

# TERMS AND CONDITIONS

## Payment terms

1. The terms of payment are strictly cash on delivery (or such other period as nominated by the supplier herein). Quality Food Services (Aust) Pty Ltd ABN 65 072 096 596 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (Supplier) may, at any time, upon the provision of 48 hours' written notice to the Applicant, vary the terms and conditions of trade.
2. If the Applicant does not agree with the variations proposed by the Supplier, they must notify the Supplier in writing within fourteen (14) days from receipt of the written notice that the variations are not agreed to. The Supplier and/or the Applicant will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variations. Absent notice from the Applicant, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction without notification.
3. The Applicant must check all invoices and advise the Supplier of any errors or omissions within seven (7) days of receipt. Failing advice from the Applicant that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier.
4. Should the Applicant not pay for the goods or services supplied by the Supplier in accordance with the credit terms as provided herein, or as agreed in writing by the Supplier and Applicant from time to time, after issuing a written demand to the Applicant demanding payment within fourteen (14) days, the Supplier will be entitled to charge an administration fee of 10 percent of the amount of the invoice payable.
5. Post-dated cheques will NOT be accepted.
6. In the event that a cheque paid by the Applicant to the Supplier should be dishonoured, cancelled or otherwise returned, then the Applicant agrees to accept all reasonable bank fees and charges that the Supplier incurs, and to, within forty-eight (48) hours, reimburse the Supplier for the sum of the cheque in full, along with any fees and/or charges incurred by the Supplier.
7. Should the Applicant tender a dishonoured cheque for payment, all future transactions will be on a CASH ONLY basis.

## Jurisdiction

8. The Applicant acknowledges and agrees that this agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.
9. The Applicant acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Applicant is formed at the address of the Supplier.
10. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

## Security/charges

11. The Applicant charges in favour of the Supplier all of its estate and interest in any real property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
12. The Applicant charges in favour of the Supplier all of its estate and interest in any personal property that the Applicant owns at present and in the future with the amount of its indebtedness hereunder until discharged.
13. The Applicant appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Applicant's name and as the Applicant's act and deed any real property mortgage, bill of sale or consent to any caveat the Supplier may choose to lodge against real property that the Applicant may own in any Land Titles Office in any state or territory of Australia, even though the Applicant may not have defaulted in carrying out its obligations hereunder, upon written notice and demand to the Applicant (in the event that there is no default by the Applicant in carrying out its obligations hereunder).
14. Where the Applicant has previously entered into an agreement with the Supplier by which the Applicant has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009* (PPSA)) over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this agreement. The Supplier may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Purpose of credit

15. The Applicant acknowledges and agrees that the credit to be provided to the Applicant by the Supplier is to be applied wholly or predominantly for commercial purposes.

## Formation of contract

16. Quotations made by the Supplier will not be construed as an offer or obligation to supply in accordance with the quotation. The Supplier reserves the right to accept or reject, at its discretion, any offer to purchase received by it upon the provision of written reasons to the Applicant. Only written acceptance by the Supplier of the Applicant's offer will complete a contract.
17. Placement of an order, either verbally or in writing, will imply acceptance of the Supplier's offer and of these terms and conditions.

## Retention of title

18. Title in the goods does not pass to the Applicant until the Applicant has made payment in full for the goods and, further, until the Applicant has made payment in full of all the other money owing by the Applicant to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever).
19. Whilst the Applicant has not paid for the goods supplied in full at any time, the Applicant agrees that property and title in the goods will not pass to the Applicant and the Supplier retains the legal and equitable title in those goods supplied and not yet sold.
20. Until payment in full has been made to the Supplier, the Applicant will hold the goods in a fiduciary capacity for the Supplier and agrees to store the goods in such a manner that they can be identified as the property of the Supplier, and will not mix the goods with other similar goods.

21. The Applicant will be entitled to sell the goods in the ordinary course of its business, but until full payment for the goods has been made to the Supplier, the Applicant will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Applicant on trust for the Supplier absolutely.
22. The Applicant's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 21 hereof unless and until the funds held on trust are remitted to the Supplier.
23. The Applicant agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with prior notice to the Applicant, to enter upon any premises occupied by the Applicant (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Applicant) to inspect the goods of the Supplier and to repossess the goods which may be in the Applicant's possession, custody or control when payment is overdue.
24. The Applicant will be responsible for the Supplier's reasonable costs and expenses in exercising its rights under clause 23. Where the Supplier exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Applicant against the Supplier, its employees, servants or agents.
25. The Applicant agrees that where the goods have been retaken into the possession of the Supplier, the Supplier has the absolute right to sell or deal with the goods upon reasonable notice to the Applicant, and if necessary, sell the goods with the trademark or name of the Applicant on those goods, and the Applicant hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Applicant.
26. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

## Claims and returns

27. The Applicant must notify the Supplier of their intention to either return goods or make a claim within forty-eight (48) hours of receipt of the goods.
28. All returns are to be made within seven (7) days from date of invoice in accordance with the Supplier's returns/refund policy.
29. No claims or returns will be accepted by the Supplier without the prior written authorisation of the Supplier.

