

**MNB VARIETY IMPORTS PTY LTD ACN 623 902 278**

**ATF THE MNB VARIETY IMPORTS TRUST ABN 83 452 685 119**

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## APPLICATION FOR COMMERCIAL CREDIT

The Customer applies to the Supplier to supply goods and/or services to the Customer on the terms of this Application for Commercial Credit which incorporates the attached Terms and Conditions, Privacy Statement and Deed of Guarantee & Indemnity.

Upon acceptance by the Supplier, the Supplier may supply goods and/or services to the Customer on the terms and conditions of this Application for Commercial Credit.

### Customer

Trading name			
Name of company, trust, person(s) or partnership operating business			
ACN		ABN	
Business street address			
Business postal address			
Contact person		Tel (b/h)	
Fax (b/h)		Email	
Name of bank		Branch	
Account no.		BSB	
Date business commenced		Nature of business	

### Details of directors/partners

Name		DOB	
Address		Drivers licence	
Title		Mobile	
Name		DOB	
Address		Drivers licence	
Title		Mobile	

### Trade references

Name		Telephone	
Email address		Fax	
Address			
Name		Telephone	
Email address		Fax	
Address			
Name		Telephone	
Email address		Fax	
Address			

## TERMS AND CONDITIONS

### Payment terms

1. The terms of payment are strictly thirty (30) days from the date of invoice (or such other period as nominated by the Supplier herein). MNB Variety Imports Pty Ltd ACN 623 902 278 as trustee for the MNB Variety Imports Trust ABN 83 452 685 119 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*) (**Supplier**) may, at any time, vary the terms and conditions of trade in accordance with the provisions of this agreement.
2. The Customer must check all invoices and advise the Supplier of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice may be deemed accepted by the Supplier. The Supplier reserves the right to issue an amended invoice in circumstances of genuine error on part of the Supplier.
3. Should the Customer 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 Customer from time to time, after issuing a written demand to the Customer demanding payment within fourteen (14) days, the Supplier will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.
4. The Customer acknowledges that the Supplier shall be at liberty to charge the Customer:
  - (a) a surcharge for credit card transactions equal to the merchant fees incurred by the Supplier;
  - (b) any costs and/or expenses (including bank charges) incurred by the Supplier as a result of any dishonoured cheques received from the Customer.

### Purpose of credit

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

### Formation of contract

6. Quotations shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. The Supplier, in its sole discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a contract in accordance with clause 7.
7. Quotations made by the Supplier are indicative only based on the quantities of goods specified in the quotation and the prices current as at the date of quotation and 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 order or offer to purchase received by it upon provision of written reasons to the Customer. For the purposes of clarity, a contract will only come into existence if:
  - (a) the Supplier confirms its written acceptance of the Customer's order; or
  - (b) the Supplier delivers the goods to the Customer (whether by single or multiple deliveries).
8. Placement of an order, either verbally, in writing, or online, will imply acceptance of these terms and conditions.
9. At the Supplier's sole discretion, an order less than \$500.00 in value may be:
  - (a) declined by the Supplier; or
  - (b) placed on hold until such time that the total value of the order exceeds \$500.00 in value;with notice to be given by the Supplier to the Customer in writing.
10. Any discount or rebate will only apply if the Customer and the Supplier have agreed to such rebate or discount in writing.
11. At the Supplier's sole discretion, a deposit may be required. The deposit amount or percentage of the price due will be stipulated at the time of the order of the goods and/or services and shall immediately become due and payable upon the formation of a contract in accordance with clause 7.

### Variations

12. Where the Customer requests or directs that any additional goods and/or services be supplied that are not strictly in accordance with the quotation, then such additional goods and/or services shall constitute a variation, unless otherwise agreed between the parties.
13. The Customer understands and agrees that:
  - (a) all variations must be agreed between the parties in writing prior to the goods and/or services being supplied;
  - (b) all variations shall be, at the Supplier's discretion, invoiced at the prices specified in the quotation, as specifically quoted, or in accordance with the Supplier's current prevailing price list (as amended from time to time).
14. Notwithstanding clauses 12 and 13, and subject to any rights the Customer might have under any relevant legislation, the Supplier reserves the right to vary the quoted price if:
  - (a) there is any movement in the cost of supplying the goods and/or services specified in the Customer's order;
  - (b) the goods and/or services specified in the Customer's order are varied from the goods and/or services specified in the Supplier's quotation; or
  - (c) otherwise provided for in these terms and conditions.

