



### COMMERCIAL CREDIT APPLICATION AND SECURITY AGREEMENT

Company Name:

Trading Name:

ABN:

ACN:

Physical Address:

Postal Address:

Please Indicate: Company  Partnership  Sole Prop  Govt. Dept.  Trustee Co  \*\* see below

Telephone:

Facsimile:

Mobile Phone:

Email:

Accounts Contact Name:

Nature of Business:

How long in this Business:

Purchase Order Number Required: YES  NO

Name of all Directors/Partners/Proprietors	Residential Address	Mobile No.	Date of Birth	Driver's License
Name of Spouses of Directors/Partners/Sole Trader	Residential Address	Mobile No.	Date of Birth	Driver's License

Please provide a minimum of three trade credit references:

Company Name	Contact Name	Telephone No.	Fax No.

- Completing a Credit Application does not infer that credit will be granted.
- The document must be completed in full with no alterations or deletions. Any such alterations or deletions will void the application and a new form will have to be completed.
- The Company reserves the right to refuse credit to any Applicant without explanation.
- The Company reserves the right to suspend or withdraw credit facilities at any time without notice.
- Special Note: if the Company acts as, or is part of, a Trust/Nominee company then the provision of personal guarantee/s from the Trust Beneficiary/Beneficiaries is required to process this application.

## General Terms and Conditions and Security Agreement

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**IN CONSIDERATION OF Thomas Foods International Australia Pty Ltd, and its associated and related entities, (hereinafter jointly and severally referred to as "the Company")** providing commercial credit facilities to the party completing the application (**hereinafter referred to as "the Customer"**) annexed to these conditions: -

- (i) The Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of Goods and/or Services by the Company and that these General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Customer. Any request from the Customer to the Company for the supply of Goods and / or Services shall constitute acceptance of these general terms and conditions.
- (ii) The Customer hereby charges in favor of the Company all its estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which it now has any legal or beneficial interest or in which it later acquires any such interest, with payment of all monies owed by the Customer and consents to the lodging by the Company of a caveat or caveats which note its interest in or over any such land or other caveatable property. If the Customer is entering into this agreement in its capacity as trustee of a trust then the Customer charges its personal property and all trust property of the trust with payment of all monies owing to the Company;
- (iii) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

### TERMS

These terms and conditions, including any Credit Limits set by the Company, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by the Company by any means. Unless or except specifically excluded herein, the company and the Customer retain any rights and remedies available to them in any prior or pre-existing agreement.

"Goods" and/or "Collateral" shall mean all goods and/or services supplied by the Company to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which the Company may intend to register a Security Interest.

"Price" shall mean the cost of the Goods as referred to in the Company's price lists, prepared quotes and / or specific arrangements and shall be subject to change from time to time without notice.

#### 1. Jurisdiction

- a. This agreement shall be construed in accordance with laws of any State of Australia as nominated by the Company from time to time and, where applicable the Commonwealth of Australia.
- b. The Company shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

#### 2. Personal Property Securities Act (2009)

- a. The Customer consents to the Company effecting a registration on the PPSA register (in any manner the Company deems appropriate) in relation to any security interest arising under or in connection with or contemplated by these terms.
- b. The Customer waives its right to receive notice of a verification statement in relation to any registration by the Company on the register.
- c. The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with the Company and do any other act or thing that the Company requires to ensure that the Company has a perfected security interest in, and has priority over any other security interests in, the Goods or otherwise.
- d. The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other Security Interest in the Goods.
- e. The Customer will not register a financing change statement in respect of the security interest without the Company's prior written consent.
- f. The Customer agrees that the Company may, at its absolute discretion, apply any amounts received from the Customer toward amounts owing to the Company in such order as the Company may determine.
- g. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).
- h. Notices or documents required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.
- i. The Company agrees with the Customer not to disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e).
- j. The Customer agrees to reimburse, upon demand, the Company for all costs and/or expenses incurred or payable by the Company in relation to registering or maintaining any financing statement, releasing in whole or in part the Company's security interest or any other document in respect of any security interest;
- k. In these terms the following words have the respective meanings given to them in the PPSA: commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.

#### 3. Retention of Title

- a. Property in all the Goods supplied shall remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and/or legal costs incurred, have been paid in full.
- b. The Goods, whether as separate chattels or as components, shall be stored in such a manner as to be clearly identifiable as the property of the Company until title has passed to the Customer.
- c. The Company may demand at any time until title has passed to the Customer that the Customer returns the Goods or any part of them.
- d. In the event that the Customer defaults in the payment of any monies owing to the Company, the Company and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession.

