

DENI

INTERNATIONAL
FOODS

19A Greenfield St Banksmeadow 2019

P.O Box 45 Matraville 2036

Phone 02 9316 9990

Fax 02 9316 9912

E-mail accounts@denifoods.com.au

www.deniinternationalfoods.com.au

APPLICATION FOR COMMERCIAL CREDIT

Customer Contact Details

Business/Entity Name: _____

Trading Name: _____

ACN (if applicable): _____ ABN: _____

Business Address: _____

Postal Address: _____

Email Address: _____

Telephone No: _____

Delivery Address: _____

Special Delivery Instructions: _____

Accounts Contact: Name: _____

Telephone No: _____ Fax No: _____

Email Address: _____

Orders Contact: Name: _____

Telephone No: _____ Fax No: _____

Email Address: _____

Business Details

Type of Entity (tick appropriate box):

Sole Trader Partnership

Company Trust Company

Type of Business Activity (tick appropriate box):

Food Service Retailer

Supermarket Other

Date Business Commenced: _____

If you have owned this business for less than 12 months, please provide details of the previous business that you owned _____

If the entity is a trust company, please provide a copy of the Trust Deed with this Application.

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Details of Partners / Directors (as applicable):

Position	Surname	Given Names	Private Address	Date of Birth	

**** PLEASE PROVIDE COPY OF DRIVERS LICENCE****

If the Customer is a company:

- (a) have any of the directors been involved with any company that has been liquidated or had external administrators appointed? If so, please provide the names of those companies;
- (b) provide with this Application a copy of the most recent Annual Return and financial accounts of the company.

References:

Trading References: _____ Telephone No: _____

Trading References: _____ Telephone No: _____

Trading References: _____ Telephone No: _____

Finance Company: _____ A/C No. _____

Telephone No: _____

TERMS AND CONDITIONS OF APPLICATION FOR COMMERCIAL CREDIT

I/We acknowledge and agree that the Terms and Conditions, the Charge and Privacy Authority, the Personal Guarantee (if applicable), and the Credit Card Authority attached to this Application for Commercial Credit form part of this Application and have been read, understood and agreed by me/us.

In the case of a trust company, the Applicant acknowledges that the trustee shall be liable for the account and in addition, the assets of the trust shall be available to meet the payments of the account.

Signed: _____ Signed: _____

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Name: _____

Name: _____

Date: _____

Date: _____

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CREDIT CARD AUTHORITY

I, _____ authorise for payments to be made against my credit card.

Please choose for the following options:

- Each delivery
- Each order
- 7 days
- 14 days

I would like a receipt of the payment emailed to: _____

Payment Details

Card Type: Mastercard Visa

Name on Card:

Credit Card Number: _____

Credit Card Expiry (MM/YY): __/__/__

CCV: ___

Signature: _____

Date: _____

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PERSONAL GUARANTEE

To: Deni International Foods (ACN 078 983 945) hereinafter called "**Deni**".

In consideration of Deni and/or its Related Bodies Corporate or their respective assigns trading under various firm names or styles ("**Deni**") agreeing at the request of the Guarantor (which request is testified by the Guarantor's execution of this document) to commence or continue to supply to the Customer on credit or otherwise goods from time to time on the terms and conditions imposed from time to time by Deni on the Customer, the Guarantor (jointly and severally if more than one) agrees with Deni as follows:

1.

1.1. To pay to Deni without any demand and without any deductions, all monies which are now or may from time to time hereafter be owing or remain unpaid by the Customer to Deni on all accounts whatsoever including (without limitation):

1.1.1. all moneys payable in respect of the supply of goods;

1.1.2. interest payable on overdue accounts; and

1.1.3. costs (on a full indemnity basis) of any attempt made by or on behalf of Deni to recover monies from the Customer or from the Guarantor or to secure any such indebtedness or liability to Deni . Monies shall for the purpose of this Guarantee remain owing and unpaid until they have been actually paid to Deni notwithstanding that they may not be or may cease to be recoverable from the Customer or any other person.

