



## 7 Commercial Day Trading Application

I/We hereby apply to Pebmac Pty Ltd ABN: 48 010 621 851 trading as MOCO Food Services ("the Supplier") for a credit account and submit the following information.

Fax completed form to 07 3375 2055 or email to credit@mocofoodsolutions.com.au

Trading Name: \_\_\_\_\_ ("The Customer")

Trading Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Postal Address: \_\_\_\_\_ Post Code: \_\_\_\_\_

Nature of Business: (eg: Restaurant, Club, Caterer etc) \_\_\_\_\_

Date of Which You Commenced in this Business: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ ABN: \_\_\_\_\_

Type of Business:      Sole Trader      Partnership      Company      Public Company

Personal Details of:      Sole Trader      Partners      Directors     Weekly Sales \$ \_\_\_\_\_

### If a Company, please complete the following:

Registered Company Name: \_\_\_\_\_ ACN: \_\_\_\_\_

Registered Office Address: \_\_\_\_\_ Post Code: \_\_\_\_\_

Incorporation:     Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_     Stat \_\_\_\_\_     Paid Up Capital \$ \_\_\_\_\_

Surname:	Christian Names:	
Date of Birth:     /     /	Licence No:	Telephone No:
Residential Address:	<input type="checkbox"/> Owned <input type="checkbox"/> Rented	
Mobile No.	Email:	
Surname:	Christian Names:	
Date of Birth:     /     /	Licence No:	Telephone No:
Residential Address:	<input type="checkbox"/> Owned <input type="checkbox"/> Rented	
Mobile No.	Email:	

Trade Reference 1: \_\_\_\_\_ Trade Reference 2: \_\_\_\_\_

**Please Note:** Directors personal guarantees included with this form must be signed by all directors of the company in order for this application to be processed. If the Customer is a Sole Director Company, guarantees from other parties may be required in order for this Application to be processed.

Name of Person to Contact Regarding Payment of Account: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

## 1. ACCOUNT TERMS ("TERMS")

- 1.1. The Supplier may in its absolute discretion refuse the Customer credit facilities or suspend or discontinue the supply of goods and services to the Customer at any time without any obligation to provide to the Customer or the Customer's Guarantors, a reason for such action.
- 1.2. All goods or services delivered to the Customer by the Supplier must be paid for in full by the Customer 7 days from statement date or by other negotiated terms as stipulated in the Customer's credit approval letter or other correspondence relevant to payment terms sent to the Customer from time to time. ("the Due Date").
- 1.3. All discounts and/or rebates granted on the invoice are conditional on payment by the Due Date. If payment is not received by the Supplier by the Due Date, any discounts and/or rebates offered by the Supplier on the invoice will be lost.
- 1.4. If payment is not made by the Due Date for payment (the "Default Event"), the Customer shall be liable to pay the Supplier interest at the rate of 14% per annum until paid, both before and (as a separate and independent obligation) after any judgment. This clause will not affect any other rights of the Supplier.
- 1.5. While any moneys are owed by the Customer to the Supplier, the Customer is not entitled to set off any amounts owed to the Supplier or withhold any payments to the Supplier.
- 1.6. The Supplier is entitled to recover from the Customer, in addition to the price, any GST on the supply of the goods and services except to the extent that the prices expressly include GST.
- 1.7. The Customer is liable to pay to the Supplier and the Supplier may recover in full from the Customer a default fee, such default fee being an amount that is calculated at a rate of up to 12% of the current debit balance of the Customer's account as at the time of the Default Event, but the default fee may not exceed \$750. It is acknowledged that the purpose of the default fee is to defray expense and cost that will be incurred by the Supplier as result of the Default Event, including by the Supplier exercising or enforcing or seeking to exercise or enforce a right under these Terms. Such default fee may be collected by the Supplier as a liquidated debt.
- 1.8. The Customer and/or the Customer's Guarantors shall pay to the Supplier any and all of the Supplier's expenses including but not limited to any legal costs (on an indemnity basis), stamp duties or dishonoured cheque fees and other expenses payable under these Terms together with any collection costs incurred in connection with the enforcement of, or the preservation of any rights under these Terms. Such costs, duties and other expenses as well as interest payable at the rate mentioned in clause 1.4 may be recovered as a liquidated debt.

