

## Credit Application Terms & Conditions

**"Goods"** means the goods sold by M & J Chickens to the Customer, including the person filling out this application form.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth) as amended from time to time and any regulations made pursuant to it.

**"Terms and Conditions"** means the rules and requirements referred to in this document.

**"Trading Address"** means location of the business premises which may or may not be the registered or official address of the company.

**"Registered Business Address"** means the address of the company's registered office and principal place of business as held by ASIC.

**"Business Days"** means a day that is not a Saturday, Sunday, public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done.

### Terminology

In these Terms and Conditions, the expressions **we**, **us** and **our** are a reference to M & J Chickens.

### Agreement

These Terms and Conditions exclusively and completely state the rights and obligations of the Customer with respect to and concerning the provision of commercial credit by the Customer. This Agreement is formed on the acceptance of these Terms and Conditions by M & J Chickens and supersedes all negotiations, representations, statements, warranties and prior agreements, whether written or oral, in respect of and concerning the provision of commercial credit by the Customer. If there is any inconsistency between these Terms and Conditions and any other agreement or security, these Terms and Conditions will prevail.

### Amendments to Terms and Conditions

We reserve the right to amend these Terms and Conditions from time to time. Amendments will be effective immediately upon notification on this form or a form with the same subject matter. The Customer's continued use of this form or any other form following such notification will represent an agreement by the Customer to be bound by the Terms and Conditions as amended.

### Sale

M & J Chickens hereby agrees to sell to the Customer and the Customer hereby agrees to purchase from M & J Chickens the Goods ordered by the Customer from time to time, in accordance with these Terms and Conditions.

### Ordering Procedure

The Customer may offer to purchase Goods described on this form for the price that the Customer has specified on this form. The Customer may make an offer to purchase Goods in writing, verbally or electronically. The offer may consist of a standing order or may be made from time to time.

The Customer's order must contain the Customer's name, email address, credit card details and any other ordering information that is listed on the above form.

We have a minimum amount per order unless otherwise agreed by us in writing. Acceptance of these Terms and Conditions must be received along with the Customer's order.

Within seven days of receipt of the Customer's order, we will at our discretion accept or reject the Customer's offer to engage our services.

The Customer may not cancel an order once it has been submitted, even if our acceptance

or rejection of the Customer's offer is still pending.

We are not required to give reasons for rejecting the Customer's offer to purchase.

If we reject the Customer's offer to purchase the Goods for any reason, neither of us will be under any further liability to the other arising out of the Customer's original offer or our non-acceptance of that offer.

If we have not responded to the Customer within seven days, the Customer's offer will be deemed to have been rejected.

We give no undertaking as to the availability of products advertised that the Customer may or may not have included on this form.

Delivery of the Goods will be effected in the manner described on this form.

Title in the Goods does not pass to the Customer until payment has been received in full or in accordance with this credit application.

Risk of loss or damage to the Goods passes to the Customer on dispatch.

Payment must be effected in the manner described on this form. Prices listed on our website are exclusive of goods and services tax. In all other respects, the price is exclusive of taxes, duties and charges imposed or levied in Australia or overseas in connection with the supply of Goods.

The Goods are offered for sale only to persons who can make legally binding contracts.

#### **New Customer**

If the Customer is new, they are required to make a full payment of their first invoice prior to delivery of any of our Goods. We will not send the Customer anything from the order until payment has been received by us. We will invoice for our freight charges at the time of stock delivery using a freight company. We have complete discretion to select the freight company that we prefer regardless of the costs of shipping which the Customer must pay. We have complete discretion to either reject or accept a request for approval of commercial credit to pay for our Goods.

#### **Existing Customer**

In the event the Customer is an existing Customer, we may agree to enter into payment terms at our sole discretion. In the event there are any late payments or a default of a payment, we may reserve our right to demand immediately our payment and to revert back to the payment terms as if the Customer was a new Customer and enforce extra obligations upon that Customer.

#### **Prices**

The Customer acknowledges that the price of Goods will vary from time to time and agrees that the price for the Goods shall be our prevailing price on the day of dispatch. The Customer acknowledges that we reserve the absolute right to vary or amend prices or quotes in relation to future orders placed for the Goods.

#### **Delivery**

Delivery shall be made at the place notified by the Customer for that purpose, otherwise it shall be at the Customer's Trading Address or Registered Business Address. In the event there are delays beyond our control, we are not responsible or liable to the Customer in respect to any claim by the Customer. In the event we deliver Goods to your site, we are not responsible for any damage or claim you may have against us and we will not indemnify you for such damage.

