

TERMS AND CONDITIONS OF SUPPLY FOR CREDIT ACCOUNTS

1 Orders

Any provision of a particular order of the Customer which is inconsistent with or additional to these Terms and Conditions is excluded from contract between the Supplier and the Customer.

2 Price

- 2.1 The Supplier may vary the price of goods supplied to the Customer by giving notice of variation, verbally or in writing
- 2.2 The variation will not apply to goods ordered before the date of receipt by the Customer of verbal or written notice of variation.

3 Delivery

- 3.1 Delivery of the goods to the Customer occurs when actually delivered by the Supplier, regardless of whether the Customer accepts delivery
- 3.2 Any time which the Supplier quotes for delivery is an estimate only
- 3.3 The Supplier may cancel the order if it determines that it will be unable to deliver the goods within a reasonable time
- 3.4 The Customer shall have no claim against the Supplier if the Supplier cancel the order or fails to deliver (for any reason) the goods, or if there is a delay in delivery of the goods.
- 3.5 The Customer must accept, in fulfilment of its order, delivery of plus or minus 10% of the quantity specified in its order and must pay for the quantity actually delivered.

4 Payment

- 4.1 As a successful applicant, the Customer will be notified of payment terms, to which we expect strict adherence.
- 4.2 The Supplier may require the Customer to pay cash in full prior to delivery if in the Supplier's opinion the credit worthiness of the Customer becomes unsatisfactory.
- 4.3 If the Customer has not paid in full by the due date, the Supplier may
- charge the Customer interest on the overdue monies from the date of delivery of the goods until paid in full. The interest rate may be set by the Supplier without prior notice to the Customer at such rate as the Supplier may from time to time determine;
 - pursue an action for the price of the goods for which payment has not been made, even though property in the goods remains with the Supplier
- 4.4 The Customer must pay the Supplier in full for the goods delivered even if
- there was a delay in the delivery of the goods
 - the Customer disputes the quality, quantity or condition of the goods delivered.
- 4.5 All payments must be made in Australian dollars
- 4.6 The Customer must pay to and indemnify the Supplier against all costs and expenses incurred by the Supplier in connection with
- default by the Customer under these Terms and Conditions
 - the recovery of any monies due and payable but unpaid by the Customer; and
 - the exercise or attempted exercise by the Supplier of any power conferred on it by these Terms and Conditions.

5 Risk

The risk of loss or damage to the goods shall pass to the Customer on delivery.

6 Title

- 6.1 Until the Customer has paid for the goods in full and also paid all other monies due and payable to the Supplier by the Customer:
- property in the goods shall remain with the Supplier
 - the Customer shall hold the goods as bailee;
 - the Customer shall store the goods in a way that clearly indicates the Supplier's title to the goods.
- 6.2 If the Customer sells the goods to its customers the Customer, in its position as a fiduciary, assigns to the Supplier the benefit of any claim against the customers and shall hold on trust and account to the Supplier for all proceeds of sale.
- 6.3 This clause shall apply even though the Supplier may give credit to the Customer

7 Right of Entry and Resale

- 7.1 If the Customer:
- (being a natural person) commits an act of bankruptcy
 - (being a corporation) does anything which entitles anyone to apply to wind up the Customer or an administrator or receiver and manager of the Customer is appointed;
 - breaches of any of these Terms and Conditions, the Supplier may take possession of and resell the goods.
- 7.2 The Customer authorises the Supplier to enter premises where the goods may be located to take possession of the goods. The Customer indemnifies the Supplier against all claims arising out of the entry by the Supplier to premises to take possession of the goods.
- ## **8 Return of Goods**
- 8.1 The Supplier will not be obliged to even consider accepting any goods returned by the Customer or allowing any credit for them, unless
- a claim is notified in writing by the Customer to the Supplier within two (2) days after the Supplier tendered delivery of the goods to the Customer or the Customer collected the goods; and
 - the goods returned are accompanied by the Supplier's packing reference and original invoice or the original invoice number; and
 - the goods are returned in the condition in which they were delivered or collected.
- 8.2 The Supplier will pay any credit for returned goods to the person conducting the business from which the goods are generally sold to the public, at the time the credit is payable. If the Customer has sold the business the Supplier will only be obliged to pay the credit to the Customer (rather than to the person running the business) if the Customer has given written notice to the Supplier that the business has been sold at least 5 business days before the credit became payable.