1.2. To Guarantee the due performance of the Customer of any other obligations owed by it to Deni.

2. This Guarantee shall be a continuing Guarantee.

3. Deni may at any time (with or without the notice to the Guarantor) without discharging the Guarantor from liability:

3.1. grant time or other indulgence to the Customer in respect of the liability of the Customer to pay Deni;

3.2. accept payment from the Customer in cash or by means of negotiable instruments;

3.3. refuse to supply to the Customer further supplies of goods;

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- 3.4. grant to the Customer or to any drawers, acceptors or endorsers of Bills of Exchange, Promissory Notes or other securities received by Deni from the Customer or on which the Customer may be liable to Deni at any time, further time or other indulgences;
 - 3.5. may release or impair any security;
 - 3.6. release or otherwise compromise with the Customer;
 - 3.7. release or otherwise compromise with another Guarantor.
4. The Guarantor shall not be discharged from liability by:
 - 4.1. the administration in insolvency of the Customer or the Guarantor or either of them;
 - 4.2. administration in insolvency includes any receivership or receivership and management, any winding up (voluntary or compulsory) and any official management or composition, arrangement with or assignment for the benefit of creditors in the administration in equity or otherwise of the estate or assets in whole or in part of the Customer or Guarantor as the case may be;
 - 4.3. from time to time any variation, modification or novation in the terms of supply of the obligations of the Customer or of other aspects of the relationship between Deni and the Customer;
 - 4.4. Deni's act, neglect, omission, delay or default by which the whole or part of the liability of the Guarantor or all or any part of the liabilities of the Guarantee would but for this provision have been affected or discharged;
 - 4.5. the release of the Customer and or one or more Guarantors by operation of law or otherwise.
 5. The Guarantor shall pay to Deni upon demand from time to time amounts equal to amounts received by Deni for the credit of any account of the Customer and for which Deni may or in connection with any administration in insolvency of the Customer be obliged to account to any person or may in its discretion so account.
 6. The Guarantor shall be jointly and severally liable with the Customer as principal debtor and not a mere surety for the Customer and the Guarantor waives all rights inconsistent with the provisions of this clause 6 which the Guarantor might otherwise have been entitled to claim and enforce. The obligations of the Guarantor imposed by this clause shall not be in any way limited by other clauses in this Guarantee.

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7. This Guarantee shall be enforceable against the Guarantor (if more than one) jointly and against each of them severally notwithstanding that any negotiable instrument or other securities as referred to in clause 3 hereof shall at the time of proceedings being taken by Deni against the Guarantor or any of them be then outstanding or in circulation.
8. This Guarantee shall remain in force so long as the Customer shall maintain an account with Deni for the sale of goods by Deni to the Customer notwithstanding that the account may from time to time be not in debt PROVIDED THAT the Guarantor may, by giving Deni three (3) months' prior notice in writing, terminate this Guarantee so far as it relates to transactions occurring between Deni and the Customer after the expiry of that period whereupon the liability of the Guarantor upon this Guarantee shall be limited to the amount representing the indebtedness of the Customer to Deni at the date upon which that period of three (3) months expires. That notice must be left personally with the Credit Manager of Deni or such other person as may be notified by Deni to the Guarantor in writing.
9. In the event that the whole or any part or parts of any provision in this Guarantee should be held to be void or unenforceable in whole or in part then such provision or part thereof shall to that extent be severed from this Guarantee but the validity and enforceability of the remainder of this Guarantee shall not be affected.
10. Notwithstanding that this Guarantee may be intended or expressed to be given by more than one Guarantor, it shall be valid and binding on each person or persons as that person shall sign the document and shall be binding forthwith upon signature by such person and shall continue to be binding on each such Guarantor or Guarantors even if other Guarantors shall not in fact subsequently sign the Guarantee or otherwise be bound as a Guarantor.
11. A statement in writing signed by Deni's Manager or Credit Manager stating monies payable by the Guarantor to Deni shall be prima facie evidence of the amount payable and will be deemed to be served if left in an envelope or mailed to the Guarantor at the address shown on this Guarantee.

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12. Whatever the context of this Guarantee so admits or requires, words importing the singular number shall include the plural number, and those importing a gender include the other genders, and words importing natural persons shall include corporations. This Guarantee and all obligations hereunder shall be binding on the Guarantor's personal representatives, successors and permitted assigns.