#### 4. Payment Terms

- a. At the Company's sole discretion, a deposit may be required prior to any supply.
- b. Credit Account Customers are required to pay all amounts for purchases, in full and with no deduction or set-off, no more than 7 days from the date upon which a statement is issued.
- c. In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms.
- d. Should it be considered necessary by the Company to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses. For the avoidance of doubt, the Customer agrees to pay all of the Company's legal costs arising from the Company's enforcement of this agreement. The Customer acknowledges that those expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency.
- e. Amounts received by the Company may be applied first against interest, charges and expenses.

- f. Interest on overdue amounts may be charged at a rate of 1.50% per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- g. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- h. The Customer shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount equal to 10% of all monies owing to Company under this agreement at the date of default) r all costs incurred as a result of the Customer defaulting under this agreement or any cheque or electronic banking transaction being dishonored for whatever reason. The Administration Fee shall be added to the debt and be recoverable against the Customer.

## **General Terms and Conditions and Security Agreement**

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### **5. Delivery**

- a. The Company shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver Goods, either whole or in part, due to circumstances beyond its control.

### **6. Defects**

- a. The Customer shall inspect the Goods upon delivery and will, within 48 hours, notify the Company of any defects, short deliveries or any failure to fulfill any quotation or order.
- b. The Customer will, within a reasonable time following delivery, grant the Company access to the Goods in order to inspect for any alleged defects.
- c. Should the Customer fail to notify the Company within the specified period then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

### **7. Warranty & Returns**

- a. The Company warrants that Goods supplied shall be of merchantable quality.
- b. The Company does not warrant that the Goods are fit for a particular purpose and, except or unless otherwise stated herein, warranties relating to title, defects or conformity of the Goods are expressly excluded.
- c. Returns will be accepted only if prior arrangements have been made with the Company and charges, including but not limited to re-stocking fees, may apply.
- d. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

### **8. Risk**

- a. Notwithstanding Retention of Title provisions as per clause 3 hereof, the risk in Goods purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer.
- b. If any of the Goods are damaged or destroyed prior to the title passing to the Customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

### **9. Cancellation**

- a. The Company may cancel the delivery of Goods at any time before delivery by giving notice to the Customer by any means.
- b. The Company shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.
- c. The Customer may cancel the delivery of Goods at any time before delivery by giving notice to the Company by any means.
- d. In the event that the Customer cancels delivery of Goods, the Customer shall be liable for any costs incurred by the Company up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by the Company.

### **10. Limitation of Liability & Suspension of Rights**

- a. The liability of the Company to the Customer for any reason related to the performance of Goods under this agreement shall be limited to the replacement or repair of the Goods or the amount paid or payable by the Customer in respect of the particular Goods.
- b. Until all monies owed to the Company under this agreement are paid in full to the Company in cleared funds, the Customer may not raise any defence available to the Customer or exercise any right of set-off or make a counter-claim or cross demand against the Company in reduction of liability under this agreement. The right of the Customer to raise any defence, set off, cross demand or counterclaim is wholly suspended until such time as the monies owed under this agreement are paid in full to the Company.

### **11. General**

- a. The Company accepts no responsibility for changes in any law which may affect supply.
- b. Neither the Company nor the Customer shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.
- c. The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- d. The Customer acknowledges that all purchases are made relying solely upon the Customer's own skill and judgment.
- e. The Customer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the Consumer Credit Act will not apply.
- f. This agreement is made in respect of the owners and/or directors of the Customer as at the date of application.
- g. The Customer agrees to notify the Company in writing at least seven (7) days prior to any change whatsoever in ownership structure and, further, indemnifies the Company against any loss or damage that may result from the Customer's failure to notify the Company of any such change.

## **Privacy**

The Company is committed to protecting your privacy. We will comply with the **Privacy Amendment (Enhancing Privacy Protection) Act 2012** which amends the **Privacy Act 1988 (Cth)**. In accordance with the Australian Privacy Principles as contained in the Act, and as reflected in the Company's Privacy Policy, persons will be given access to their personal information upon request. The Company uses the types of personal information collected to enable it to supply customers with its products and services and for assessing Applications for Commercial Credit, managing accounts and, if necessary, assessing its risk in, and collecting debts. This information may be disclosed to the Company's associated or related entities, parties related to the Customer's employment (e.g. referees and others as set out in the Privacy Policy) contractors, other credit providers, whether or not an account is overdue and, if necessary, its risk insurers, debt collectors and credit reporting agencies. If all or part of the information requested is not provided, the Company may not be able to consider any application or to provide credit facilities. Customers who have any concerns about, or would like a copy of, the full Privacy Policy are requested to direct them to:

**The Credit Manager, P O Box 87 Dry Creek SA 5094.**

**I/We acknowledge and give consent** that the Company may make enquiries as to the credit and financial situation of me or any of us and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the Credit Application, as the Company reasonably sees fit from time to time, for purposes including but not limited to;

- passing the information on to a credit reporting agency,
- passing the information on to a debt collector,
- obtaining further personal information, including consumer and/or commercial credit information, relating to me or any of us from another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the **Privacy Amendment (Enhancing Privacy Protection) Act 2012** which amends the **Privacy Act 1988 (Cth)**.