9 Liability

- 9.1 All conditions and warranties expressed or implied by law, custom or otherwise are expressly excluded, to the extent permitted by law. Where so permitted, the liability of the Supplier for a breach of a condition or warranty, that cannot be excluded, is limited, at the Supplier's option, to the replacement of the goods or the supply of equivalent goods, or the costs of replacing the goods or acquiring equivalent goods.
- 9.2 So far as the law permits, the Supplier shall not be liable for any loss which may be suffered by the Customer for any reason, including, but not limited to, delay, negligence or any act, matter or thing done or permitted or omitted to be done by the Supplier.

10 Notice

- 10.1 Any notice to be given by the Supplier or the Customer to the other must be in writing and may be given by facsimile, post or hand delivered to the other's business address at last known to the party giving it
- 10.2 A notice:
- given by facsimile shall be deemed to be given on the business day following the day it is sent;
 - sent by pre-paid post shall be deemed to be given on the business day following the day on which it was posted
 - delivered by hand shall be deemed given when delivered

11 Entire Agreement

- 11.1 These Terms and Conditions constitute the entire agreement or contract between the Supplier and the Customer for the supply of goods by the Supplier.
- 11.2 The Customer acknowledges that neither the Supplier nor anyone purporting to act on its behalf has made any representation or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the goods for any particular purpose or any other matter.
- 11.3 The Supplier may alter these Terms and Conditions
- without notice if done so at the request of the Customer, or the Customer is in default of any of these Terms and Conditions
 - in any other case, on giving seven (7) days prior written notice to the Customer.

12 Governing Law

These Terms and Conditions shall, at the sole election of the Supplier, be governed by and construed in accordance with the Laws either of the State in which the goods were produced or the State in which the Customer took delivery of the goods, and the Supplier and the Customer submit to the jurisdiction of the Courts of such of those States as may be selected by the Supplier.

APPLICATION FOR CREDIT ACCOUNT

VICTORIAN FROZEN FOODS DISTRIBUTORS PTY LTD

Trading as Richmond Oysters ACN 118 258 398

437-443 Church Street Richmond Victoria 3121

P.O. Box 2206 Richmond South Victoria 3121

Tel (03) 9429 2022 Fax (03) 9429 2384

PLEASE READ THIS FIRST

Only original copies will be considered

The Customer must be the LEGAL entity which conducts the business. If in doubt, the Customer should ask their accountant or solicitor.

The Customer MUST NOT just be the business name.

The Customer must be either:

- * a company (ie. the name ends in Ltd or Pty Ltd) - in which case:
 - * the name of the company is to be inserted as the Customer in A1 below
 - * the details of ALL directors are to be inserted in B1 below
- * a partnership - in which case:
 - * the name of the partnership is to be inserted as the Customer in A1
 - * the details of ALL partners are to be inserted in B1
- * an individual person - in which case:
 - * that person's full name is to be inserted as the Customer in A1

ALL items must be completed. Leave no blanks.

**To: VICTORIAN FROZEN FOODS DISTRIBUTORS PTY LTD trading as RICHMOND OYSTERS
ABN 53 093 769 664 ("Supplier")**

A. PARTICULARS OF CUSTOMER

1 Full name of Customer..... ACN (If a company)..... ABN.....

2 Trading Name/Business Name (if different to 1)..... Business Name Registration No.....

3 Business Address..... Postcode.....

4 Postal Address (if different to 3)..... Postcode.....

5 Address for Deliveries (if different to 3)..... Postcode.....

6 Telephone No's: Business..... After Hours.....
Facsimile..... Mobile.....

7 Sales Tax Exemption No..... 8 Accounts Contact Person.....

B. OTHER INFORMATION

1 Names of Directors/ Partners or Individual Private Residential Address Private Ph. No. Driver's Licence No. D.O.B.

(1).....