### Cancellation of orders

15. Unless otherwise agreed in writing between the parties, the Customer may not cancel an order (or any part of an order) unless the Customer pays to the Supplier (in the Supplier's sole discretion):
  - (a) in respect of orders that do not include Specially Ordered Goods, any and all costs incurred by the Supplier in relation to the cancelled order (or cancelled part of an order) up until and including the date of cancellation; and
  - (b) in respect of orders for Specially Ordered Goods held in inventory by the Supplier, the full price of the order for the Specially Ordered Goods.
16. Notwithstanding any other rights the Supplier may have under this agreement, the Supplier may cancel any order or delivery of any order, by providing written notice to the Customer if the Customer:
  - (a) defaults in payment of any invoice by the due date;
  - (b) enters into liquidation or, in the case the Customer is an individual, becomes bankrupt; or
  - (c) breaches an essential term of this agreement.
17. To the fullest extent permitted by law, the Supplier accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of the Supplier exercising its rights under clause 16.

### Delivery

18. Where the Supplier has been retained to deliver the goods, the Supplier shall deliver the goods to the address nominated in the Customer's application for commercial credit, or to such other place as agreed by the Supplier in writing from time to time.
19. The Customer shall be liable for all costs associated with delivery, including freight, insurance, handling and other charges, unless otherwise agreed in writing.
20. The Customer acknowledges and accepts that any estimated delivery or supply of goods provided by the Supplier is an estimate only and the Supplier will not be liable for any loss suffered by the Customer as a result of any delay in the delivery of goods or non-delivery of the goods.
21. Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed to in writing), and the Customer shall make all arrangements necessary to accept delivery of the goods.
22. Delivery is deemed to occur at the earlier of:
  - (a) the collection of goods from the Supplier by the Customer or any third party on behalf of the Customer;
  - (b) the time of loading of goods at the Supplier's premises for the purpose of delivery to the Customer.
23. The Supplier is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the goods.

24. The Customer accepts that the Supplier may deliver goods by instalments and require payment for each separate instalment in accordance with these terms and conditions.
25. The Customer acknowledges and accepts that it is not relieved from any obligation

### Specially Ordered Goods

26. Orders for goods not normally stocked by the Supplier or goods specially ordered or manufactured for the Customer (collectively, **Specially Ordered Goods**) must be authorised by the Customer on an order form. The Customer understands and agrees that Specially Ordered Goods may have to be purchased in minimum quantities and that the Customer will be notified if this applies in respect of the Customer's order.
27. Notwithstanding anything herein to the contrary, and subject to any rights the Customer might have under the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation, the Customer acknowledges and agrees that Specially Ordered Goods are non-refundable and cannot be returned to the Supplier, unless otherwise agreed in writing by the Supplier.
28. Where Specially Ordered Goods are held in inventory for the Customer and the Customer:
  - (a) notifies the Supplier that it wishes to terminate its commercial credit account with the Supplier and no longer requires the Specially Ordered Goods held in inventory by the Supplier; or
  - (b) fails to purchase the Specially Ordered Goods for a period of three consecutive months, then the Customer must purchase all remaining inventory of the Specially Ordered Products within ten (10) days of receiving notification from the Supplier to do so.
29. The Customer acknowledges that where the Customer fails to purchase the Specially Ordered Goods, the Supplier shall be permitted to dispose of the Specially Ordered Goods in any such manner as it sees fit. The Supplier, to the extent permitted by law, shall not be liable for any loss or damage suffered by the Customer as a result.

### Returns

30. The Customer must inspect the goods immediately upon delivery and must within seven (7) days after the date of inspection give written notice to the Supplier with particulars, of any claim that the goods are not in accordance with this agreement. Further, the Customer must, upon request from the Supplier, allow the Supplier to enter upon any premises occupied by the Customer to inspect the goods that are subject of the claim. If the Customer fails to give notice or refuses to allow the Supplier to inspect the goods, then to the extent permitted by law, the goods must be treated as having been accepted by the Customer and the Customer must pay for the goods in accordance with these terms and conditions.
31. The Customer cannot return goods to the Supplier without the written agreement of the Supplier.
32. The Customer acknowledges and agrees that any return, other than a return due to a default by the Supplier under this agreement or as otherwise permitted by law, will incur a handling and administration charge of ten (10) percent of the purchase price of the returned goods.
33. Unless otherwise agreed in writing between the parties, the Customer must pay all costs associated with the return of any goods (either to the Supplier or from the Supplier to the Customer or any third party) including freight, insurance, handling and other charges. Goods to be returned to the Supplier must be packed and wrapped appropriately and must include all original packaging and documentation. The Supplier accepts no liability for any damage that occurs to any goods in return transit.