#### **Title**

Title or legal or beneficial ownership of any Goods purchased from us will not pass to the

Customer until payment of the Goods have been received by us in full. We reserve all our rights in this clause to claim any damages, indemnity, remedies, action etc whether direct or indirect against the Customer. For the avoidance of doubt, the Customer agrees that we may register security or a charge in accordance with the *Personal Property Securities Act 2009* (Cth) (**PPSA**) or any other collateral in order to repay any monies owed to us by the Customer. Accordingly, we may register any agreement entered into for the sale of Goods with us or a notification of it or a security interest related to or constituted by such an agreement at the Customer's expense. In the event that we deem it necessary to obtain the Goods from the Customer's premises for non-payment, we will be authorised by the Customer and permitted to enter the Customer's premises and/or place of storage and re-collect and repossess our Goods. Any action of ours (including holding any customer's keys) will not result in trespass as the Customer irrevocably agrees that we will be allowed to re-collect and repossess our Goods or access the site for any reason. Any costs associated with such recollection and repossession will be paid and reimbursed by the Customer.

#### **Personal Properties Securities Act (PPSA)**

The Customer acknowledges that under the PPSA: the acceptance of these Terms and Conditions constitutes a security agreement; the Customer grants us purchase money security interest in the Goods and any proceeds; and we may register a financing statement on the Personal Properties Securities Register (**PPSR**). The Customer agrees to provide information and do anything reasonably required for us to register, maintain and enforce our security interest.

The Customer must not assign or grant a security interest in respect of any accounts owed to them without our prior written consent.

#### **Provision of information under PPSA not required**

The Customer waives the requirement for us to provide information under various provisions of the PPSA. In particular, the Customer agrees that as provided for in:

Section 157- we are not required to give the Customer a verification statement;

Section 144- we are not required to give the Customer notices under sections 95,118,121,130,132 and 135; and

Section 275- we are not required to provide interested persons with information relating to our security interest and neither is the Customer.

#### **Terms defined in the PPSA**

Terms defined in the PPSA (including purchase money security interest, verification statements, proceeds and various other terms) have the same meaning when used in these Terms and Conditions.

#### **Cancellation due to Error**

The Customer acknowledges that despite our reasonable precautions, products may be listed at an incorrect price or with incorrect information due to a typographical error or like oversight. In these circumstances, we reserve the right to cancel the transaction, notwithstanding that the Customer's order has been confirmed and the Customer's credit card has been charged or any other way in which payment is charged to the Customer. We reserve this right up until the time of delivery of goods or supply of the services to the Customer. If a cancellation of this nature occurs after the Customer's credit card or any other

type of payment has been charged for the purchase, we will immediately issue a credit in a way and form at our sole discretion for the amount in question.

### **Disclaimer**

This disclaimer set out in these Terms and Conditions does not attempt or purport to exclude liability arising under statute if, and to the extent, such liability cannot be lawfully excluded. We do not accept responsibility for any loss or damage, however caused (including through negligence), which the Customer may directly or indirectly suffer in connection with the Customer's order or any linked website, nor do we accept any responsibility for any such loss arising out of the Customer's use of or reliance on information contained on or accessed through this form.

To the extent permitted by law, any condition or warranty which would otherwise be implied into these Terms and Conditions is hereby excluded. If legislation implies any condition or warranty, and that legislation prohibits us from excluding or modifying the application of, or our liability under, any such condition or warranty, that condition or warranty will be deemed only to the extent that it is required by law then it will only be limited for a breach of that condition or warranty to one or more of the following:

- (a) If the breach relates to goods,
  - (i) the replacement of the goods or the supply of equivalent goods; or
  - (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods.

Except in relation to liability for personal injury (including sickness and death), and except as otherwise stipulated in these terms and conditions, we will not accept liability to the Customer in respect of any loss or damage (including indirect, special, or consequential loss or damage) which may be suffered or incurred by the Customer or which may arise directly or indirectly in respect of goods supplied pursuant to an order placed on this website or in respect of any failure or omission on our part to comply with our obligations as set out in these terms and conditions. In the event we are held liable for whatever reason (which we deny), we will only be limited to our insurance cover. For the avoidance of doubt, we cannot be held liable for any amounts that are in excess of our capped insurance coverage. Notwithstanding this clause and without affecting the transfer of title above, the risk of deterioration shall be the Customer's from delivery. From delivery, the Customer shall properly handle and store the Goods so as to minimise deterioration.