(2).....

(3).....

2 Who was your previous supplier?.....

3 Date commenced operating the business for which credit is sought:...../...../20.....

4 Estimated monthly purchases: \$..... per month

5 How is the drawer shown on the cheque which the Customer will use to pay accounts?..... (copy out exactly what is on the cheque)

6 Bank Details (Principal Bank if more than one)
Name of Bank Branch BSB Account No.

7 Trade References (provide details for 4 referees with whom the Customer is currently trading on an account basis ie. not COD)
Name Contact Person State Phone No. Fax No.

(1).....

(2).....

(3).....

(4).....

8 Business Premises (please tick) Owned Leased/Rented Name of Landlord.....

9 Name & Phone No of the Customer's Accountants: Name: Phone No.....

C. PRIVACY ACT AUTHORITY

1 Acknowledgement and consent that credit information may be given to a credit reporting agency.

The Customer understands that section 18E(8)(c) of the Privacy Act ("Act") allows the Supplier to give a credit reporting agency certain personal information about the Customer which the Customer authorises the Supplier to do. The information which may be given pursuant to section 18E(1) of the Act includes:

- * such permitted particulars about the Customer which allows the Customer to be identified;
- * the fact that the Customer has applied for credit and the amount;
- * the fact that the Supplier is a credit provider to the Customer;
- * that payments have become overdue more than 60 days and that collection action has commenced;
- * advice that payments are not longer overdue;
- * that cheques drawn by the Customer have been dishonoured more than once;
- * in specified circumstances, that in the Supplier's opinion the Customer committed a serious credit infringement; and that the credit the Supplier provided to the Customer has been discharged.

2 Authority to obtain certain information

The Customer authorises the Supplier to obtain from a credit reporting agency a credit report containing:

- * personal credit information about the Customer for the purpose of assessing this application in accordance with s.18K(1)(b) of the Act; and
- * personal information about the Customer for the purpose of collection; of overdue payments in respect of this application in accordance with s.18K(1)(h) of the Act.

3 Authority to exchange information with other credit providers

In accordance with section 18N(1)(b) of the Act, the Customer authorises you to give to and obtain from the credit providers named:

- * in this application; and
- * in a credit report issued by a credit reporting agency or a commercial reporting agency respectively

information about the Customer's credit arrangement including the Customer's credit worthiness, standing, history or capacity that credit providers are permitted to exchange under the Act.

The purposes for which this information may be used include:

- * assessing the Customer's application for credit;
- * notifying other credit providers of a default by the Customer;
- * assessing the Customer's credit worthiness; and
- * assessing the Customer's position if the Customer falls into arrears with other credit providers.

D. AGREEMENT

The Customer:

- (a) applies to the Supplier for a (or a continuation of a) credit facility and, if written approval is given by the Supplier;
- (b) agrees to comply with the attached Terms and Conditions of Supply (on the last page);
- (c) agrees that the Supplier may withdraw further credit at any time without notice.

E. SIGNATURE

PLEASE READ THIS BEFORE SIGNING

If the Customer is a company, a director of the Customer must sign, and warrants that he/she binds the Company.

If the Customer is a partnership, a partner of the Customer must sign, and warrants that he/she binds the Partnership.

If the Customer is an individual person, that person must sign.

Signature..... Date...../...../20.....

Full Name of Director/
Partner/Individual.....

Witness (sign here).....

Full Name of Witness.....

OFFICE USE ONLY

Approved By.....

Date...../...../.....

Payment Terms.....