## Cancellation of terms of credit

30. The Supplier reserves the right to withdraw credit at any time upon the provision of 48 hours' written notice.
31. Upon cancellation with notice, all liabilities incurred by the Applicant become due and payable to the Supplier within seven (7) days.

## Indemnity

32. The Applicant agrees to indemnify the Supplier and keep the Supplier indemnified against any claim that arises out of the goods and services supplied under this agreement. This indemnity includes any legal fees and expenses the Supplier incurs in order to enforce its rights, on an indemnity basis.

## Provision of further information

33. The Applicant undertakes to comply with any reasonable written requests request by the Supplier to provide further information for the purpose of assessing the Applicant's creditworthiness, including an updated credit application.
34. If the Applicant is a corporation (with the exception of a public listed company), it must advise the Supplier of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders the Supplier may ask for new guarantors to sign a guarantee and indemnity.

## Corporations

35. If the Applicant is a corporation, the Applicant warrants that all of its directors have signed this agreement and that all of its directors may be required to enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.

## Trustee capacity

36. If the Applicant is the trustee of a trust (whether disclosed to the Supplier or not), the Applicant warrants to the Supplier that:
  - (a) the Applicant enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Applicant has the right to be indemnified out of trust assets;
  - (c) the Applicant has the power under the trust deed to sign this agreement; and
  - (d) the Applicant will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier.
37. The Applicant must give the Supplier a copy of the trust deed upon request.

## Partnership

38. If the Applicant enters into this agreement as partners, the Applicant warrants that all of the partners have signed this agreement and that all of the partners may be required to enter into a guarantee and indemnity with the Supplier in relation to the Applicant's obligations to the Supplier.
39. If the Applicant is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising the Supplier. In the case of a change of partners, the Supplier may ask for new guarantors to sign a guarantee and indemnity.

## Insolvency

40. If the Applicant becomes insolvent, the Applicant remains liable under this agreement for payment of all liabilities incurred hereunder. The Applicant remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Applicant being insolvent.

## Waiver

41. A waiver of any provision or breach of this agreement by the Supplier must be made by an authorised officer of the Supplier in writing. A waiver of any provision or breach of this agreement by the Applicant must be made by the Applicant's authorised officer in writing.
42. Until ownership of the goods passes, the Applicant waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by the Supplier and the Applicant):
  - (a) under section 95 to receive notice of intention to remove an accession;

- (b) under section 118 to receive notice that the Supplier intends to enforce its security interest in accordance with land law;
- (c) under section 121(4) to receive a notice of enforcement action against liquid assets;
- (d) under section 129 to receive a notice of disposal of goods by the Supplier purchasing the goods;
- (e) under section 130 to receive a notice to dispose of goods;
- (f) under section 132(4) to receive a statement of account following disposal of goods;
- (g) under section 134(2) to receive a statement of account if no disposal of goods for each 6 month period;
- (h) under section 135 to receive notice of any proposal of the Supplier to retain goods;
- (i) under section 137(2) to object to any proposal of the Supplier to retain or dispose of goods;
- (j) under section 142 to redeem the goods;
- (k) under section 143 to reinstate the security agreement; and
- (l) under section 157(1) and 157(3) to receive a notice of any verification statement.

**Costs**

- 43. The Applicant must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Applicant under this agreement. The Applicant must also pay for all stamp duty and other taxes payable on this agreement (if any).
- 44. The Applicant will pay the Supplier's reasonable costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Applicant, including debt recovery fees and legal costs on an indemnity basis as a result of any default under this agreement.
- 45. Subject to clauses 46 and 48, payments by, or on behalf of, the Applicant will be applied by the Supplier as follows.
  - (a) Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 24 and 44.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 51.
  - (c) Thirdly, in payment of the outstanding invoice(s).
- 46. The Supplier may apply and allocate payments received by, or on behalf of, the Applicant in a manner in the Supplier's absolute and unfettered discretion, including so as to attribute the payments to satisfy obligations which are or are not secured by a purchase money security interest or otherwise.
- 47. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, in its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at any time whatsoever.
- 48. Payments allocated (and/or reallocated) under clause 46 and/or 47 will be treated as though they were allocated or reallocated, respectively, in the manner determined by the Supplier on the date of receipt of payment.

**Taxes and duty**

- 49. The Applicant must pay GST on any taxable supply made by the Supplier to the Applicant under this agreement. The payment of GST is in addition to any other consideration payable by the Applicant for a taxable supply.
- 50. If as a result of:
  - (a) any legislation becoming applicable to the subject matter of this agreement; or
  - (b) any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
 the Supplier becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Applicant, then the Applicant must pay the Supplier these additional amounts on the provision of 48 hours' written demand.

**Interest rates**

- 51. The interest rate on any outstanding debts is a fixed rate of 15 percent per annum.

**Set-off**

- 52. All payments required to be made by the Applicant under this agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by the Supplier and the Applicant in writing. Any reasonable requests to set-off, deduct or withhold from amounts outstanding will be considered by the Supplier, provided that reasonable evidence is provided to the Supplier as to why the Applicant is entitled to set-off, deduct or withhold from amounts outstanding.
- 53. Any amount due to the Supplier from time to time may be deducted from any monies which may be or may become payable to the Applicant by the Supplier, with the written agreement of the Supplier and the Applicant.