## 2. GENERAL

- 2.1. The Supplier may vary these Terms by a notice of variation in writing to the Customer. The Customer agrees that the purchase of any goods or services after the date of a notice of variation will be deemed to be an acceptance of such varied Terms by the Customer.
- 2.2. Should there be any variation to any of the information supplied by the Customer to the Supplier in the Commercial Trading Application or in the structure or nature of the Customer's business (such as a conversion to or from a Company or trust) the Customer shall notify the Supplier in writing within 7 days of such variation.
- 2.3. The Customer warrants that this Commercial Trading Application is for the supply of goods and services on credit for use in a commercial operation and is not for personal (consumer) consumption.

## 3. EVIDENCE OF MONIES PAYABLE

A statement in writing signed by any director, secretary, administration manager or credit manager of the Supplier stating the balance of the monies due to the Supplier by the Customer shall be prima facie evidence of the amount of indebtedness of the Customer to the Supplier at the date of that statement.

## 4. DEFAULT

- 4.1. If there is any Default Event by the Customer or in making due payment to the Supplier of any monies owing by the Customer, or if an administrator, liquidator or provisional liquidator or receiver and manager or controller is appointed in respect of the Customer or the Customer goes into bankruptcy or commits any act of bankruptcy, or if there is a breach by the Customer of any of these Terms then:-
  - 4.1.1. All monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding that the Due Date for payment of any of the monies shall not have expired;
  - 4.1.2. The Supplier may suspend credit facilities;
  - 4.1.3. The Supplier may terminate this Agreement forthwith.
  - 4.1.4. All discounts and/or rebates given to the Customer and shown on the invoices representing the total amount demanded, may be reversed by the Supplier, in the Supplier's absolute discretion, with the new amount superseding the old balance as the balance immediately due and payable by the Customer.

## 5. DISHONOURED CHEQUE AND CREDIT CARD SURCHARGE

- 5.1 A dishonour fee of \$25.00 shall be payable by the Customer for each presentation of a cheque received from the Customer which is not honoured on presentation.
- 5.2 Payment of transactions by credit card will incur a surcharge, being a percentage of the invoice value, as follows – VISA, MasterCard, Bankcard 1.2% and – Amex 2.7%.

## 6. RISK AND PROPERTY IN GOODS

- 6.1. For the purposes of the *Personal Property Securities Act 2009* (the "PPSA") (as amended from time to time) "goods" in this clause means any and all present and after acquired goods supplied by the Supplier to the Customer;
- 6.2. The goods shall be entirely at the risk (including loss, damage or deterioration) of the Customer as soon as they are dispatched from the Supplier's premises (the carrier of the goods shall be taken to be the agent of the Customer even if engaged or paid by the Supplier).
- 6.3. The Supplier retains full title to the goods until the Supplier receives payment in full for the goods and all other amounts owed by the Customer to the Supplier.
- 6.4. Until all Monies have been paid:
  - 6.4.1. The Supplier has the right to call for or recover possession of the goods (for which purpose the Supplier's employees or agents may enter onto the Customer's premises) and the Customer must deliver up the goods if so directed by the Supplier;
  - 6.4.2. the Customer:
    - 6.4.2.1. agrees that the relationship between the Customer and the Supplier shall be fiduciary and the Customer shall keep the goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to the Supplier;
    - 6.4.2.2. has the right to resell the goods in the ordinary course of the Customer's business as the Supplier's fiduciary agent but must not otherwise dispose of or encumber the goods;
    - 6.4.2.3. shall not mix the goods with or attach them to other materials or otherwise make them unable to be returned to the Supplier in their original state;
    - 6.4.2.4. agrees that if the goods are incorporated with goods of the Customer, the resultant product shall become and be deemed to be the sole property of the Supplier. If the goods are incorporated in any way with the property of a party other than the Customer, the resultant product shall become and be deemed to be owned in common by the Supplier with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Customer of the incorporated materials; and
    - 6.4.2.5. will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the goods or any product incorporating the goods (including sale or supply to a party other than the Customer) in trust for the Supplier and shall pay the proceeds into a separate fiduciary account to be held in trust for the Supplier until accounted for to the Supplier at the demand of the Supplier.
- 6.5. To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 6 that there is created for the benefit of the Supplier a Purchase Money Security Interest in the goods.
- 6.6. The Customer agrees that the Supplier may register any personal property security interest created by these Terms on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) for any financing statement or financing change statement (as those terms are defined in the PPSA) registered by the Supplier in respect of any personal property of the Customer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on the Supplier, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that the Supplier otherwise agrees in writing.