13.

13.1. Unless varied by notice in writing by Deni, this Guarantee and every variation amendment or special term of this Guarantee and all matters arising from the relationship of Deni with the Guarantor shall be interpreted and governed in accordance with the laws of the State or Territory specified or made applicable in the terms and conditions of sale agreed on by Deni and the Customer provided that if those terms do not so specify then in accordance with the laws of the State or Territory in which this document is signed.

13.2. The Guarantor submits to the exclusive jurisdiction of the Courts in the capital city of the State or Territory provided for in clause 13.1 or such other State or Territory (or, if there is more than one court in any such capital city, the one chosen by Deni at its absolute discretion) as Deni may from time to time notify in writing to the Guarantor.

13.3.

13.4. Deni and the Guarantor agree that proceedings may be commenced in any Court in the capital city of the State or Territory having jurisdiction by virtue of clauses 13.1 or 13.2 above and consent to that court having locality jurisdiction notwithstanding that it may not have such jurisdiction without this consent.

14. Where the Guarantor is a trustee:

14.1. the Guarantor agrees to forthwith produce a stamped copy of the trust deed (with all amendments) if and when requested by Deni;

14.2. the Guarantor warrants that he, she or it has full power and authority for the benefit and purposes and objects of the trust to enter into this Guarantee on behalf of the trust and that he she or it (as the case may be) (and that the trust and all of its real or personal property) shall be bound by the terms of this Guarantee both personally and as trustee irrespective of whether or not the guarantor discloses to Deni that the guarantor is a trustee at the time of entering into this Guarantee.

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15. To better secure the payment of all monies which the Guarantor may become liable to pay to Deni hereunder, and as an essential condition of this Guarantee, the Guarantor charges all of its interest in real property both present and future and wheresoever situated with the amount of the Guarantor's indebtedness to Deni on any account whatsoever from time to time and shall, immediately upon demand being made on the Guarantor by Deni, sign all documents and do all things that Deni may reasonably require to be signed and done to further secure to Deni the amount of any indebtedness owed to Deni from time to time by the Customer or Guarantor including, but without being limited to, such mortgage or mortgages over any real property (whether acquired before or after the date of this Guarantee) containing such covenants as are required by Deni and such bills of sale or mortgage debentures over any or all items of personal property as are listed in any section of this Guarantee giving details of assets. The Guarantor (and if more than one then jointly and each of them severally) irrevocably appoint(s) Deni, each Manager and each Credit Manager from time to time of Deni, each successor of Deni, each assignee of Deni and each of them severally to be the duly constituted attorney of each Guarantor to execute in the name of each Guarantor and as each Guarantor's several act and deed any documents including, without limitation, any mortgage or mortgages of real property, bills of sale, mortgage debentures or any like documents and Consents to any Caveats as Deni may wish to lodge against any dealings in the real property of the Guarantor in any Titles Office (and if more than one Guarantor, the real property of each Guarantor severally and real property of each combination of Guarantors) and to do all acts and execute any documents necessary to give effect to and/or register any of the foregoing. Each Guarantor undertakes to not object to the lodging of any such caveat or take any steps to remove any such caveat. "Real property" includes estates and interests including leasehold. I/We hereby also authorise any officer, partner or employee of any solicitors or agents engaged by Deni or any of Deni's officers or employees as referred to previously in this clause to sign any stamp duties form on my/our behalf so as to stamp any form required to withdraw any caveat lodged by Deni over any of my/our real property.

