

# Commercial Credit Application

The applicant applies for a credit account with JIMMY'S BEEF PTY LTD, ABN 78 673 178 615.



<b>ACCOUNT TYPE</b> (please tick box provided)			
Sole Trader		Partnership	Company
		Other:	
<b>APPLICANT DETAILS</b>			
Registered Name (in full):			
ABN:		ACN:	
Trading Name (in full):			
Trading Address:			
Postal Address (if different):			
Preferred Contact Person:		Position:	
Contact Number:		Mobile:	
Email Address:			
Type of Business/Industry:			
Credit Limit Requested:		Forecast Purchase (in next 3 months)	

<b>PERSONAL DETAILS OF DIRECTORS, SOLE TRADERS, PARTNERS &amp; SHAREHOLDERS</b>				
Applicant 1	Family Name:		Given Names:	
	Residential Address:			
	Date of Birth:		Driver License No:	
	State of issue:		Expiry Date:	
Applicant 2	Family Name:		Given Names:	
	Residential Address:			
	Date of Birth:		Driver License No:	
	State of issue:		Expiry Date:	
Applicant 3	Family Name:		Given Names:	
	Residential Address:			
	Date of Birth:		Driver License No:	
	State of issue:		Expiry Date:	

<b>FINANCIAL DETAILS</b>	
Bank:	
Account Name:	
BSB Number:	
Account Number:	

<b>TRADE REFERENCE</b>	
Company Name:	
Contact Person:	
Phone:	Email:

## TERMS AND CONDITIONS

**Please read carefully and seek independent legal advice if you do not understand the Terms & Conditions below.**

**For the Purpose of the Privacy Act 1988, this section must be signed by the Directors/Proprietors.**

**I/WE HEREBY AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS IN RELATION TO THE ACCOMMODATION OF CREDIT BY JIMMY'S BEEF PTY LTD ("the Supplier")**

Upon the approval of this application for credit for the supply of goods and services, the Application hereby agrees with the Supplier:

"Applicant" means the person who purchase goods or services from the Supplier and who applies for credit to the Supplier in respect of payment to the goods or services;

"Conditions" means these terms and conditions of sale and supply which shall govern the terms of sale and supply of goods or services from the Supplier to the Applicant;

"Supplier" means JIMMY'S BEEF PTY LTD and its agents, servants and employees and, as applicable, any related bodies corporate as defined in the Corporations Act 2001 (Cth);

"Goods or Services" means all products or services, or both agreed to be supplied by the Supplier to the Applicant pursuant to these conditions:

### 1. Credit Facility

- a. The Applicant warrants that all information given to the Supplier is true, accurate and correct to the best knowledge of the Applicant. The Supplier's determination on whether to grant further credit terms to the Applicant as requested (Credit Facility) in respect of the payment is substantially relied upon the information supplied by the applicant. If any of the information turns out to be untrue, inaccurate and incorrect, the Supplier is entitled to revoke the Credit Facility from that Applicant without written notification, and any amounts owing to the Supplier ("Outstanding Payment") become payable immediately to the extent applicable.
- b. Notwithstanding clause 1, the Supplier may at all times in its sole and unfettered discretion and without being under any duty or obligation to provide reasons to the Applicant, review, alter or terminate the Applicant's credit limit or payment terms on notice to the Applicant. Without limiting the generality of the foregoing, the decision of Supplier shall be final and Supplier accepts no liability or responsibility for any loss, howsoever arising, incurred by the Applicant due to the operation of this clause 2.
- c. That the Supplier may at any time and without the need to provide a reason to the Applicant refuse to extend any further credit to the Applicant and that its approval of this Application does not require the Supplier to extend to the Applicant any particular amount of credit. The Supplier may refuse an initial application for credit, but may proceed if the Supplier is able to obtain insurance against a default by the Applicant and the Applicant pays to the Supplier the amount of any premium for that insurance.
- d. The Supplier may require that the Applicant enter into further security documentation as a condition of granting a credit facility, further credit or continuing credit to the Applicant. If there is an inconsistency between the provisions of those security documents and these Terms and Conditions then the Provisions of the security document will prevail.
- e. Where there is more than one Applicant each applicant shall be jointly and severally liable under the terms of this Application.
- f. The Applicant agrees to notify the Supplier of any changes within seven days affecting the legal entity, structure, ownership, shareholder or management control of the applicant.
- g. Notwithstanding any change in the Applicant's ownership/trading structure or any advice by it to the Supplier of such change, the Applicant will remain personally liable for any goods and services requested by it or on its behalf until has received written confirmation from the Supplier that its account has been closed and full payment received and a new account has been opened in the name of the new entity.