### Risk

34. Risk of damage to or loss of the goods passes to the Customer on delivery and the Customer must insure the goods on or before delivery.
35. If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the goods to the extent of the indebtedness of the Customer to the Supplier. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquires.
36. If the Customer requests that goods are delivered either to an unattended location, left outside, or are left outside the Supplier's premises for collection, the Customer acknowledges that the Supplier will deliver the goods as requested at the Customer's risk.

### Retention of title

37. Until such time as the Customer has made payment in full for the goods and until such time as the Customer has made payment in full of all other money owing by the Customer to the Supplier (whether in respect of money payable under a specific contract or on any other account whatsoever):
  - (a) title in the goods does not pass to the Customer;
  - (b) the Customer agrees that property and title in the goods will not pass to the Customer and the Supplier retains the legal and equitable title in those goods supplied and not yet sold;
  - (c) the Customer 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; and
  - (d) the Customer will be entitled to sell the goods in the ordinary course of its business, but will sell as agent and bailee for the Supplier and the proceeds of sale of the goods will be held by the Customer on trust for the Supplier absolutely.
38. The Customer's indebtedness to the Supplier, whether in full or in part, will not be discharged by the operation of clause 37(d) hereof unless and until the funds held on trust are remitted to the Supplier.
39. The Customer agrees that whilst property and title in the goods remains with the Supplier, the Supplier has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of the Supplier and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.
40. The Customer will be responsible for the Supplier's reasonable costs and expenses in exercising its rights under clause 39 where the Customer is otherwise in default of the terms of this agreement. 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 Customer against the Supplier, its employees, servants or agents.
41. The Customer 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, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to the Supplier to do all things necessary to sell the goods bearing the name or trademark of the Customer.
42. For the avoidance of doubt, the Supplier's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

### Cancellation of terms of credit

43. The Supplier reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.
44. Notwithstanding clause 43, if the Customer defaults in the payment of any amount due to the Supplier pursuant to this agreement and does not cure such default within seven (7) days after being given notice of such default, the Supplier may terminate this agreement (to be effective immediately) upon notice to the Customer.
45. Upon the withdrawal of credit in accordance with clause 43, or upon termination of this agreement in accordance with clause 44, all liabilities incurred by the Customer become immediately due and payable to the Supplier.
46. For the avoidance of doubt, termination of this agreement will not affect:

- (a) the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
- (b) the rights and/or obligations pursuant to this agreement which by their nature are intended to survive termination of this agreement.

#### **Indemnity**

47. The Customer 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 to the extent that such a claim is a consequence of a default by the Customer under the terms of 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**

- 48. The Customer undertakes to comply with any reasonable written requests by the Supplier to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
- 49. If the Customer 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 its directors to sign a guarantee and indemnity.

#### **Corporations**

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

#### **Trustee capacity**

- 51. If the Customer is the trustee of a trust (whether disclosed to the Supplier or not), the Customer warrants to the Supplier that:
  - (a) the Customer enters into this agreement in both its capacity as trustee and in its personal capacity;
  - (b) the Customer has the right to be reasonably indemnified out of trust assets;
  - (c) the Customer has the power under the trust deed to sign this agreement; and
  - (d) the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising the Supplier and having the new or additional trustee sign an agreement on substantially the same terms as this agreement.

52. The Customer must give the Supplier a copy of the trust deed upon request.

#### **Partnership**

- 53. If the Customer enters into this agreement in its capacity as a partnership, the Customer 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 Customer's obligations to the Supplier.
- 54. If the Customer 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**

55. If the Customer becomes insolvent, to the extent permitted by law, the Customer remains liable under this agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this agreement even if the Supplier receives a dividend or payment as a result of the Customer being insolvent.

#### **Waiver**

- 56. 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 Customer must be made by the Customer's authorised officer in writing.
- 57. Until ownership of the goods passes, the Customer waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by the Supplier and the Customer):
  - (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(1) to receive a statement of account following disposal of goods;
  - (g) under section 132(4) to receive a statement of account if no disposal of goods for each six (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.