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16. Each of us acknowledge that the information provided in this Agreement is the basis for evaluation by Deni of the financial standing and credit worthiness of each of us and do hereby:
- 16.1. certify that the information provided in this Agreement is true and correct;
 - 16.2. acknowledge that Deni has informed me/us, in accordance with the *Privacy Act* 1988 as amended, that certain items of personal information, including an opinion about me/us are permitted to be kept on a credit information file and might be disclosed to credit reporting agencies;
 - 16.3. in accordance with the *Privacy Act* 1988 as amended:
 - 16.3.1. agree to Deni obtaining from a business which provides information about the commercial credit worthiness of persons, information concerning my/our commercial activities or commercial credit worthiness and using such information for the purpose of assessing whether to accept me/us as guarantors;
 - 16.3.2. authorise Deni to exercise my/our rights to access to my/our credit information file and credit reports;
 - 16.4. agree that Deni may give to and seek from any credit providers reports and information that has any bearing on my/our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:
 - 16.4.1. to assess an application by me/us for credit or commercial credit;
 - 16.4.2. to notify other credit providers or a default by me/us;
 - 16.4.3. to exchange information with other credit providers as to the status of my/our account where I am/we are in default with Deni or another credit provider;
 - 16.4.4. to access my/our credit worthiness or commercial credit worthiness at any time;
 - 16.4.5. to access whether to accept me/us as guarantors or to continue supplying credit to the Customer;
 - 16.5. agree that Deni may seek, from a credit reporting agency, a credit report containing personal information about me/us to assess whether to accept me/us as a Guarantor for credit applied for, or provided to, the Customer;
 - 16.6. agree that these authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided for or sought by the Customer from Deni or while any moneys are owed by me/us or the Customer

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to Deni on any account under this or any other Guarantee or any terms and conditions for the sale of goods by Deni to the Customer as the case may be.

SIGNED, SEALED AND DELIVERED BY EACH GUARANTOR NAMED BELOW

I/We hereby acknowledge and agree that before signing this Guarantee, I/we have been given and have read all of the terms of the Credit Application, Terms and Conditions of Sale and Agreement between Deni and the Customer and this Guarantee and that I/we fully understand that the terms and nature and effect of each of those documents and in particular that this Guarantee will be a continuing guarantee (subject only to its terms) for all of the Customer's obligations under the Application for Credit Facilities and that I/we have been given an opportunity to obtain legal advice on those terms and either have taken that advice or declined to get it (as the case may be).

Company Name: _____
(if applicable)

ACN/ ABN: _____

Signature of Guarantor: _____

Print Name: _____

Date: _____

Signature of Witness: _____

Print Name: _____

Date: _____

Company Name: _____
(if applicable)

ACN/ ABN: _____

Signature of Guarantor: _____

Print Name: _____

Date: _____

Signature of Witness: _____

Print Name: _____

Date: _____

Company Name: _____
(if applicable)

ACN/ ABN: _____

Signature of Guarantor: _____

Print Name: _____

Date: _____

Signature of Witness: _____

Print Name: _____

Date: _____

Company Name: _____
(if applicable)

ACN/ ABN: _____

Signature of Guarantor: _____

Print Name: _____

Date: _____

Signature of Witness: _____

Print Name: _____

Date: _____

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CHARGE AND PRIVACY AUTHORITY

In consideration of Deni's acceptance of this application and/or in consideration of Deni providing and/or continuing to provide goods to the Customer and as an essential condition of the terms of supply:

1. Each of us acknowledges that the information provided in this application is the basis for evaluation by Deni of the financial standing and credit worthiness of each of us (and the incorporated body) and do hereby:
 - 1.1. authorise Deni to make such enquiries and receive such information from the bankers and business referees mentioned in this application and otherwise from anyone as Deni may reasonably consider necessary;
 - 1.2. certify that the information provided in this application is true and correct;
 - 1.3. acknowledge that Deni has informed me/us, in accordance with Section 18E(8)(c) of the *Privacy Act* 1988 as amended, that certain items of personal information about me/us contained in the application are permitted to be kept on a credit information file and might be disclosed to credit reporting agencies;
 - 1.4. in accordance with Sections 18H and or 18K and or Section 18L(4) of the *Privacy Act* 1988 as amended:
 - 1.4.1. agree to reports being given to Deni for the purpose of assessing the application for credit or commercial credit or assessing whether to accept us as Customer as the case may be;
 - 1.4.2. agree that Deni may use, for the purpose of assessing an application for credit or assessing whether to accept us as customer, information concerning my/our commercial activities or commercial credit worthiness obtained from a person or body carrying on business or undertaking involving the provision of information about the commercial credit worthiness of person;
 - 1.4.3. authorise Deni to exercise my/our rights of access to my/our credit information files and credit reports;
 - 1.5. agree that Deni may give to and seek from any credit providers (whether or not named in this application) reports and information that has any bearing on my/our credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:
 - 1.5.1. to assess an application by me/us for credit or commercial credit;

