



MARSH DAIRY PRODUCTS PTY LTD
A.B.N. 25 005 086 288

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. CUSTOMER:

State full name and A.C.N. (if applicable)
["the Customer"]

2. APPLICATION: The Customer 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 not provided and otherwise agrees to allow the Customer access to all such information. This Application may be produced as conclusive evidence of such 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; (ii) all information provided to Marsh's in this Application is true and correct; (iii) the Customer shall provide any interested person(s) with a copy of this Application. 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).

A. WHERE THE CUSTOMER IS A PARTNERSHIP/SOLE TRADER:

Partners' or trader's full name(s) and private address(es)	Name	Address	Date of Birth	Private Telephone

B. WHERE THE CUSTOMER IS A COMPANY:

Company name: A.C.N.

Address for correspondence: Postcode

Registered office address: Postcode

Directors' full names:

	Name	Address	Date of Birth	Private Telephone
1.			
2.			
3.			
4.			

C. TRADING DETAILS:

Trading name:

Business address: Postcode

Address for correspondence:

Telephone: ()

Fax: ()

Date business commenced: / /

A.B.N.:

Trusts:
 Is the Customer involved or associated in any way with a Trust?
 Yes No
 If yes, is the Trust a: unit trust family trust other?

Insolvency:
 Has the Customer or any partners or directors been insolvent or in any way involved with an insolvency administration (e.g. liquidation, receivership, administration, bankruptcy or Part X etc.)?
 Yes No

Type of business:

How long current owner?

Name(s) of related or subsidiary companies and/or partnerships:

Are the business premises: owned leased? Do you currently trade with Marsh's? Yes No

Do you currently trade with a competitor of Marsh's? Yes No If yes, who?

Financial details: Bank: Branch: Phone: ()

Trade references (each must provide credit similar in value to level of credit sought):

Company	Address	Telephone

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 shall be charged on overdue accounts at the *Penalty Interest Rates Act 1983* (Vic) 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 and with such force as is necessary. c) Immediately upon delivery the Customer accepts liability for the safe custody of goods and agrees to indemnify Marsh’s for any losses relating thereto. d) Upon sale or disposition of any goods prior to full payment the Customer agrees to deposit all proceeds in a separate bank account, agrees not to 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 to store all goods in a manner which shows Marsh’s as owner; (ii) only to sell goods in the usual course of its business on condition that the Customer holds all proceeds in trust for Marsh’s; and (iii) that sale on terms, for less than cost or to any related entity of the Customer shall not be “in the usual course”. f) Without derogating from any rights of Marsh’s as a creditor of the Customer or arising 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 that a certificate purporting to be signed by an officer of Marsh’s identifying goods as “unpaid for” shall be conclusive evidence that they have not been paid for and that property in and ownership of those goods remains with Marsh’s.

4. Limitation of Liability: a) The Customer agrees to limit any claim to the cost of replacement of goods or supply of equivalent goods and/or services. b) Marsh’s shall not be liable in any way for: (i) any claim, loss or expense arising which is made after 7 days from the date of delivery of goods and/or services (or at all once goods have been unpacked, on-sold or otherwise used or applied) – after which there shall be deemed to have been unqualified acceptance; (ii) any contingent, consequential, direct or indirect, special or punitive damages arising in any way and whether due to the negligence of Marsh’s or otherwise; (iii) any claim relating to any alleged fault or defect in any way caused or contributed to by the Customer and/or any third party. c) No other term, condition, agreement, warranty, representation or understanding whatsoever whether express or implied, in any way extending to, otherwise relating to or binding upon Marsh’s other than these Terms is made or given.