### 2. Payment and Default

- a. Subject to clause 3 and 4, and unless otherwise agreed in writing by both parties, all accounts shall be payable within 30 days of delivery, or as otherwise identified on any statement of account issued by the Supplier.
- b. If the Applicant fails to fulfill its payment obligation as set out above, or other obligations contemplated under the Conditions, the Supplier may-
  - i. Revoke any Credit Facility it has granted to that Applicant and require cash in advance payment by the Applicant for future supplies until a new Credit Facility is determined and granted to that Applicant;
  - ii. Require all Outstanding Payment to be paid by that Applicant immediately in full amount upon notice to the Supplier;
  - iii. Revoke any discounted rates offered to that Applicant in the calculation of the Outstanding Payment Amount; and

- c. If any of the events set out in (i) to (vi) below occur, the Supplier may at its option withhold further deliveries and/or cancel these Conditions on notice to the Applicant. Without prejudice to any other action, right or remedy which Supplier has or might otherwise have had at law or in equity, all moneys owing and outstanding to Supplier on any account whatsoever and irrespective of whether the due date has occurred or passed shall become immediately due and payable and the security interest constituted by this agreement shall become immediately enforceable if any of the events set out in (i) to (vi) below occur:
- i. The Applicant defaults in any payments or is unable, or states that it is unable, to pay its debts as and when they fall due;
  - ii. The Applicant being an individual commits an act of bankruptcy or has a controller or trustee appointed in respect of the Applicant's estate or any part of the Applicant's property or assets;
  - iii. The Applicant being a company passes a resolution for its winding up or enters into liquidation or has an application for winding up filed against it;
  - iv. A receiver, receiver and manager, controller or voluntary administrator is appointed over any part of the property or assets of the Applicant;
  - v. The Applicant experiences any analogous event having substantially similar effect to any of the events specified above;
  - vi. The Applicant fails to remedy a breach of any material term of these Conditions within 14 days of a remedy notice from Supplier.
- d. The Supplier may charge interest on any Outstanding Payment at the rate prescribed by the State Penalty Interest Rates Act 1983 (VIC), plus two percent.
- e. The Applicant should indemnify the Supplier any associated costs arising from the collection of any Outstanding Payment from that Applicant. Those associated costs include, without limitation to interest, costs and commissions and legal expenses.

### **3. Personal guarantee provided by director/proprietor**

- a. If the applicant is a company, the Supplier may, at its discretion, require the Director(s) of that company to give a personal guarantee and indemnity in the form prescribed by the Supplier. The Supplier reserves the right to require a personal guarantee and indemnity to be given by individuals in any other circumstances.
- b. Where the Applicant is unincorporated, each proprietor of the Applicant, hereby charges with payment of the moneys and compliance with all obligations owed by the Applicant to the Supplier under these terms and conditions all beneficial interests (freehold and leasehold) in real property held now or in the future by the Applicant or proprietor. The Applicant and where applicable, each proprietor agrees that if demand is made upon it, him or her by the Supplier, the Applicant or, if applicable, that proprietor will immediately execute a mortgage in registerable form or a consent to caveat, as required by the Supplier to secure the interest of the Supplier pursuant to this equitable mortgage. If he, she or it fails to do so within a reasonable time of being so requested, the Applicant or, if applicable, that proprietor irrevocably and by way of security appoints any credit manager or solicitor engaged by the Supplier to be its, his or her true and lawful attorney to execute and register such instruments.