**I have read and understood this document and have been advised, and given opportunity, to seek independent legal advice.**

**I warrant by signature below that the information given in support of this application is true and correct.**

**I further warrant that I am authorised to sign on behalf of the Customer and to bind the Customer in contract.**

<b>Print Name:</b>	<b>Signature:</b>	<b>Date:</b>
<hr/>		
<b>Title:</b>	<b>Owner / Director / Partner (circle title)</b>	
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<b>Print Name:</b>	<b>Signature:</b>	<b>Date:</b>
<hr/>		
<b>Title:</b>	<b>Other Director / Other Partner (circle title)</b>	
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#### **GUARANTEE AND INDEMNITY**

**IN CONSIDERATION OF Thomas Foods International Australia Pty Ltd, and it's associated and related entities, (hereinafter jointly and severally referred to as "the Company") granting the Customer (as named in the Application for Credit and which forms a part of this document) trade credit, I/WE GUARANTEE** payment to the Company of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of us arising from any past, present or future dealing with the Company.

#### **I/WE HEREBY AGREE & ACKNOWLEDGE:**

- That this is a continuing guarantee and,
- To indemnify the Company against all loss or damage arising from any past, present or future dealing with the Customer or any of us,
- That our liability under this guarantee is joint and several and will not be affected, waived or discharged by the reason of any time or indulgences granted by the Company or any grant to any of the guarantors of a release whether in whole or in part from any obligation contained in or implied by this guarantee and indemnity and,
- That our liability under this guarantee shall not be affected, waived or discharged by the Customer entering into a Deed of Company Arrangement (DOCA) or by the Company voting in favor of or against, or abstaining from voting, in relation to any proposal by the Customer to enter a DOCA and,
- That this guarantee becomes binding on such of us that sign this guarantee irrespective of whether or not all intended signatories execute this guarantee and,
- That the Company is entitled to recover against a Guarantor without having first taken steps to recover against the Customer or any other Guarantor and,
- That this guarantee may not be unilaterally revoked by me or any of us and remains in force until such time as I/we receive written confirmation from the Company that we are released from our obligations and liabilities under this guarantee.
- That any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid and,
- That I/we indemnify the Company against losses or costs that it may suffer as a result of disgorging monies to a liquidator of the Customer and,
- That I/we sign in both our personal capacity and as Trustee of every Trust of which I/we are Trustee and/or a beneficiary and,
- That I/we consent to the Company effecting a registration on the PPSA register (in any manner the Company deems appropriate) in relation to any security interest arising under or in connection with or contemplated by these terms and,
- That I/we waive my/our right to receive notice of a verification statement in relation to any registration on the register and,
- That I/we must promptly do any act or thing that the Company requires to ensure that the Company's interest is a perfected security interest and has priority over all of the other security interests and,
- That I/we will not register a financing change statement in respect of the security interest without the Company's prior written consent and,
- That the Company may, at its absolute discretion, apply any amounts received from me/us toward amounts owing to the Company in such order as the Company may determine and,
- That if Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, I/we agree that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement) and,
- That notices or documents required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA and,
- That the Company will not disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e) and,
- I/We must, upon demand, reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to registering or maintaining any financing statement or any other document in respect of any security interest or releasing in part or in whole the Company's security interest and,
- In these terms the following words have the respective meanings given to them in the PPSA: commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.
- Until all monies owed to the Company under this agreement are paid in full to the Company in cleared funds, the Guarantor may not raise any defence available to the guarantor or exercise any right of set-off or make a counter-claim or cross demand against the Company in reduction of liability under this agreement. The right of the Guarantor to raise any defence, set off, cross demand or counterclaim is wholly suspended until such time as the monies owed under this agreement are paid in full to the Company.