5. Cancellations and Returns: The Customer agrees: a) not to cancel any order placed without prior approval from Marsh’s; b) not to return goods without prior approval from Marsh’s 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 to 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 to 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) 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 ratification; 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 which 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 (and including any question of identity or 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 the Customer places shall be and be deemed to be a representation by it made at the time that it is solvent and able to pay all of its debts as and when they fall due; c) failure to pay Marsh’s in accordance with these Terms shall be and be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in sub-clause 7.b) hereof and that the representations were unconscionable, misleading and deceptive; d) when any order is placed the Customer shall inform Marsh’s of any material facts which would or might reasonably affect the commercial decision by Marsh’s to accept the order and/or grant credit in relation thereto and any failure to do so by or on behalf of the Customer shall create and be deemed to create an inequality of bargaining position, shall constitute and 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 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; and/or (iv) Marsh’s considers it appropriate whether because of any minimum invoice policy or otherwise. b) The Customer agrees that: (i) Marsh’s accepts no responsibility or duty for delivery but 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) Marsh’s reserves the right to charge for any delivery; (iii) the Customer shall be deemed to have accepted delivery and liability for the goods immediately upon Marsh’s notifying the Customer that any goods are ready for collection or upon Marsh’s delivering any goods to a carrier or to the business premises of the Customer or site whether attended or not; (iv) 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; (v) Marsh’s shall not be liable for delay, failure or inability to deliver any goods; and (vi) once the Customer is notified goods are ready for collection or delivery the Customer agrees to pay all costs of

Marsh’s in holding those goods for the Customer. c) The Customer agrees (i) to pay for so much of any forward order as is from time to time invoiced by Marsh’s; (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; (iii) to pay for any demurrage or other costs and expenses in handling and/or holding any goods after they are ready for delivery.

9. Purchase Price: a) In the absence of a binding quotation all sales are made by Marsh’s at its ruling price at the time of delivery. b) All government imposts (including any GST or equivalent) will be to the account of the Customer. c) The price lists of Marsh’s shall be deemed to exclude government imposts (including any GST or equivalent) unless Marsh’s otherwise directs.

10. Variations: 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, its services and/or its 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 or assistance given for or on behalf of Marsh’s shall be accepted at the risk of the Customer 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 liable nor responsible for any failure to comply with any 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 and/or otherwise). f) Marsh’s disclaims any responsibility or liability whatsoever relating to 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 relevant, applicable standards, regulations and/or guidelines before use, on-sale or application; and (ii) comply with all applicable standards, regulations and/or guidelines; with all recommendations and/or directions made and/or given by Marsh’s and/or by any manufacturer; and (iii) act in accordance with good practice at all times.

12. Default: a) Upon any default or breach of these Terms by the Customer Marsh’s may *inter alia* retain all monies paid and/or cease further deliveries and/or provision of services and recover from the Customer 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 costs and expenses incurred by Marsh’s and by all 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 recovery costs and/or expenses, interest and/or part or all of any principal debt in such order of priority as Marsh’s deems to be appropriate in the exercise by Marsh’s of its absolute and unfettered discretion. 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 indemnifies Marsh’s against any claim or loss arising from or arising in any way to any dealing between Marsh’s and the Customer or anything related therefrom or arising as a result of any breach of these Terms.

14. Intellectual Property: The Customer agrees that all tooling, material, industrial and/or intellectual property employed in the preparation for sale or production of any goods and/or services shall be and remain the property of Marsh’s notwithstanding any contribution by the Customer relating thereto.

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

16. Customer Restructure: The Customer shall notify Marsh’s in writing of any change in its structure or management including any change in director, shareholder or management or change in partnership or trusteeship within 7 days of any such change. Until such notice is received by Marsh’s the Customer guarantees the performance of all obligations passing to any third party and indemnifies Marsh’s against all loss.

17. 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.

18. 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.

19. 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 subsequent or other breach.

20. 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.

21. 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.

22. Force Majeur: Marsh’s shall not be in default or in breach of any contract with the Customer as a result of Force Majeur. Force Majeur means beyond the reasonable control of Marsh’s and includes any strike or lock-out.

23. 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 bankruptcy, liquidation, receivership, administration or the like.

24. Severability: Any part of these Terms being the whole or part of any clause(s) shall be capable of severance without affecting any other part of these Terms.

AGREEMENT TO GUARANTEE AND INDEMNIFY ["this Agreement"] (05/05)

To Marsh's:

1. **We guarantee** payment to **Marsh's** of all monies and performance of all obligations including any past, present and 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 whatsoever; (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 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; (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 only one of us signs 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 limit 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 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 current debt:** We acknowledge that the Customer is indebted to Marsh's in the sum noted below as at the date noted below and we acknowledge and agree that our guarantee is unlimited.
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, any party or parties who acquire, have any beneficial interest in and/or conduct any part of the business of the Customer (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. **Attornment:** To give effect to our obligations arising under this Agreement we irrevocably appoint any solicitor for Marsh's as our attorney.
15. **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.