#### **Security/charges**

- 58. The Customer charges in favour of the Supplier all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 59. The Customer charges in favour of the Supplier all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
- 60. As security for the payment of the amount of its indebtedness to the Supplier from time to time, the Customer irrevocably appoints as its duly constituted attorney the Supplier's company secretary from time to time to execute in the Customer's name and as the Customer'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 Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder).
- 61. Where the Customer has previously entered into an agreement with the Supplier by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009 (PPSA)*) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this agreement and will secure all indebtedness and obligations of the Customer under 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.

#### **Costs**

- 62. The Customer must pay for its own legal, accounting and business costs and all costs incurred by the Supplier relating to any default by the Customer under this agreement. The Customer must also pay for all stamp duty and other taxes payable on this agreement (if any).
- 63. The Customer will pay the Supplier's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.
- 64. Subject to clauses 65 and 66, payments by, or on behalf of, the Customer 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 40 and 63.
  - (b) Secondly, in payment of any interest incurred in accordance with clause 69.

(c) Thirdly, in payment of the outstanding invoice(s), or part thereof in an order determined by the Supplier in its absolute discretion.

- 65. To the extent that payments have been allocated to invoices by the Supplier in its business records, the Supplier may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at the Supplier's absolute discretion, including in a manner inconsistent with clause 64 herein.
- 66. Payments allocated (and/or reallocated) under clause 64 and/or 65 will be treated as though they were allocated (and/or reallocated) in the manner determined by the Supplier on the date of receipt of payment.

#### **Taxes and duty**

- 67. The Customer must pay GST on any taxable supply made by the Supplier to the Customer under this agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.
- 68. 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 Customer, then the Customer must pay the Supplier these additional amounts on 48 hours' written demand.

#### **Interest rates**

69. The interest rate on any outstanding debts is a fixed rate of ten (10) percent per annum.

#### **Set-off**

- 70. All payments required to be made by the Customer 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 Customer in writing or as required by law.
- 71. 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 Customer by the Supplier.

#### **Intellectual property**

- 72. All documentation supplied by the Supplier shall remain the absolute property of the Supplier and no part of any such documentation are to be divulged to any third party without the prior written consent of the Supplier. The copyright in all designs, drawings, specifications, plans, sketches, ideas, catalogues, flyers, and data (collectively, **Designs**) prepared and compiled by the Supplier shall remain in the Supplier and the Customer shall not have the right or license to use such Designs without the express written consent of the Supplier.
- 73. Where any Designs have been supplied by the Customer, the Customer warrants that the use of those Designs does not infringe the intellectual property rights of any third party. Further, the Customer agrees to indemnify the Supplier against any claim arising from the use of Designs supplied by the Customer where such Designs infringe or are alleged to infringe the intellectual property rights of any third party.

#### **Export contracts**

- 74. For the interpretation of this section, the following expressions shall have the following meaning:
  - (a) **'CIF Contract'** means a contract of sale of goods under this agreement of which the price to be paid by the Customer is inclusive of insurance and freight costs from the Port of Loading to the Port of Destination;
  - (b) **'FOB Contract'** means a contract of sale of goods under this agreement of which the price to be paid by the Customer is exclusive of insurance and freight costs;
  - (c) **'Port of Destination'** means the location of the port at which the goods are to be delivered for collection by the Customer; and
  - (d) **'Port of Loading'** means the location of the port at which the goods are to be loaded by the Supplier.
- 75. In the event that goods sold under this agreement are to be exported, a CIF Contract or FOB Contract may be entered into in writing between the parties.
- 76. A CIF Contract or FOB Contract entered into under this agreement must include confirmation of the following in writing as agreed between the parties.
  - (a) Mode of transport.
  - (b) The location of the Port of Loading.
  - (c) The location of the Port of Destination.
- 77. The following terms apply to a CIF Contract or FOB Contract entered into under this agreement:
  - (a) delivery of the goods is deemed to have occurred when the goods are loaded on board the agreed mode of transport at the Port of Loading on or before the delivery date;
  - (b) risk of damage to or loss of the goods passes to the Customer from the time the goods are loaded on board the agreed mode of transport at the Port of Loading; and the Supplier will provide the Customer with a clean shipped bill of lading within twenty-four (24) hours of the goods being loaded on board the agreed mode of transport at the Port of Loading.
- 78. If the sale of goods is subject to a CIF Contract entered into under this agreement, the following terms also apply:
  - (a) the Supplier will insure the goods from dispatch from the Port of Loading until delivery of the goods to the Port of Destination; and
  - (b) before loading the goods on board, the agreed mode of transport, the Supplier will provide a copy of the following documents to the Customer:
    - (i) contract of carriage; and
    - (ii) insurance policy.