**I/WE HEREBY CHARGE** in favor of the Company all our estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which I/we now have any legal or beneficial interest or in which I/we later acquire any such interest, with payment of all monies owed by the Customer to the Company. I/we shall, upon demand, execute such documents in registrable form, or do such other things as the Company requests to give further or better effect to the security granted by me/us to the Company and I/we consent to the lodging by the Company of a caveat or caveats which note its interest in or over any such land or other caveatable property. In the event that I/we should neglect or fail to deliver the requested instrument of security or consent, I/we hereby appoint the Company to be my/our lawful attorney for the purpose of executing and registering such instruments.

**I/WE FURTHER AGREE** that this agreement shall be governed by and construed in accordance with the laws of **any State of Australia as nominated by the Company from time to time** and, where applicable, the Commonwealth of Australia, and I/WE submit to the non-exclusive jurisdiction of the courts of **South Australia**.

**Notice of Disclosure of Your Credit Information to a Credit Reporting Agency**

**I/We acknowledge and give consent** that the Company may make enquiries as to the credit and financial situation of any of us and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the Credit Application, as the Company reasonably sees fit from time to time, and for the duration of this agreement, including but not limited to;

- passing the information on to a credit reporting agency
- passing the information on to a debt collector
- obtaining further personal information relating to any of us from another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the **Privacy Amendment (Enhancing Privacy Protection) Act 2012** which amends the **Privacy Act 1988 (Cth)**.

**GENERAL:**

- "I" and "we" and "us" means each of the Guarantors jointly and severally.
- "PPSA" and "Goods" have the meaning ascribed to them in the Application for a Credit Account which forms a part of this document.
- The invalidity or unenforceability of any provision of this Guarantee and Indemnity shall not affect the validity or enforceability of the remaining provisions.
- Clerical errors are subject to correction and do not bind the Company.

**I/We have read and understood this document and have been advised, and given opportunity, to seek independent legal advice.**

## **ALL DIRECTORS, PARTNERS AND THEIR SPOUSES TO SIGN BELOW**

<b>Guarantor Name – Director/Partner / Proprietor</b>	<b>Signature</b>	<b>Date</b>
<b>Witness Name (print)</b>	<b>Signature</b>	<b>Date</b>
<b>Guarantor Name Director/Partner/ Proprietor</b>	<b>Signature</b>	<b>Date</b>
<b>Witness Name (print)</b>	<b>Signature</b>	<b>Date</b>
<b>Guarantor Name – Spouse of Director/Partner/ Proprietor</b>	<b>Signature</b>	<b>Date</b>
<b>Witness Name (print)</b>	<b>Signature</b>	<b>Date</b>
<b>Guarantor Name – Spouse of Director/Partner/ Proprietor</b>	<b>Signature</b>	<b>Date</b>
<b>Witness Name (print)</b>	<b>Signature</b>	<b>Date</b>



If you would like to give Thomas Foods authority to debit your credit card please fill in the below.

### Authority to Debit Credit card

I, \_\_\_\_\_ (Print Name of Cardholder) am the Cardholder named on the credit card listed below. I irrevocably authorise and request the Company to debit my credit card listed below for any amount that is owing to the Company from time to time under this Credit Application or Guarantee. I hereby acknowledge that:

- a) the Company may deduct all monies due to the Company by the Customer or any Guarantor, including for goods, interest and legal costs;
- b) the Company does not need to give me notice of its intention to debit funds from my credit card;
- c) it is my responsibility to ensure that sufficient funds are available on the credit card to pay the debt;
- d) the Company may deduct any transaction fee which is charged to the Company by its financier; and
- e) this is a continuing authority and cannot be revoked until all amounts owing to the Company are paid in full.

Type of card: VISA / Master Card (please circle)	
Cardholders name (as printed on the front of the card):	
Credit card number:	
Expiry date:	Card Verification or security (CVV) number:

Credit Card Holder Name (Print)	Signature	Date
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### Application for Credit Checklist

1. I have completed in full the details on the Application
2. I and each of the directors (if company) have signed the Application
3. Each of the directors or partners have signed the Guarantee.
4. The spouse of each sole trader / proprietor, director or partner has signed the Guarantee
5. I or my spouse have completed and signed the credit card authority in full
6. I understand that my Application will be rejected if:
  - (a) Each of the directors do not sign the guranteee;
  - (b) My spouse does not sign the guranteee;
  - (c) If the credit card authority is not completed in full or the credit card is not valid.

Thomas Foods International Australia Pty Ltd  
PO Box 87, Dry Creek SA 5094

Phone: (08) 8162 8400  
Fax: (08) 8349 4831  
Sales Fax: (08) 8262 7265

Email: [foodservice.credit@thomasfoods.com](mailto:foodservice.credit@thomasfoods.com)