- 6.7. Despite this clause 6, the Supplier will be entitled to maintain an action against the Customer for the purchase price of the goods plus any interest, costs, charges and expenses notwithstanding the ownership of the goods delivered to the Customer has not yet passed or been transferred to the Customer.
- 6.8. If the Customer fails to pay the purchase price of the goods in full in accordance with the Terms or prior to payment in full deals with the goods in a manner inconsistent with these Terms, then the goods must be returned to the Supplier immediately on request. The appointment of a receiver, manager, administrator, provisional liquidator, liquidator or trustee in bankruptcy or if any proceedings are instituted for the bankruptcy or winding up of the Customer, is taken to be inconsistent with the rights of the Supplier. Failure to return the goods upon request entitles the Supplier to enter upon the premises containing the goods without liability for trespass or resulting damage and remove the goods whether they are fixed to land or a building and the Supplier may on taking possession resell the goods.

#### 7. SEVERANCE

In the event that the whole or any part or parts of any clause in these Terms is found to be unenforceable by a Court then such clause or part thereof shall be to that extent severed from these Terms without effect to the validity and enforceability of the remainder of these Terms.

#### 8. JURISDICTION

These Terms shall be governed by and construed in accordance with the laws of the State of Queensland. The parties submit to the exclusive jurisdiction of the Courts in Brisbane and agree that proceedings may be commenced in any court in Brisbane and consent to that court having jurisdiction by virtue of this clause notwithstanding that the court would not have such jurisdiction without this consent.

#### 9. NOTICE

- 9.1. Notice required to be given by the Customer to the Supplier pursuant to these Terms may be delivered to the Supplier personally to the Supplier at 75 Ebberrn Street Darra, QLD 4076, or sent by post to the Supplier's postal address at PO Box 3076, Mt Ommaney, QLD, 4074, or sent by facsimile to the Supplier at 07 3375 2055.
- 9.2. Notice will be taken as delivered when received by the Supplier.
- 9.3. Notice required to be given by the Supplier to the Customer pursuant to these Terms may be delivered by post to the Customer's last known address (and shall be taken as delivered on the second business day following posting), or by facsimile to the Customer's last known facsimile number (and will be taken to be received when a successful facsimile transmission is notified by the Supplier's fax machine), or by email to the last notified email address of the Customer (which will be taken to be received within 24 hours of the Supplier sending the email to the correct email address).

#### 10. CHARGING CLAUSE

- 10.1. For the purpose of this clause 10, "Customer's Land" means all of the Customer's right, title and interest in land (held now or in the future, wherever located) whether owned by the Customer legally and/or beneficially or as trustee of any Trust;
- 10.2. To secure payment of all moneys owing to the Supplier, the Customer (or where the Customer is comprised of two or more persons or other entities then each person and other entities jointly and severally) hereby charges as legal and/or beneficial owner and as trustee of any trust in favour of the Supplier the Customer's Land with the due payment of all of those moneys. The Customer acknowledges that the Supplier may register a caveat or caveats over the Customer's Land in respect of this charge.
- 10.3. If the Customer is a trustee of any trust, the Customer:
  - 10.3.1. agrees to produce immediately to the Supplier a stamped copy of the trust deed (including all amendments) upon written notice from the Supplier demanding a copy of that trust deed;
  - 10.3.2. warrants that it has full power and authority to enter into these Terms on behalf of the trust and that it shall be bound by these Terms both personally and as trustee and this clause 10 extends to any land held by the Customer as trustee.
- 10.4. Upon demand by the Supplier, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Customer's indebtedness to the Supplier and the Customer acknowledges by reason of this clause to give a mortgage in favour of the Supplier and that the Supplier is an equitable mortgagee in respect of the Customer's Land.