### **4. Title**

- a. The Applicant acknowledges that until title in and to the Goods passes to the Applicant in accordance with this clause, the Applicant holds the Goods as bailee of Supplier and that a fiduciary relationship exists between the Applicant and Supplier.
- b. Until title in and to the Goods passes to the Applicant in accordance with this Clause the Applicant shall store the Goods separately and in such a manner that they are clearly identified as the property of Supplier, Supplier shall be entitled at any time until title in and to the Goods passes to the Applicant to demand the return of the Goods and shall be entitled without notice to the Applicant and without liability to the Applicant to enter any premises occupied by the Applicant in order to search for and remove the Goods.
- c. The Applicant acknowledges that if it sells the Goods before title in and to the Goods has passed to the Applicant in accordance with this clause, it sells the Goods as a fiduciary agent of Supplier provided that such sales shall not give rise to any obligations on the part of Supplier. The Applicant shall hold the proceeds of sale on trust for Supplier in a separate account.
- d. If title in and to the Goods has not passed to the Applicant in accordance with this clause, the Applicant's implied right to sell the Goods shall immediately terminate upon the happening of any of the events stipulated in clause 1(c) hereof, without prejudice to any other rights therefrom.

### **5. Supplier's Rights**

- a. All Goods and Services supplied by the Supplier to or for the Applicant are supplied only upon the terms contained in the Supplier's Standard Terms and Conditions of Sale. Until altered conditions of sale are notified to the Applicant in writing the Applicant agrees that the current conditions of sale shall continue to apply.
- b. The Supplier may from time to time alter its Standard terms of Credit and such altered conditions or terms shall apply in respect of all transactions taking place after notification to the Applicant of such altered terms of credit.
- c. The Supplier may at any time set-off amounts owed by the Supplier to the Applicant from the amounts owed by the Applicant to the Supplier.
- d. No claims levied against the Supplier in relation to loss or damage will be considered unless all amounts owing by the Applicant to the Supplier have been paid in full.

e. The failure by the Supplier to insist upon compliance with any provisions of these terms does not constitute a waiver of that provision and the Supplier shall be entitled to insist upon compliance with all provisions of these terms at any time.

## **6. General Lien**

a. In addition to any right of lien to which Supplier may be entitled at law, Supplier shall be entitled to exercise a general lien over all items in its possession belonging to the Applicant until the Applicant has paid in full for all Goods and Services supplied by Supplier to the Applicant. Supplier may in its sole discretion sell any item that is subject to the said lien, provided that Supplier shall pay to the Applicant any surplus proceeds that are recovered by it from a sale of any such items after discharging in full all monies outstanding to Supplier in respect of Goods and Services that have been delivered by it to the Applicant and all reasonable costs of sale and otherwise related thereto incurred by Supplier.

## **7. Risk**

- a. Unless otherwise agreed in writing, all risk in and to the Goods or Services purchased shall pass to the Applicant upon delivery to the Applicant, its agent or to a carrier commissioned by the Applicant.
- b. Without in any way limiting the operation of the foregoing, upon delivery of the Goods or Services to the Applicant, its agent or to a carrier commissioned by the Applicant, the Applicant covenants and warrants to Supplier that, in the storage, use and handling of the Goods, the Applicant, its agents and carriers shall comply with all relevant laws, including environmental laws and regulations, and shall comply with all necessary and/or relevant permits or licenses pertaining to the storing, use and handling of the Goods. And the Applicant shall ensure that the Applicant, its agents and carriers are familiar with and shall comply with all the necessary and appropriate precautions and safety measures relating to the storing, use and handling of the Goods.
- c. If Supplier does not receive forwarding instructions sufficient to enable it to dispatch the Goods within 14 days of notification to the Applicant that they are ready, the Applicant shall be deemed to have taken delivery of the Goods from such date and Supplier may store the Goods. The Applicant shall be liable for related costs, including storage and insurance charges, payable monthly on demand.