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- 1.5.2. to notify other credit providers of a default by me/us;
 - 1.5.3. to exchange information with other credit providers as to the status of my/ our account where I am/we are in default with Deni or with another creditor provider;
 - 1.5.4. to assess my/our credit worthiness or commercial credit worthiness at any time;
 - 1.5.5.
 - 1.5.6. to assess whether to accept me/us as Customer or to continue supplying credit to the Customer;
 - 1.6. agree that Deni may seek from a credit reporting agency, a credit report containing personal information about me/us to assess whether to accept me/us as a Customer for credit applied for, or provided to the Customer;
 - 1.7. agree that these authorisations shall continue to have effect for the duration of the period during which credit or commercial credit is provided or sought by me/us from Deni or, while any moneys are owed on any account by me/us or any guarantor of mine/ours to Deni.
2. Whether or not credit facilities are approved, future supply of products to the Customer shall be on the terms and conditions of this document the "Agreement". If credit is refused or withdrawn, then payment shall be in accordance with Deni's requirements (for supply to the Customer) from time to time instead of any credit period which may otherwise have applied.
 3. In consideration of the acceptance of this application by Deni and as an essential condition of the terms of supply, we jointly and each of us severally charge all of my, our, and its real property both present and future and wheresoever situated with the amount of my, our and its (as the case may be) indebtedness to Deni on any account whatsoever, from time to time and each person shall immediately upon demand being made on he, she or it by Deni, sign all documents and do all things that Deni may reasonably require to be signed and done to further secure to Deni the amount of such indebtedness to Deni including but not limited to such guarantee and or indemnity instruments in such terms as are required by Deni and such mortgage or mortgages over any real property (whether acquired before or after the date of this agreement) containing such covenants as are required by Deni or such bills of sale or mortgage

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debentures over any or all items of personal property as are listed in any section of this document detailing any assets of mine/ours, before or after approval of credit by Deni and each of us hereby irrevocably appoints Deni , each manager and each credit manager from time to time of Deni , each successor of Deni , each assignee of Deni , each manager and each credit manager from time to time of each successor and such assignee and each of them severally to be the duly constituted attorney of each of us to execute in our several names and as our several acts and deeds any documents including, without limitation, any mortgage or mortgages of real property, bills of sale, mortgage debentures or any like documents and consents to any caveats as Deni may wish to lodge against any dealings in any real property of mine/ours in any titles office and to do all acts and execute any documents necessary to give effect to and/or register any of the foregoing and undertake to not object to the lodging of any such caveat or take any steps to remove any such caveat. "Real property" includes estates and interests including leasehold. I/We hereby authorise any officer, partner or employee of any solicitors or agents engaged by Deni or any of Deni's offices or employees as referred to previously in this clause to sign any stamp duties form on my/our behalf so as to stamp any form required to withdraw any caveat lodged by Deni over any of my/our real property.

4. If the Customer is an incorporated body:

In consideration of and as an essential condition of the acceptance of this application by Deni, I/we the undersigned do jointly and severally with the incorporated, body and in our own names:

- 4.1. accept liability to Deni for the payment as principal debtor of all monies owed by the incorporated body to Deni from time to time and waive all rights as a mere surety which may be inconsistent therewith and hereby guarantee to Deni payment of all such monies;
- 4.2. accept liability to Deni for the payment as principal debtor of any sum required to be paid by Deni to any administrator, liquidator, receiver or other controller of the incorporated body pursuant to law;
- 4.3. enter into this Agreement and the charge as contained in clauses 1-3 above;
- 4.4. bind the incorporated body and warrant our authority to bind the incorporated body.

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Executed by)
[Party Name]ACN (if any))
by:)

Director Director/secretary

Name: Name:

Executed by)
[Party Name] ACN)
in accordance with section 127 of the *Corporations Act 2001*:)
)

Signature Signature

Name: Name:
Office held: Office held:

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TERMS AND CONDITIONS OF TRADE

By submitting a credit application and/or ordering goods from Deni, you ("Customer") agree that the following terms and conditions of sale shall apply to the supply. These terms and conditions replace any previous terms and conditions of sale. These terms and conditions create a security interest in favour of Deni for the purposes of the *Personal Property Securities Act 2009* (Cth) (PPSA).