#### 11. FORCE MAJEURE

The Supplier shall not be liable for any delay or for the consequences of any delay in performing or failure to perform any of its obligations under these Terms if such delay is due in full or in part to any cause whatsoever beyond its reasonable control. Such delay or failure shall not constitute a breach of these Terms and the Supplier shall be entitled at its option to either extend the time for delivery or performance for a reasonable period or to determine the contract without any recourse by the Customer to any claim for damages.

#### 12. DELIVERY

- 12.1. Delivery dates are estimates only. The goods will be dispatched to an address or addresses nominated by the Customer or the Customer's employee/agent. If the Customer, employee or agent are not present at the specified address for delivery then the Supplier may unload the goods at that address and the goods shall be deemed to be received by the Customer and the Supplier shall not be liable for any claims, costs or losses suffered by the Customer. Alternatively, the Supplier at its discretion and having due care and consideration for the type of goods being delivered, may instruct its employee or contractor to return the goods to the warehouse to ensure the goods maintain their suitability for their intended use.
- 12.2. The Supplier may at its discretion levy an "uneconomic delivery charge" for deliveries below a certain value. This charge will be itemized on the invoice.
- 12.3. The Supplier may at its discretion levy a separate "delivery charge" the purpose for which will be itemized on the invoice.

#### 13. PRICES

All goods will be invoiced at the price ruling at the time of dispatch, as all goods purchased by the Supplier from its suppliers are subject to increase at any time.

#### 14. ACCEPTANCE

- 14.1. The Customer authorises his/her/its servants and agents to take delivery on the Customer's behalf goods and services sold or provided to the Customer by the Supplier, and such authority shall continue until written notice of its revocation is expressly served upon the Supplier.
- 14.2. The Customer must within 24 hours after delivery inspect the goods and give the Supplier written notice of damage, shortages or anything else not in accordance with these Terms.
- 14.3. The Customer agrees to keep goods referred to in a notice given under this clause (and in the case of shortages the remainder of the goods delivered) in the condition in which they were delivered until the Supplier has inspected them. The Supplier agrees to inspect the goods as soon as reasonably practicable after receipt of the notice.
- 14.4. Goods are taken to be as ordered if:-
  - 14.4.1. The Customer does not give the notice referred to in this clause; or
  - 14.4.2. The goods referred to in a notice are used or damaged after delivery.
- 14.5. If the Supplier delivers less than the full quantity of goods the Customer may not reject those goods delivered.
- 14.6. If the Supplier delivers extra or different goods the Customer may reject only the extra or different goods.
- 14.7. If the Customer does not comply with this clause 14, the Customer shall be taken to have unconditionally accepted the goods and services.

#### 15. RETURNS

The Supplier shall not allow credit for returns unless the return of goods is specifically authorised by the Supplier and the product is returned in a condition (original packaging and deemed to be re-saleable) which is satisfactory to the Supplier. Returned goods and returned requested "buy ins" if accepted by the Supplier, may attract a restocking fee payable by the Customer of 25% of the full price of the goods in the absolute discretion of the Supplier.

#### 16. LIABILITY AND WARRANTY OF THE SUPPLIER

- 16.1. If under any law, any terms which apply to the supply of goods or services under these Terms cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law.
- 16.2. All terms which would otherwise be implied are excluded except as stated in these Terms.

- 16.3. The only remedy of the Customer against the Supplier for any loss, damage or liability whether in contract, tort, negligence or otherwise in connection with these Terms and/or goods and services, the Supplier's supply of the goods and services, or the Supplier's failure to supply the goods and services to the Customer, shall be limited to, in the Supplier's absolute discretion:-
- 16.3.1. The replacement of the goods or supply of equivalent goods;
  - 16.3.2. The payment of the cost of replacing the goods or acquiring equivalent goods;
  - 16.3.3. Re-performing the services.
- 16.4. The Customer must satisfy itself as to the truth and accuracy of and may not rely for any purpose on any representation, warranty or other term made by or on behalf of the Supplier which is not set out in these Terms.
- 16.5. The Supplier is not liable for any damage, economic loss or loss of profits whether direct, indirect, general, special or consequential:-
- 16.5.1. Arising out of a breach of an implied or expressed term; or
  - 16.5.2. Suffered as a result of the negligence of the Supplier or its employees or agents, apart from liability as set out in this clause.
- 16.6. If the Customer is a Consumer ("Consumer" has the meaning defined in Section 3 of the Competition and Consumer Act 2010) the goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods and services repaired or replaced if the goods and services fail to be of acceptable quality and the failure does not amount to a major failure.