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GUARANTEE BY COMPANY DIRECTORS

PLEASE READ THIS FIRST

It is only necessary to complete this Guarantee if the Customer is a company.

This Guarantee must be completed, if the Customer is a company, by at least 2 of its directors.

This Guarantee is given in favour of all divisions, branches, business units and subsidiaries of Victorian Frozen Foods Distributors Pty Ltd, which might at any time supply goods or services to the Customer.

If the Customer already owes money to the Supplier, this Guarantee is given both for what is already owing and for what will become owing in future.

**To: VICTORIAN FROZEN FOODS DISTRIBUTORS PTY LTD trading as RICHMOND OYSTERS
ABN 53 093 769 664 (referred to as "you" in this Guarantee)**

In consideration of you at our request agreeing to supply or continue to supply goods and services to

..... ("Customer")
(insert full name and ABN of company customer)

(1)

(2)

hereby agree with you as follows:

- 1 We guarantee the punctual payment to you of all the money which is now or in the future owing to you by the Customer in connection with the supply of goods or services by you to the Customer, and interest payable on that money ("Guaranteed Money").
- 2 We will pay to you immediately you demand that we pay any amount of the Guaranteed Money which the Customer has not paid by its due date.
- 3 We agree that:
 - (a) this document is a continuing Guarantee for the whole of the Guaranteed Money;
 - (b) our liability for the Guaranteed Money is joint and several;
 - (c) you may act against each one of us as though we were the principal debtor in place of the Customer; and
 - (d) we waive all our rights as surety which are inconsistent with this document.
- 4 Our obligations and liabilities under this document are not affected by:
 - (a) any agreement between you and the Customer being wholly or partly unenforceable;
 - (b) any release of the Customer by you;
 - (c) any variation to the amount or the terms on which you provide credit or of any agreement between you and the Customer;
 - (d) you granting any time to pay or other indulgence to the Customer;
 - (e) negligence or mistake by you;
 - (f) you taking discharging dealing with or losing any security for the Guaranteed Money;
 - (g) you refusing to supply further goods or services to the Customer;
 - (h) anything else which might prejudice or discharge our liability under this document.
- 5 Any one of us may only revoke our guarantee for further transactions by giving prior written notice forwarded by prepaid post addressed to the company Credit Controller of Victorian Frozen Foods Distributors Pty Ltd at its registered office in Melbourne and such notice shall only take effect one month after it has actually been received by the company Credit Controller.
- 6 All dividends and other payments received by you from the Customer (whether in liquidation or otherwise) shall be taken and applied by you as payments in gross and the right of any one of us to be subrogated to you shall not arise until you have received the full amount of the Guaranteed Money.
- 7 This Guarantee will render each of us liable to reimburse you for any monies which you may have to pay or elect to pay to any liquidator or administrator of the Customer in response to any claim they may make against you.
- 8 This Guarantee shall bind each of us and take effect as a deed immediately that we sign it, regardless of whether or not others who we may have understood were to sign this Guarantee (including any persons named above) actually ever do so.
- 9 In accordance with s.18K(1)© of the Privacy Act, I authorise you to obtain from a credit reporting agency, a credit report containing personal information about me to assess whether to accept me as a guarantor for credit applied for, or provided to, the Customer. I agree that if you approve the Customer's application, this authorisation remains in force until the credit facility covered by the Customer's application ceases.

GUARANTOR*

DATE

INDEPENDENT WITNESS**

.....
Guarantor's Signature Full Name (Print)

.....
Witness's Signature Full Name (Print)

.....
Guarantor's Signature Full Name (Print)

.....
Witness's Signature Full Name (Print)

.....
Guarantor's Signature Full Name (Print)

.....
Witness's Signature Full Name (Print)

*** Do NOT put Common Seal of the company Customer here.
The Guarantee must be signed by the individual directors.**
**** The witness must be fully independent. The witness cannot be an employee or representative of the Supplier, or another Guarantor.**