1. Definitions

- 1.1. In relation to the terms and conditions set out below, the following words shall have the following meanings:
- | | |
|-----------|---|
| Agreement | Any agreement or arrangement relating to the supply of goods to the Customer by Deni (including any Orders) |
| Order | An order placed with Deni by the Customer for the supply of a specific quantity of goods which is placed |

2. Basis of Agreement

- 2.1. These terms and conditions apply to this Agreement to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. Despite clause 2.1, Deni may from time to time vary these terms and conditions by notifying the Customer of the variations to these terms and conditions.
- 2.3. The Order constitutes an offer by the Customer to purchase the goods in accordance with these terms and conditions.
- 2.4. The Order shall be deemed to be accepted on the earlier of:
- 2.4.1. Deni issuing a written acceptance of the Order; and
- 2.4.2. Deni doing an act consistent with fulfilling the Order, at which point the Agreement shall come into existence.
- 2.5. For the avoidance of doubt, each Order placed by the Customer (if accepted by Deni under clause 2.4) shall constitute an Agreement between Deni and the Customer, which is subject to these terms and conditions.
- 2.6. If at any time any provisions of the Agreement is, becomes, or is found to be illegal, invalid or unenforceable (in whole or in part), the legality, validity and enforceability of the remainder of the Agreement shall not be affected.

3. Delivery

- 3.1. Unless otherwise agreed between the parties, the goods shall be delivered to the Customer's designated delivery address, or collected from Deni's or its agent's premises.
- 3.2. The Deni shall use its best endeavour to dispatch the goods by the agreed date. In the event that the goods are not delivered by the agreed date, the Customer acknowledges that Deni shall not be liable for any loss or damage arising directly or indirectly from delay whether such delay was caused by Deni or otherwise.
- 3.3. If goods are to be dispatched by instalments, the Customer shall pay to Deni all moneys owing for or on account of each instalment dispatched. Where goods comprising instalments are awaiting dispatched by Deni (which may occur from time to time), such goods shall be dispatched to the Customer and the Customer shall not be entitled to cancel or otherwise avoid accepting and paying for any instalment dispatched.

4. Risk and Title

- 4.1. All risk in the goods shall pass from Deni to the Customer at the time that they are delivered to the Customer's designated delivery address, or collected by or on behalf of the Customer from Deni's or its agent's premises.
- 4.2. Property in and title to all goods shall not pass from Deni to the Customer until all moneys payable by the Customer to Deni have been paid in full and until that time, the Customer shall hold separately and store the goods solely as bailee for Deni.
- 4.3. Where property in and title to the goods has not yet passed the Customer:
- 4.3.1. the Customer shall immediately return the goods to Deni upon demand by Deni;
- 4.3.2. the Customer authorises Deni and its agent to enter the premises in which the Customer is keeping the goods or any part thereof to repossess, remove and sell such goods;
- 4.3.3. the Customer shall not object to Deni, or its agent, entering any premises for the purpose of this clause and agrees to indemnify and keep Deni indemnified in respect of any claims, actions and costs that may arise against Deni in relation to the removal, repossession and sale of the goods pursuant to these terms and conditions including any claims brought by third parties.

- 4.4. If the Customer sells the goods or any part thereof prior to making full payment to Deni, all proceeds received on account thereof shall be held on trust by the Customer for Deni to be applied against the purchase price of the goods and such proceeds shall be kept separate and dealt with separately by the Customer at all times until the purchase price of the goods has been duly paid to Deni.

5. Quotation

- 5.1. All prices quoted by Deni are based on the current prices of the goods at the time of the quotation. However, the price of the goods is subject to market price fluctuations (including any increase in or imposition of any charges, taxes, levies, duties or fluctuation in exchange rates). In such a case, Deni, at its discretion, and without notice to the Customer may increase the price payable for any goods subject to a quotation to the extent necessary to take into account any such fluctuation and the increased price shall be the amount payable for those goods.
- 5.2. The Deni shall not be bound but it may at its discretion accept any order for goods in respect of that it has quoted a price more than seven (7) days before hand but any delivery dates and quantities specified in an Order deviating from those in the quotations shall render the quotation subject to review.