## **8. Force Majeure**

a. Supplier shall not be responsible for any delay, suspension or failure arising out of any circumstances outside Supplier's reasonable control, including but not limited to, strikes, lockouts or other labour difficulty, inability to obtain any necessary materials, equipment, facilities or services, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network, acts of God, acts of terrorism or an act or omission of a third party. Supplier shall not incur any liability to the Applicant in respect of such delay, suspension or failure and, without limiting the foregoing, Supplier reserves its right to totally or partially suspend deliveries during such period.

## **9. Personal Property Securities Act 2009 (Cth) ('PPSA')**

- a. The Applicant acknowledges that these Conditions create a security interest in the Goods supplied to the Applicant for the purpose of the PPSA.
- b. Nothing in these conditions may be construed as an agreement or consent by Supplier to:
- Subordinate any security interest granted in favour of Supplier in favour of any person; or
  - Defer or postpone the date of attachment of any security interest granted in favour of Supplier.
- c. The Applicant must not create or cause to be created a security interest over, or in respect of its rights in, the Goods, other than a security interest arising under these terms and conditions and other than a security interest granted by the Applicant in all of its assets in favour of a bank or similar financial institution.
- d. The Applicant must not, without Supplier's prior consent, allow:
- the Goods to become mixed or commingled with any other property;
  - the Goods to become an accession to any other property; or
  - any other property to become an accession to the Goods.
- e. The Applicant must do all things and provide all information necessary to enable Supplier to perfect its security interest in the Goods, including:
- ensuring that the security interest is enforceable against third parties, or otherwise effective; and
  - assisting Supplier to complete the registration of any financing statement or financing change statement (each as defined in the PPSA).
- f. The Applicant must pay all costs incurred by Supplier in connection with the registration of a financing statement or financing change statement (each as defined in the PPSA) in respect of a security interest granted by the Applicant in favour of Supplier.
- g. The Applicant must immediately notify Supplier if any other person attempts to enforce a security interest in the Goods.
- h. The Applicant undertakes not to change any of its details recorded in a financing statement registered by Supplier (including changing its ACN or any ABN allocated to a trust of which it is trustee or becoming the trustee of a trust) without giving Supplier 10 business day's prior notice.
- i. Supplier may apply or appropriate all money received from the Applicant as Supplier sees fit (including so as to enable Supplier to preserve any purchase money security interest (as defined in the PPSA)). An application or appropriation by Supplier will override any appropriation made by the Applicant. For the purposes of section 14(6)(a) of the PPSA, this paragraph constitutes the method of payment application agreed by the parties.

j. To the extent permitted by law, the Applicant irrevocably waives its right to receive notice of a verification statement (as defined in the PPSA) in respect of each security interest granted in favour of Supplier.

k. To the extent permitted by law, the Applicant and Supplier contract out of sections 125, 132(3)(d), 142, 143 and (if permitted by section 115(7) Part 4.3 (other than sections 123(1), 126, 128, 129(1), 133, 134(1), 136(1) and 136(2)) of the PPSA, The Applicant irrevocably waives any rights under sections 95, 118, 121(4), 130 and 132(4) of the PPSA.

#### **10. Severance**

a. If any provision or part of a provision of these Terms and Conditions is found to be invalid or unenforceable then that provision or part of a provision shall be severed and the remaining provisions shall continue to be binding and have full force and effect on the Supplier and the Applicant.

#### **11. Governing law**

a. The law applicable to these Terms and Conditions is the law of the State of Victoria.