#### **CHEP and LOSCAM Pallets**

- 79. All CHP or LOSCAM pallets delivered to the Customer are the responsibility of the Customer.
- 80. If an order is delivered to the Customer using a CHP or LOSCAM pallet, the Customer must either:
  - (a) provide the transport company delivering the order with an equivalent number replacement CHP or LOSCAM pallets in good order; or
  - (b) transfer the delivered pallets back to CHP or LOSCAM through a valid CHP or LOSCAM account.
- 81. If the Customer does not comply with clause 80 above, the replacement cost for the CHP or LOSCAM pallets will be invoiced to (and payable by) the Customer.

#### **Limitation of liability**

- 82. In relation to the supply of goods, to the extent permitted by law, 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.
- 83. In relation to the supply of services, to the extent permitted by law, the Supplier's liability is limited to:
  - (a) supplying the service again; or
  - (b) providing for the cost of having the services supplied again.
- 84. 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 Customer as a result of the goods and/or services supplied under this agreement.

#### **Miscellaneous**

- 85. The Supplier is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, supplier shortages, plant or mechanical breakdown, acts of God or any other activity beyond the Supplier's control.
- 86. The Customer acknowledges that it will not license, subcontract or assign any of its rights and/or obligations under this agreement without the Supplier's prior written consent.

87. All descriptions, illustrations, drawings, data, dimensions and weights supplied by the Supplier or otherwise contained in catalogues, price lists, and advertising or in other printed material of the Supplier are approximate only and are for general illustration purposes only.
88. The Customer will, at the request of the Supplier, execute documents and do such further acts as may be required for the Supplier to register pursuant to the PPSA the security interest granted by the Customer under the PPSA.
89. The Customer 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 Customer or the Customer's authorised representative.
90. The Customer further agrees that where the Supplier has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
91. The Customer irrevocably grants to the Supplier the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if the Supplier has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify the Supplier from any claims made by any third party as a result of such exercise.
92. 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**
93. 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.
94. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the agreement remains effective.
- Variation of agreement**
95. The Customer 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 Customer or by publishing a copy a copy of the terms and conditions on the Supplier's website located at [www.mnb.com.au](http://www.mnb.com.au).
96. If the Customer does not agree with the variation(s) proposed by the Supplier, it must notify the Supplier in writing within fourteen (14) days from receipt of the written notice that the variation(s) is/are not agreed to. The Supplier and/or the Customer will then be at liberty to suspend/withdraw credit facilities until such time as agreement can be reached between the parties regarding the proposed variation(s). Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction by the Supplier without notification.
97. Notwithstanding clause 96, the Customer is deemed to have accepted the Supplier's amended terms and conditions if the Customer's places an order through the Supplier's website after receiving notice of the amended terms and conditions.
98. Any proposed variation to these terms and conditions by the Customer must be requested in writing. The Supplier may refuse any such request without providing reasons either orally or in writing.
99. Variations requested by the Customer will only be binding upon the Supplier if they are in writing signed by an authorised officer of the Supplier.
- Consent to register**
100. The Customer 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.
101. The Customer 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.
- Jurisdiction**
102. The Customer acknowledges and agrees that this agreement will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
103. The Customer acknowledges and agrees that any contract for the supply of goods or services between the Supplier and the Customer is formed at the address of the Supplier.
104. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.
- Entire agreement**
105. This agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by the Supplier and the Customer in writing. 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.
106. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer 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.
107. For the avoidance of doubt, the Customer understands and agrees that these terms will prevail over, and the Supplier will not be bound by, any conditions (express or implied) added or provided by the Customer, whether in an order or otherwise, unless otherwise agreed in writing by the Supplier.
- Privacy Act**
108. The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* contained in this document.

The Customer 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 Customer and the information given is true and correct to the best of my/our knowledge.

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

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

#### FOR COMPLETION BY THE SUPPLIER

The Customer's credit application is accepted. Signed for and on behalf of the Supplier.

<b>Signature</b>		<b>Position</b>	
<b>Name (print)</b>		<b>Date</b>	

**ACCOUNT APPROVED FOR CASH ON DELIVERY / 7 DAYS / 14 DAYS / 30 DAYS**  
(supplier to nominate)

## PRIVACY STATEMENT

1. This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988 (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 Customer 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 Customer 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 Customer 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 Customer and/or Guarantor(s) or their related bodies corporate.
7. The Customer and/or Guarantor(s) consent to the Supplier obtaining and making disclosure of Information about the Customer 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 Customer 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 Customer 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 Customer 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 Customer's and/or Guarantor(s)' right to request limitations to the use of their information.