**17. ENTIRE AGREEMENT**

These Terms constitute the entire Agreement between the Supplier and the Customer notwithstanding any terms to the contrary on any documents supplied by the Customer or the Supplier. These Terms also apply notwithstanding all other negotiations, understandings, agreements, written or oral, express or implied.

**18. ACKNOWLEDGEMENTS, DECLARATION AND PRIVACY CONSENTS**

I/WE, the undersigned, acknowledge and declare and/or consent to:

- 18.1 that I/we have read and understood the Supplier's Terms and which form part of this Commercial Trading Application and agree that, if a credit account is granted, the Customer is bound by and subject to those Terms.
- 18.2 that the information provided in this Credit Application is true and correct, that the business seeking credit is able to pay all debts as they become due and no trader, partner or director has been bankrupt, executed a Scheme or Deed of Arrangement or compromised with creditors, or been a Director of any Company which has had an Agent for Mortgagee in Possession, Receiver or Official manager appointed, or entered into a Scheme of Arrangement or Composition with its creditors or gone into Liquidation.
- 18.3 that any credit account that may be provided by the Supplier pursuant to this Commercial Trading Application (and any goods and services provided by the Supplier pursuant to the credit account) is for business and commercial purposes and will be used wholly or predominantly for business and commercial purposes.
- 18.4 the Supplier collects personal information about individuals if it is necessary for one or more of the Supplier's functions or activities as a credit provider. As part of the Supplier's functions or activities as a credit provider, the Supplier collects credit related information ("credit information") about individuals.
- 18.5 a detailed summary of the kinds of credit information that the Supplier collects about individuals (or an entity associated with an individual) is set out in the Supplier's Credit Reporting Privacy Policy available via its website at: [www.mocofoodservices.com.au](http://www.mocofoodservices.com.au) and I/we have had the opportunity to read that policy. However, in short, credit information about an individual (or an entity associated with an individual) includes information about the individual's (or an entity associated with an individual) credit history and credit worthiness and is used by the Supplier for the purposes detailed below.
- 18.6 with the consent of the individual, the Supplier collects credit information (including credit eligibility information) about individuals (or an entity associated with an individual) from other credit providers and/or trade suppliers for such purposes as: assessing whether to enter into agreements, including those which involve provision of credit; assessing the provision of credit; and the recovery of any overdue amounts.
- 18.7 if such credit information about individuals (or an entity associated with an individual) is not collected by the Supplier then the Supplier cannot properly process applications for credit accounts or deal with other credit related requests such that the Supplier will not be able to process an order or request for goods and/or services on credit and decide whether or not to provide goods and/or services on credit.
- 18.8 with the consent of the individual, the Supplier may disclose credit information to a Credit Reporting Body ("CRB") and other credit providers and/or trade suppliers for such purposes as: assessing whether to enter into agreements, including those which involve provision of credit; assessing the provision of credit; and the recovery of any overdue amounts.
- 18.9 in particular, the Supplier is likely to disclose credit information collected from individuals to the following CRB's:  
**Dun & Bradstreet**, PO Box 7405, St Kilda Rd, Melbourne VIC 3004, Email [clientservices@dnb.com.au](mailto:clientservices@dnb.com.au) or call D&B Client Services 13 23 33;  
**Veda**, Verify Holdings Australia Ltd, Locked Bag 965, North Sydney, NSW 2059, Email: [info@verifycv.com.au](mailto:info@verifycv.com.au), Website: [www.veda.com.au](http://www.veda.com.au)  
You are able to obtain a copy of Dun & Bradstreet and Veda's credit reporting policies from their website.
- The Supplier may, in the future, disclose credit information to a CRB other than Dun & Bradstreet or Veda, but prior to disclosing any credit information about individuals to any other CRB, the Supplier will amend its Credit Reporting Privacy Policy to set out the name and contact details of any such other CRB and will post a notification of the change to the Credit Reporting Privacy Policy on the Supplier's web site.
- 18.10 the Supplier has a Credit Reporting Privacy Policy which is available at [www.mocofoodservices.com.au](http://www.mocofoodservices.com.au) which contains information about the following:
- 18.10.1 how an individual may access the credit eligibility information about the individual held by the Supplier;
  - 18.10.2 how an individual may seek the correction of credit information about the individual that is held by the Supplier;
  - 18.10.3 how an individual may complain about a failure of the Supplier to comply with its obligations under Part IIIA of the Privacy Act or the Credit Reporting Code and how the Supplier will deal with such a complaint;
  - 18.10.4 that the Supplier is not likely to disclose credit information to any overseas entities that do not have an Australian link.
- 18.11 for the purposes of processing this order requesting goods and/or services; or assessing any ongoing provision of credit and/or the recovery of any overdue account; or facilitating all business functions and activities of the Supplier as an agent for another credit providers, by each individual signing this Commercial Trading Application, I/we hereby expressly give my/our consent to the Supplier, its successors and/or assigns to:
- (i) obtain credit information and credit eligibility information about me/us and/or the entity associated with me/us from any other credit provider or trade supplier;
  - (ii) use, disclose or exchange with other credit providers or trade suppliers credit eligibility information about me/us and/or the entity associated with me/us;
- and I/we further agree that this consent remains in force until all rights under any agreement granted as a result of a Commercial Trading Application, whether such agreement is held directly with the Supplier, ceases.
- 18.12 **SIGNING** (Note: for partnerships, all partners must sign; for companies, all directors are required to sign)