6. Goods and Services Tax (GST)

- 6.1. Where Deni is liable for GST on a supply that it makes to the Customer, Deni is entitled to recover from the Customer an additional amount equal to that GST (GST Amount). The GST Amount must be paid at the same time as the first part of any consideration is provided by the Customer for that supply.
- 6.2. In this clause 6, the terms "supply" and "consideration" takes its meaning from the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

7. Payment Terms

- 7.1. Payment for goods shall be made by the Customer to Deni within 15 days from the order date, which is also the date of invoice rendered to the Customer by Deni unless the parties have previously agreed to the contrary in writing.
- 7.2. If payment is not received in accordance with clause 7.1, the Customer will be in default and, without limiting any other rights of Deni (including to demand immediate payment), Deni at its discretion, may:
- 7.2.1. charge the Customer interest on the amount outstanding as compensation for the loss of its funds calculated from the due date of payment until payment is made in full. The rate of interest applicable is 12.5% per annum; and
- 7.2.2. suspend delivery of any goods ordered by the Customer until all outstanding amounts have been paid in full.

8. Personal Property Security Act

- 8.1. The Customer agrees that these terms and conditions create a purchase money security interest (PMSI) and a general security interest in the goods (and their proceeds) supplied presently and in the future by Deni to the Customer.
- 8.2. The Customer agrees to do all things necessary and execute all documents reasonably required to register the general security interest and that PMSI granted by the Customer under these terms and conditions and to ensure that Deni acquires a perfected security interest in the goods under the PPSA.
- 8.3. The Customer will, upon demand, pay all of Deni's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of Deni's security interest and all other costs associated with protection and enforcement of Deni's security created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the goods the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that Deni has with the Customer.
- 8.4. This PMSI does not lose its priority as a result of the renewal, refinancing, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.
- 8.5. Until ownership of the goods passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the extent that it is permitted by law to:
- 8.5.1. receive a notice of intention of removal of an accession (s95);
- 8.5.2. receive a notice that Deni has determined to enforce its security interest in accordance with land law (s118);
- 8.5.3. receive a notice of enforcement action against liquid assets;

- 8.5.4. receive a notice of disposal of goods by Deni purchasing the goods (s129);
- 8.5.5. receive a notice of disposal of the goods (s130);
- 8.5.6. receive a statement of account following disposal of the goods (s132(2));
- 8.5.7. receive a statement of account if no disposal of the goods, six monthly (s152(4));
- 8.5.8. receive notice of any proposal by Deni to retain the goods (s135(2));
- 8.5.9. object to any proposal by Deni to either retain and dispose of the goods (s137(3));
- 8.5.10. redeem the goods (s142);
- 8.5.11. reinstate the security agreement (s143); and
- 8.5.12. receive a notice of any verification statement (s157(1) and 157(3)).

- 8.5.13. To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in Deni's discretion and which would otherwise confer rights on the Customer.

- 8.6. The Customer further agrees that where Deni has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- 8.7. The Customer's right to possession of the goods still owned by Deni under these Conditions shall cease if:

- 8.7.1. the Customer being an individual, commits an act of bankruptcy;
- 8.7.2. the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer entering into a Deed of Company Arrangement;
- 8.7.3. the Customer ceasing or threatening to cease conducting business in the normal manner or applying for deregistration or receives a deregistration notice;
- 8.7.4. any cheque the Customer provides to Deni is dishonoured for payment;
- 8.7.5. the Customer failing to comply with any demand for payment issued by Deni; or
- 8.7.6. the Customer breaching any of these terms and conditions and/or are in default of any other agreement between Deni and the Customer.
- 8.8. The Customer agrees that repossession and retention of the goods pursuant to the PPSA will only be satisfied so much of the monies which may become payable to Deni by the Customer, as is equivalent to Deni's estimation of the market value of the goods as it is at the date of repossession and the repossession and retention will immediately extinguish any rights for interest Deni has on the value of the goods recovered.
- 8.9. Until ownership of the goods passes, the Customer must not give Deni a written demand or allow any other person to give Deni a written demand requiring Deni to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.