**Miscellaneous**

- 54. The Supplier is not liable for any loss caused to the Applicant by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, acts of God or any other activity beyond the Supplier's control.
- 55. In relation to the supply of goods, the Supplier's liability is limited to:
  - (a) replacing the goods or supplying similar goods;
  - (b) repairing the goods;

- (c) providing the cost for replacing the goods or for acquiring equivalent goods; and
- (d) providing the cost for having the goods repaired.
- 56. In relation to the supply of services, the Supplier's liability is limited to:
  - (a) supplying the service again; or
  - (b) providing for the cost of having the services supplied again.
- 57. The Supplier is not liable, for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Applicant as a result of the goods and/or services supplied under this agreement.
- 58. The Applicant will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register the security interest granted by the Applicant under the PPSA.
- 59. The Applicant agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to the Supplier by the Applicant or the Applicant's authorised representative.
- 60. The Applicant further agrees that where we have rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
- 61. The Applicant irrevocably grants to the Supplier the right to enter upon the Applicant's property or premises, with notice, and without being in any way liable to the Applicant or to any third party, of the Supplier has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Applicant shall indemnify the Supplier from any claims made by any third party as a result of such exercise.
- 62. Nothing in this agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this agreement of all or any of the provisions the Competition and Consumer Act 2010 or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

**Severance**

- 63. If any provision of this agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
- 64. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.

**Variation**

- 65. The Applicant agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of the Supplier at any time by written notice to the Applicant. The Applicant will be provided with fourteen (14) days to accept the variation/s, failing which the variations may be deemed accepted by the Supplier. Any reasonable request to vary the terms will be considered by the Supplier.
- 66. Any proposed variation to these terms and conditions by the Applicant must be requested in writing. The Supplier may refuse any such request by provision of written reasons.
- 67. Variations requested by the Applicant will only be binding upon the Supplier if they are accepted in writing.

**Consent to register**

- 68. The Applicant hereby consents to the Supplier recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by the Supplier to effect such registration.
- 69. Unless otherwise agreed to in writing by the Supplier, the Applicant waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

**Entire agreement**

- 70. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise in writing by the Supplier and the Applicant. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this agreement are merged in this agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this agreement or constitutes any collateral agreement, warranty or understanding.
- 71. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Applicant and the Supplier, these terms and this agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.

**Privacy Act**

- 72. The Applicant agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.

**Acknowledgement and acceptance**

The Applicant hereby applies for the opening of an account and provides the above information in support thereof.

I am/we are authorised to sign this credit application form on behalf of the Applicant and the information given is true and correct to the best of my/our knowledge.

<b>Signature (Applicant)</b>		<b>Signature (Witness)</b>	
<b>Applicant name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			

<b>Signature (Applicant)</b>		<b>Signature (Witness)</b>	
<b>Applicant name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			

<b>Signature (Applicant)</b>		<b>Signature (Witness)</b>	
<b>Applicant name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			

<b>Signature (Applicant)</b>		<b>Signature (Witness)</b>	
<b>Applicant name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			

## PRIVACY STATEMENT

1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) (Act).
2. The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
3. For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
4. The Supplier may collect personal information about the Applicant and/or Guarantor(s) for the Supplier's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
5. The Applicant and/or Guarantor(s) consent to the Supplier collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
6. The Supplier may collect, and may already have collected, Information from the Applicant and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by the Supplier it may restrict or impede upon the Supplier trading with, extending credit to, continuing to extend credit to or extending further credit to the Applicant and/or Guarantor(s) or their related bodies corporate.
7. The Applicant and/or Guarantor(s) consent to the Supplier obtaining and making disclosure of Information about the Applicant and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. The Supplier notifies the Applicant and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
8. The Supplier may provide personal information about the Applicant and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. The Supplier intends to disclose default information to any or all of the credit reporting bodies listed below. The Applicant and/or Guarantor(s) consent to such disclosure. The Supplier's credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what the Supplier may disclose and the Applicant's and/or Guarantor(s)' right to request limitations to the use of their information.

Veda Advantage Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820
Dun & Bradstreet Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: 07 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: 03 9699 0100	
9. The Supplier may disclose Information to, and about them and the Applicant and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to the Supplier's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Applicant and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit, and/or overseas recipients and recipients who do not have an Australian link.
10. By reason of the Applicant's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to the Supplier's dealing with the Applicant's and/or Guarantor(s)' Information.
11. A full copy of the Supplier's privacy policy and credit reporting policy can be obtained from the Supplier's website (details above) or by making a request in writing directed to the Supplier's privacy officer. The Supplier's privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how the Supplier will deal with any such complaint.
12. The Applicant and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Supplier within 14 days of receipt of this statement that its terms are not accepted, continuing to trade with the Supplier after receipt of this Statement or, if the Applicant and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with the Supplier after receipt of this statement.