**I/WE DECLARE AND AFFIRM THAT:**

- **I/WE HAVE READ AND UNDERSTOOD THE TERMS OF THIS APPLICATION AND CONFIRM THAT THE TERMS WILL APPLY TO ANY CREDIT FACILITY PROVIDED BY THE SUPPLIER TO ME/US; AND**
- **THE INFORMATION SUPPLIED BY US, THE APPLICANT, IN THIS APPLICATION IS TRUE AND CORRECT AND ACKNOWLEDGE THE SUPPLIER AND ITS RELATED ENTITIES WILL USE THIS INFORMATION FOR THE PURPOSE OF ASSESSING MY/OUR COMMERCIAL CREDIT APPLICATION.**

IN ACCORDANCE WITH THE PROVISIONS OF THE PRIVACY ACT 1988, IF THE SUPPLIER CONSIDERS IT RELEVANT TO ASSESSING MY/OUR APPLICATION FORM COMMERCIAL CREDIT,

- **I/WE CONSENT TO THE SUPPLIER OBTAINING FROM A CREDIT REPORTING AGENCY A CREDIT REPORT CONTAINING PERSONAL CREDIT INFORMATION ABOUT ME/US IN RELATION TO COMMERCIAL CREDIT PROVIDED BY THE SUPPLIER.**

IN ACCORDANCE WITH THE PROVISIONS OF THE PRIVACY ACT 1988, IF THE SUPPLIER CONSIDERS IT RELEVANT TO COLLECTING OVERDUE PAYMENTS IN RESPECT OF COMMERCIAL CREDIT PROVIDED TO ME/US,

- **I/WE AGREE TO THE SUPPLIER RECEIVING FROM A CREDIT REPORTING AGENCY A CREDIT REPORT CONTAINING PERSONAL INFORMATION ABOUT ME/US IN RELATION TO COLLECTING OVERDUE PAYMENTS.**
- **I/WE FURTHER CONSENT TO THE RETENTION OF THIS INFORMATION BY THE SUPPLIER FOR THE PURPOSE OF CONTINUING CREDIT REVIEW.**

[Under the Privacy Act 1988, the Supplier, is allowed to give a credit reporting agency or another credit provider personal information about your credit application, information which may be given to an agency or another credit provider includes: identify particulars; the fact that I/we have applied for credit and the amount, the fact that the Supplier, is a credit provider to me/us, payments which become overdue more than sixty (60) days and for which collection action has been commenced; any credit reports received and held by the Supplier in relation to me/us for inclusion in or establishment of a credit information file in relation to me/us; advice that payment are no longer overdue; cheques drawn by me/us which have been dishonoured more than once; in specific circumstance, that in the opinion of the Supplier, I/we have committed a serious credit infringement; that credit provided to me/us by the Supplier has been paid or otherwise discharged.]

SIGNED BY DIRECTORS, PARTNERS, SOLE TRADERS, TRUSTEES AS APPROPRIATE		
Applicant 1	Name:	
	Position:	
	Signature:	
	Date:	
Applicant 2	Name:	
	Position:	
	Signature:	
	Date:	
Applicant 3	Name:	
	Position:	
	Signature:	
	Date:	

## GUARANTEE AND INDEMNITY

To: JIMMY'S BEEF PTY LTD ABN 78 673 178 615 ("the Supplier")

A. The Guarantors acknowledge that (insert the Applicant Name)

(ABN \_\_\_\_\_) ("the Applicant") has, at the request of the Guarantors, submitted an application to be supplied credit by the Supplier.

B. The Guarantors acknowledge and agree that this Guarantee and Indemnity shall apply to the provisions of credit, to the Applicant by any branch of the Supplier, and that the Guarantee and Indemnity hereby granted is enforceable by any branch of the Supplier which has supplied credit to the Applicant.

### OPERATIVE PART

1. The Guarantors:

- a. guarantee punctual payment to the Supplier of all amounts which the Applicant does now or may at any time in the future owe to the Supplier;
- b. guarantee punctual and correct compliance with all obligations (including payment obligations) which the Applicant owes now or may in the future owe to the Supplier;
- c. indemnify the Supplier against any loss it may suffer if the Applicant does not meet any of its obligations.

