising under this Agreement we irrevocably appoint any solicitor for Marsh's as attorney for each of us.
16. **Read and understood:** We have each read and understood this document before signing it ("refer below).

THE PARTIES:

A. Marsh's: Marsh Dairy Products Pty Ltd A.C.N. 005 086 288 and all subsidiaries, related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns whether trading as "Marsh's" and/or otherwise.

B. Customer: (** PLEASE COMPLETE - refer below)
 A.C.N. (if applicable).....

C. Current debt acknowledged: \$

D. Guarantors: 1.
(Full name of the first Guarantor – please print)

(Full home address of first Guarantor – please print)

2.
(Full name of the second Guarantor – please print)

(Full home address of second Guarantor – please print)

DATED:

SIGNED in accordance with sub-clause 3(d) of this Agreement by the Guarantor(s) in the presence of a witness:

1.
(Signature of first Guarantor)

Signature of Witness

Name of Witness – please print

2.
(Signature of second Guarantor)

Signature of Witness

Name of Witness – please print

* **IMPORTANT NOTICE:** If you sign this Agreement you may be required to pay someone else's debts. You should ensure that you read and understand all terms of this Agreement. If necessary seek independent legal advice.

** *If this section is incomplete for any reason Marsh's may treat as the Customer the party so described on Page 1 of the document headed "Application for Commercial Credit Account" of which this Agreement can be found on Page 4.*