- 8.10. The Customer agrees not to change its name or undertake any changes to any documents that Deni has registered, requires to be registered or are capable of being registered without the prior written consent of Deni.

- 8.11. For the avoidance of doubt, these Conditions relating to the PPSA apply even whether the Customer is a Consumer.

9. Return of Goods

- 9.1. The Deni shall not be liable in any way whatsoever for any defect in any goods dispatched to the Customer or collected by or on behalf of the Customer from Deni's or its agent's premises, unless the Customer gives written notice to Deni specifying the nature of any defect within two (2) days from the date of receipt of the goods.
- 9.2. If the Customer gives to Deni written notice of defective goods in accordance with clause 9.1, and if Deni accepts that such goods are defective, Deni may at its discretion repair or replace the goods or deliver equivalent goods. Deni shall not be liable to the Customer for any losses or damages arising directly or indirectly from the defective goods whether the defect was caused by Deni or otherwise.

10. Sale by Samples

- If the Customer approves a sample supplied by Deni and subsequently enters into a contract for the purchase of goods of the nature of the same, Deni does not warrant that the goods supplied will be of identical quality to the sample but so far as it is reasonably possible, Deni shall supply goods of a quality similar to the sample and the Customer shall not have any cause of action against Deni for such difference in quality.

11. Pallets

DENI

INTERNATIONAL
FOODS

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Fax 02 9316 9912

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www.deniinternationalfoods.com.au

Any pallets belonging to Deni used by it in dispatching goods to the Customer or which is used by or on behalf of the Customer when collecting the goods from Deni's or its agent's premises shall remain the sole property of Deni and be returned upon request to Deni by the Customer at the expense of the Customer and the Customer shall pay to Deni an amount determined by Deni for any pallet not returned or accepted in exchange for pallets which should be returned in accordance with this clause.

12. Unloading

All costs and expenses however incurred by Deni for unloading and discharging goods on arrival at the place of destination nominated by the Customer shall be paid by the Customer.

13. Packing

Unless stated to the contrary, any price for goods quoted by Deni includes packaging in accordance with recognised standards but the cost of any special packing request or required by the Customer or deemed necessary by Deni shall be borne by the Customer.

14. Warranty

14.1. Any express or implied condition, statement or statutory warranty or otherwise in respect of the goods is hereby expressly negated to the extent permitted by the law.

14.2. Without limiting the generality of clause 14.1, the Customer acknowledges that the Supplier has not made any representation or warranty that the goods are suitable for use under any specific conditions (although such conditions may be known to Deni) nor as to the life or wear of the goods.

14.3. Neither Deni nor any servant, agent or independent contractor of it will be liable to the Customer or any party claiming on behalf of or through the Customer for any loss, injury, expense or damage of any kind whatsoever (including any economic or consequential loss, injury, expense or damage) however wherever and whenever occurring, whether arising out of or in connection with the goods (including any latent defect in them) or any other action, matter, statement or thing connected therewith or incidental thereto whether or not arising by negligence or under statute.

14.4. The conditions and warranties implied in the *Competition and Consumer Act 2010* (Cth) have application hereto and are not affected by the exclusions contained herein. However the Customer hereby acknowledges that Deni is unaware of the consequences to the Customer of defect in or failure of the goods purchased and that the Customer has relied solely upon its own skill and judgement in all respects to enable it to decide that the goods purchased are reasonably fit for the purpose for which they are acquired.

15. Applicable Law

These terms and conditions are governed by and construed in accordance with the laws of the State of New South Wales, Australia. The parties agree to submit to the jurisdiction of the courts of that state.

16. General

In these Conditions, unless the context otherwise requires:

16.1. where there is more than one (1) Customer, their liability shall be joint and several;

16.2. words importing the singular shall include the plural and vice versa; and

16.3. any terms and conditions prohibited by law shall be ineffective to the extent of such prohibition without

16.4. invalidating the remainder.