Date: / /

Name	Signature	Witness Name	Signature
------	-----------	--------------	-----------

Date: / /

Name	Signature	Witness Name	Signature
------	-----------	--------------	-----------

## GUARANTEE AND INDEMNITY

### TO: Pebmac Pty Ltd ABN: 48 010 621 851 trading as MOCO Food Services ("the Supplier")

IN CONSIDERATION of the Supplier agreeing to supply (either now or at some future time) or to continue to supply or to cause to be supplied at the Supplier's cost to the Customer (being the Customer identified in the accompanying Commercial Trading Application) goods and/or services on credit the persons identified below as guarantor ("the Guarantor") HEREBY GUARANTEES the due payment by the Customer of all moneys now due and owing or which become due and owing by the Customer on any account whatsoever (including on account of goods sold and services supplied) to the Supplier AND the Guarantor agrees:

1. In this Guarantee, unless a contrary intention appears from the context, persons is defined to include but not limited to a company, trust, partnership or incorporated association and the singular number shall include the plural and vice versa.
2. This Guarantee:
  - 2.1. will be a continuing Guarantee;
  - 2.2. will be irrevocable irrespective of any amount or amounts which may be paid to the Supplier by or on behalf of or for the credit of the Customer at any time during the continuance of any credit which may be given by the Supplier to the Customer;
  - 2.3. shall not be determined or affected by the death, bankruptcy, liquidation, official management, administration, control or receivership (as the case may be) of the Customer;
  - 2.4. shall remain in full force and effect until all moneys owing to the Supplier from time to time by the Customer have been paid or satisfied and this Guarantee has been discharged in writing by the Supplier;
  - 2.5. shall be a principal obligation and shall not be treated as ancillary to or collateral with any other obligation however created and in particular shall be independent of any other security which the Supplier may hold now or in the future in respect of the moneys intended to be secured by this Guarantee to the effect that this Guarantee shall be enforceable without first having recourse to any such security and without taking any steps or proceedings against the Customer regardless of whether any other security shall be in whole or in part unenforceable by reason of any rule of law or equity and notwithstanding the loss by the Supplier of any other security through acts or omissions on the Supplier's part;
  - 2.6. shall be governed by the laws of the State of Queensland and each party submits to the exclusive jurisdiction of the Courts in Brisbane for any claim or matter arising under this Guarantee.
3. The Guarantor will not, while any moneys are owing to the Supplier by the Customer, claim or receive the benefit of any dividend or payment in a winding up/bankruptcy of the Customer and will not prove or claim in a winding up/bankruptcy of the Customer nor in any arrangement relating to the Customer in competition with the Supplier so as to diminish any dividend or payment which but for such proof or claim the Supplier would be entitled to receive and that the receipt of any payment by the Supplier out of a winding up/bankruptcy of the Customer or any arrangement relating to the Customer shall not affect the Supplier's right to recover from the Guarantor under this Guarantee.
4. Any settlement, discharge or release between the Guarantor and the Supplier will be conditional upon no security or payment to the Supplier by the Customer or any other person being voided or reduced by virtue of any provisions or enactments relating to insolvency or bankruptcy, and the Supplier may recover the value or amount of any such security or payment so voided or reduced from the Guarantor subsequently as if that settlement, discharge or release had not occurred.