In the event that the Customer breaches these Terms and Conditions, then in addition to our rights on Breach, we may (at its option) enter the premises of the Customer and retake possession of the Goods without prior notice to the Customer. The Customer hereby irrevocably grants the lawful representative of us access to the Customer's premises for the purposes of repossessing the Goods as herein provided. The Customer indemnifies us against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which we suffer, incur or is liable in respect of us exercising our right under this clause or in respect of the Customer breaching its obligations under these Terms and Conditions.

### **Payment**

Payment is to be made by way of a form at our discretion, unless we approved credit facilities for the Customer; and is to be made by the Customer to us unless otherwise specified in writing by us. Payment is to be made for all deliveries by us to the Customer whether or not the Customer has signed the accompanying invoice and/or delivery docket.

**Default on Payment**

Should the Customer default in the payment of any monies due and payable to us, then the total of all monies due to us from the Customer shall immediately become due and payable. The Customer shall pay or reimburse any expenses, costs or disbursements incurred or paid by us in recovering outstanding monies including bank charges, debt collection agency fees and commissions and solicitor’s costs.

**Interest**

When the Customer pays subsequent to delivery (or where credit facilities have been approved by us, then from expiration of the credit period allowed for payment), interest shall accrue on all monies payable but unpaid at the current bank rate plus 3% per annum simple interest calculated daily from the due date of payment until the date of actual payment.

**Insurance**

In the event the Customer is purchasing our Goods in bulk for business and commercial purposes, then the Customer warrants that our goods that we have delivered to the Customer are insured and protected by a mutual arrangement to our satisfaction. In the event we require such insurances, the Customer must deliver to us all insurance policies and certificates of insurance or schedule or certificate of mutual risk protection contribution at least three (3) Business Days after the Customer has signed this credit application and/or on request from us and not to do or permit anything to be done which prejudices any insurance policy or mutual risk protection (whether it prejudices our insurance policies or the Customer’s insurance policies).

**Governing Law**

These Terms and Conditions are governed by the laws in force in Australia. The Customer agrees to submit to the exclusive jurisdiction of the courts of New South Wales.

**General**

We accept no liability for any failure to comply with these Terms and Conditions.

If we waive any rights available under these Terms and Conditions on one occasion (provided we have done so expressly in writing), this does not mean that those rights will automatically be waived on any other occasion.

If any of the Terms and Conditions are held to be invalid, unenforceable or illegal for any reason, the remaining Terms and Conditions shall nevertheless continue in full force.

These Terms and Conditions and these Credit Terms are governed by, construed and take effect in accordance with the laws of New South Wales, and M&J Chickens and the Customer irrevocably and unconditionally submits to the non exclusive jurisdiction of the Courts of New South Wales. I/We have read and accept the terms governed by M&J Chickens.

Applicant’s Name: .....

Signature:.....

Date:

## DECLARATION, AUTHORITY & CONSENT

The Applicant and signatories appearing below declare that all information supplied is true and correct in every detail and also that the signatories are authorised by the Applicant to complete this application and further acknowledge that if credit is granted by us to the Applicant that this will be done in reliance upon the information supplied by the Applicant. We cannot be held liable for any false information that has been provided by the Applicant on this Application.

The Applicant and signatories below acknowledge that they understand the Terms and Conditions and Credit Terms in this Application (along with any other documentation provided by us), that they have had the opportunity of obtaining independent legal advice prior to submitting this Application and that they are separately and together bound by the Credit Terms and the Terms and Conditions and any other relevant documentation.

The Applicant and signatories further authorise and consent to us obtaining and disclosing information about the Applicant's credit worthiness (including identity particulars and details of overdue payments) to and from credit reporting agencies and other credit providers who have entered or intend to enter into a commercial or business dealing with the Applicant.

A copy of all relevant proof and evidence must accompany this Application for credit.

Signed on behalf of the Applicant by (*please tick*) SHAREHOLDERS PARTNERS SOLETRADER AUTHORISED OFFICER

Signature \_\_\_\_\_ Print Name and Title \_\_\_\_\_

### CONTACT DETAILS - Personal Details Of Sole Trader/Partnership/Company

Full Name

Date of Birth

Driver's Lic. No.

State    Exp. Date