2. This Guarantee and Indemnity creates a principal obligation from the Guarantor to the Supplier and it is in addition to any security which the Supplier holds from the Applicant. This Guarantee and Indemnity may be enforced without the Supplier having to take any steps against the Applicant or its security.

3. This Guarantee and Indemnity is not affected and is still enforceable:

- a. If any amount owing to the Supplier by the Applicant is not recoverable by the Supplier for any reason at all;
- b. If the Supplier does not comply with any law or any agreement with the Applicant;
- c. If the Supplier grants any time, release or other concession to the Applicant or the Guarantors or any one or more of the Guarantors;
- d. If one or more of the Guarantors or any other party does not execute this Guarantee and Indemnity; in the event of death, incapacity, administration, bankruptcy or insolvency of the Applicant or any of the Guarantors;
- e. If a payment by the Applicant or by any Guarantor to the Supplier is set aside in bankruptcy, litigation or official management of the Applicant or of any Guarantor;
- f. If a Guarantor ceases to be director of or be involved with the Supplier or the status or structure of the Applicant changes at all;
- g. if the Supplier agrees to extend or increase, at any time any credit limit imposed on the Applicant;
- h. if any other things occur which could otherwise limit the effect of the Guarantee and Indemnity.

4. This Guarantee and Indemnity is a continuing guarantee and indemnity and is not wholly or partially discharged until all credit arrangements between the Supplier and the Applicant are ended, all amounts owing to the Supplier by the Applicant are paid, and all obligations of the Applicant to the Supplier are complied with in full.

5. Where there are two or more guarantors their obligations are joint and several and none of them shall be discharged from their obligations under this Guarantee and Indemnity if:

- a. This Guarantee and Indemnity is not enforceable against one of them or the liability of one of them ceases;
- b. Any Guarantor dies; or
- c. One of them is unable to perform his or her other obligations under this Guarantee and Indemnity.

6. The Guarantors agree to waive all rights inconsistent with the terms of this Guarantee and Indemnity.

7. Each Guarantor hereby charges with payment of the moneys and the compliance with all obligations secured by this Guarantee and Indemnity all beneficial interests (freehold and leasehold) in real property held now or in the future by a Guarantor. Each Guarantor agrees that if demand is made upon him or her or it by the Supplier, that Guarantor will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required by the Supplier and against the event that he, she or it fails to do so within a reasonable time from being so requested, that Guarantor hereby irrevocably and by way of security appoints any credit manager or solicitor engaged by the Supplier to be his or her other true and lawfully attorney to execute and register such instrument.

8. Each Guarantor agrees that the Supplier may seek from a credit reporting agency, a credit report containing personal information about them to assess whether to accept them as guarantors for credit applies for or provided to the Supplier. The Guarantors agree that if the Supplier approves the Applicant's application for credit, this Deed remains in force until the credit facility covered by the Applicant's application ceases.

9. If the Applicant is a trustee of a trust, the Guarantors warrant that the Applicant has full authority as trustee to enter into agreements for the supply to it of goods or services, or both, on credit.
10. If a notice or a demand is given to one of the Guarantors it will mean it has been given to all of them.
11. "the Supplier" and "Applicant" include their respective successors and assigns. "Guarantors" includes the heirs, executors, administrators and assignees of each Guarantor.

**SIGNED AS DEED BY GUARANTOR 1**

Guarantor Name:	
Guarantor Signature:	
Date:	

**IN THE PRESENCE OF**

Witness Name:	
Witness Signature:	
Date:	

**SIGNED AS DEED BY GUARANTOR 2**

Guarantor Name:	
Guarantor Signature:	
Date:	

**IN THE PRESENCE OF**

Witness Name:	
Witness Signature:	
Date:	