5. That the liability of the Guarantor under this Guarantee will not be impaired or discharged:-
  - 5.1. by any reason of any time or other indulgence granted by the Supplier to the Customer or by any arrangement entered into whereby the Supplier's rights are in any way modified or abrogated and that no notice of the granting of any time or indulgence or of the entering into of any arrangement need be given to the Guarantor;
  - 5.2. if any amounts owed by the Customer may be unrecoverable (temporarily or permanently) for any reason at all;
  - 5.3. if any change in the status or structure of the Customer occurs;
  - 5.4. by any release or compromise with the Customer or any one or more Guarantors by operation of law or otherwise;
  - 5.5. by the omission of any name or address of any Guarantor.
6. That the liability of the Guarantors (if more than one):
  - 6.1. is joint and several and every reference to the Guarantor in this Guarantee will bind each of those persons;
  - 6.2. will be effective even if any of the intended co-Guarantors have not executed the Guarantee or that the Guarantee has been held to be ineffective or unenforceable against one or more of the Guarantors.
7. The Guarantor:
  - 7.1. will pay the Supplier for any and all of the Supplier's expenses including but not limited to any legal costs (on an indemnity basis), stamp duties or dishonoured cheque fees and other expenses payable under this Guarantee together with any collection costs incurred in connection with the enforcement of, or the preservation of any rights under this Guarantee. Such costs, duties and other expenses may be recovered as a liquidated debt and such costs, duties and other expenses attract interest at the rate mentioned in clause 1 of the Terms.
  - 7.2. has made independent investigations and enquires and has not entered into this Guarantee nor executed this instrument as a result of or by reason of any promise, information, representation or statement of any kind whatsoever given by or on behalf of the Supplier.
8. In the event that the whole or any part or parts of any clause in this Guarantee is judged to be unenforceable by a court of competent jurisdiction then such clause or part thereof shall be to that extent severed from this Guarantee without effect to the validity and enforceability of the remainder of these clauses.
9. To secure payment of all moneys which are or may become payable by the Guarantor to the Supplier under this Guarantee the Guarantor hereby charges with the due payment of all of those moneys all of the Guarantor's interests in real property wherever located both present and future and the Guarantor consents to the Supplier lodging a caveat or caveats to protect its interests.
  - 9.1. Upon demand by the Supplier, the Guarantor agrees to immediately execute a mortgage or other instrument in terms satisfactory to the Supplier to further secure the Guarantor's indebtedness to the Supplier.
10. If the whole or any part of the monies hereby secured are or may be irrecoverable from the Customer by the Supplier for any reason whatever whereby the amount thereof or resulting therefrom is not recoverable from the Guarantor as a surety, then and in each such case:-
  - 10.1. the Guarantor as a separate and additional liability under this Guarantee indemnifies the Supplier in respect of the monies secured by this Guarantee;
  - 10.2. the Guarantor as a principal debtor agrees to pay to the Supplier a sum equal to the amount of the monies secured by this Guarantee; and
  - 10.3. for the purposes of this indemnity, this clause shall be construed as if the monies secured by this Guarantee were recoverable and the terms of this Guarantee will apply as far as possible, with any necessary changes being made.