Equifax Australia  
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

Illion  
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 Customer 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 Customer 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.
10. By reason of the Customer'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 Customer'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 at [accounts@mnbc.com.au](mailto:accounts@mnbc.com.au). 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 Customer 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 fourteen (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 Customer 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.

# DEED OF GUARANTEE & INDEMNITY

To	MNB Variety Imports Pty Ltd ACN 623 902 278 as trustee for the MNB Variety Imports Trust ABN 83 452 685 119 and its related bodies corporate			(Supplier)
Name of guarantor		Address		
Name of guarantor		Address		

(Guarantors) hereby covenant and undertake and if more than one, jointly and severally, as follows.

## Jurisdiction

- The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
- The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

## Consideration

- In consideration of the Supplier extending or agreeing to extend credit or further credit to the Customer at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold or to be sold from time to time or services provided or to be provided, the Guarantors guarantee payment to the Supplier of all money which is now or at any time in the future becomes due and payable to the Supplier by the Customer on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Customer to the Supplier arising out of a relationship of trustee and beneficiary.

## Guarantee and indemnity

- The Guarantors agree to guarantee and indemnify the Supplier against all losses damages or expenses that the Supplier may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to the Supplier whether for goods sold, services provided or otherwise or to observe the terms of any agreement between the Customer and the Supplier, including costs on an indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by the Supplier to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to the Supplier.
- This guarantee and indemnity will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Supplier to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for the Supplier, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 of this guarantee and indemnity.
- Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and the Supplier will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
- The Supplier will have the right to enforce this guarantee and indemnity, irrespective of whether the Supplier has sought to recover the amounts guaranteed from the Customer and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. Further, the Supplier may proceed against the Guarantors (or any one of them) notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
- This guarantee and indemnity will continue in force until such time as the Supplier releases all of the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Customer.
- This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of the Supplier against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
  - any other security taken by the Supplier from the Customer or from any other person;
  - any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantors or any one or more of the Guarantors;
  - by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
  - any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

## Right of subrogation

- In the event of a Guarantor making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until the Supplier has been paid in full.
- In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until the Supplier has been paid in full.

## Insolvency of Customer

- No sum of money which the Customer pays to the Supplier and the Supplier later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee in bankruptcy of the Customer by reason of the *Corporations Act 2001, Bankruptcy Act*

1966 or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Customer.

## Costs

- The Supplier is at liberty from time to time to charge the account of the Customer with all costs, charges and expenses, legal or otherwise that the Supplier incurs in connection with:
  - the account of the Customer;
  - this guarantee and indemnity;
  - any other security in respect of the indebtedness of the Customer to the Supplier;
  - the preparation, completion and stamping of this deed; or
  - the exercise or attempted exercise of any right, power or remedy conferred on the Supplier under or by virtue of this deed;and the same will be part of the monies secured by this deed.
- The Guarantors agree to pay the Supplier's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.
- As security for the payment of the amount of the indebtedness to the Supplier from time to time, the Guarantors irrevocably appoint as their duly constituted attorney the Supplier's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' 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 Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

## Variation

- The Guarantors authorise the Supplier to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to the Supplier, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
- The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by the Supplier making any variation or alteration in the terms of its agreement(s) with the Customer, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

## Severance

- If any provision of this guarantee and indemnity 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.

## Security/charge

- The Guarantors charge in favour of the Supplier all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
- The Guarantors charge in favour of the Supplier all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
- This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed constitutes the entire guarantee.
- Where the Guarantors have previously entered into an agreement with the Supplier by which the Guarantors have granted a charge, mortgage or other security 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 deed and will secure all indebtedness and obligations of the Guarantors under this deed. The Supplier may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

## Personal Property Securities Act

- For the avoidance of any doubt, the security interest(s) created by this instrument in favour of the Supplier constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
- The Guarantors waive 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.

## Service of notices

- The Guarantors agree 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 Guarantors or the Guarantors' authorised representative.

## Privacy Act

- The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* contained in this document.

Executed as a deed on (date)

Signed, sealed and delivered by the guarantor	Signature	
	Name (print)	
	Position	
	Witness signature	
	Witness name (print)	
Signed, sealed and delivered by the guarantor	Signature	
	Name (print)	
	Position	
	Witness signature	
	Witness name (print)	