**PRIVACY ACT NOTIFICATIONS AND CONSENT** – By executing this Guarantee I/We acknowledge that I/we am/are informed of the following matters:

11. The Supplier collects personal information about individuals if it is necessary for one or more of the Supplier's functions or activities. In the Supplier's activities as a credit provider the Supplier collects credit-related information ("credit information") about individuals.
12. A detailed summary of the kinds of credit information that the Supplier collects about individuals is set out in the Supplier's Credit Reporting Privacy Policy available via its website at: [www.mocofoodservices.com.au](http://www.mocofoodservices.com.au). However, in short, credit information about an individual includes information about the individual's credit history and credit worthiness and is used by the Supplier for the purposes detailed below.
13. With the consent of the individual, the Supplier collects credit information (including credit eligibility information) about individuals (or an entity associated with an individual) from other credit providers and/or trade suppliers in connection with any guarantee given or proposed to be given for such purposes as: assessing whether to enter into agreements, including those which involve provision of credit; assessing the provision of credit; and the recovery of any overdue amounts.
14. If such credit information about individuals associated with the Customer (including Guarantors) is not collected by the Supplier then the Supplier cannot properly process or consider applications for credit accounts such that the Supplier will not be able to process the application and decide to or not to grant a commercial credit account or process some other request associated with a credit account.

15. With the consent of the individual, the Supplier may disclose credit information to a Credit Reporting Body ("CRB") and to other credit providers and/or trade suppliers in connection with any guarantee given or proposed to be given for such purposes as: processing and assessing applications for commercial credit accounts; assessing the provision of credit and the amount of any credit; and the recovery of any overdue amounts.
16. In particular, the Supplier is likely to disclose credit information collected from individuals to the following CRB's:  
**Dun & Bradstreet**, PO Box 7405, St Kilda Rd, Melbourne VIC 3004, Email [clientservices@dnb.com.au](mailto:clientservices@dnb.com.au) or call D&B Client Services 13 23 33;  
**Veda**, Verify Holdings Australia Ltd, Locked Bag 965, North Sydney, NSW 2059, Email: [info@verifycv.com.au](mailto:info@verifycv.com.au), Website: [www.veda.com.au](http://www.veda.com.au)  
You are able to obtain a copy of Dun & Bradstreet's and Veda's credit reporting policies from their website.  
 The Supplier may, in the future, disclose credit information to a CRB other than Dun & Bradstreet or Veda, but prior to disclosing any credit information about individuals to any other CRB, the Supplier will amend its Credit Reporting Privacy Policy to set out the name and contact details of any such other CRB and will post a notification of the change to the Credit Reporting Privacy Policy on the Supplier's web site.
17. The Supplier has a Credit Reporting Privacy Policy which is available at [www.mocofoodservices.com.au](http://www.mocofoodservices.com.au) which contains information about:
- 17.1. how an individual may access the credit eligibility information about the individual held by the Supplier;
  - 17.2. how an individual may seek the correction of credit information or credit eligibility information about the individual that is held by the Supplier;
  - 17.3. how an individual may complain about a failure of the Supplier to comply with its obligations under Part IIIA of the *Privacy Act* or the Credit Reporting Code and how the Supplier will deal with such a complaint;
  - 17.4. that the Supplier is not likely to disclose credit information or credit eligibility information to any overseas entities that do not have an Australian link.
18. Individuals have the right to request that CRBs not use credit information for the purposes of pre-screening of direct marketing by a credit provider.
19. Individuals have the right to request that CRBs not use or disclose credit information about the individual if the individual believes, on reasonable grounds, that the individual has been, or is likely to be, a victim of fraud.

For the purposes of processing and/or assessment of this Guarantee in connection with any associated application for a commercial credit account, or ongoing provision of credit and/or the recovery of any overdue account, whether or not in connection with any guarantee I/we hereby expressly give my/our consent to Supplier, its successors and/or assigns to:

- (a) obtain credit information and credit eligibility information about me/us and/or the Customer from other credit providers and/or trade suppliers;
- (b) use, disclose or exchange with other credit providers or trade suppliers credit eligibility information about me/us and/or the Customer.

I/we further agree that this consent remains in force until all rights under the Guarantee come to an end.

**EXECUTED as a deed this** \_\_\_\_\_ **day of** \_\_\_\_\_ **20** \_\_\_\_\_

				Date: / /
Guarantor Name	Signature	Witness Name	Signature	
				Date: / /
Guarantor Name	Signature	Witness Name	Signature	
				Date: / /
Guarantor Name	Signature	Witness Name	Signature	
				Date: / /
Guarantor Name	Signature	Witness Name	Signature	