



5WAYS Foodservice Pty Ltd
("the Company")
ACN 966 71920 ABN 550 966 71920

15-17 Quality Drive
Dandenong Vic 3175
Ph: (03) 9554 5555 Fax: (03) 9554 5530

CREDIT APPLICATION

(This information will be treated as CONFIDENTIAL)
(Please type or use BLOCK letters)

This is an application for credit to be provided by "the Company" in conjunction with such supplies of Product by "the Company" as "the Company" may from time to time approve, subject to the terms and conditions which regulate such supply ("Terms & Conditions of Sale"). This application for credit must be completed in full in order for the application to be considered.

Section 1 - Applicant Details

Type of Business: [] Registered Company [] Partnership [] Government [] Trust
(PLEASE TICK) [] Club/Charity [] Sole Trader [] Other

Registered Name: _____ ("Customer")

Date of Incorporation: _____ State of Incorporation: _____
A.C.N. _____ A.B.N. _____

Trading Name: _____

Postal Address (no PO Box): _____
Postcode: _____

Trading Address: _____
Postcode: _____

Telephone No.: _____ Fax No.: _____
Mobile Phone No.: _____ Email: _____

Bank: _____ Branch: _____
Account Name: _____ BSB No.: _____ Account No.: _____

Section 2 – Company Directors / Partners / Proprietors of your Business

Details of: (Tick appropriate box): Directors Partners Proprietors

1. Surname: _____ Given Names: _____
 Residential Address: _____ State _____ Postcode _____
 Telephone No.: _____ Date of Birth: ____ / ____ / ____ Drivers Licence No: _____

2. Surname: _____ Given Names: _____
 Residential Address: _____ State _____ Postcode _____
 Telephone No.: _____ Date of Birth: ____ / ____ / ____ Drivers Licence No: _____

3. Surname: _____ Given Names: _____
 Residential Address: _____ State _____ Postcode _____
 Telephone No.: _____ Date of Birth: ____ / ____ / ____ Drivers Licence No: _____

4. Surname: _____ Given Names: _____
 Residential Address: _____ State _____ Postcode _____
 Telephone No.: _____ Date of Birth: ____ / ____ / ____ Drivers Licence No: _____

Note: *If there are more than (4) parties (as specified above), please provide details on an attachment to form part of this Application.*

Have you or any of your directors / partners / proprietors ever been registered under any part of the Bankruptcy Act, been under any special financial arrangements or had legal proceedings commenced against you for payment of debts?

Yes (attach full details to this Application)

No

Section 3 – Your Business' Financial Details

Estimated Current Financial Year Turnover \$ _____

Previous Financial Year Turnover \$ _____

Estimated Value of Current Assets \$ _____

Estimated Current Liabilities \$ _____

If any Registered Encumbrances/Charges, give details _____

Are Suppliers' Product in Your Possession covered by insurance?

Yes No Name of Insurer _____

Number of Employees: Permanent _____ Casual _____ Temporary Staff _____

Your Current Business Accountant's Name _____

Accountant's Address: _____

Telephone: _____ Email: _____

Section 4 – Declaration

I/We expressly represent to “the Company” that I am/we are authorised to sign this Application for an account on behalf of “the Customer”. I/We declare that the information in this Application is true and correct to the best of my/our knowledge. “The Customer” acknowledges that the Terms and Conditions (which include a retention of title provision) overleaf govern the account. “The Customer” acknowledges that first use by “the Customer” of the account will constitute its acceptance of and agreement to those Terms and Conditions. I/We declare that this account is wholly for business purposes.

I/We have read and agree to the collection, uses and disclosures of information about me/us, “the Customer” and other persons, as set out in the Terms and Conditions that appear on the reverse of this Application.

Name in Block Letters: _____ Position: _____

Signature: _____ Date: _____

Section 5 – Guarantee Indemnity and Charge

Please Note: This “Guarantee” must be signed by all directors of the company or all partners of the partnership in order for this application to be processed.

I/We understand that “the Company” is required to be paid for Product and/or services supplied. I/We jointly and/or severally guarantee and indemnify “the Company” as unconditional, irrevocable and continuing guarantee and indemnity and hold “the Company” harmless from and against any loss (including all of “the Company’s” legal costs on a solicitor and own client basis and expenses) or liability howsoever arising, whether direct or indirect, in respect of this Application including but not limited to any breach by “the Customer” of its obligations under this Application or misrepresentation or improper acts or omissions by “the Customer” relating to “the Company”, “the Company’s” products and services or this Application or arising out of any claim, demand, suit, action or proceeding by a third party against “the Company”. I/We understand that “the Company” requires payment of me/us personally quite separate from “the Customer’s” liability and that there is no obligation on “the Company” to take any action against “the Customer” or to give us any notice prior to demanding payment from us, and I/We accept this direct independent personal responsibility freely. I/We agree to charge all of my/our real and personal assets and agree to execute on demand a mortgage in registrable form in favour of “the Company” as mortgagee over all or any part of my / our real estate containing such covenants as “the Company” may require and “the Company” placing a caveat on the title to any real estate I/WE own in respect of this agreement to grant a mortgage and further agree for “the Company” to register a charge over any personal property I/We own with the Personal Property Securities Register and confirm that this guarantee shall act as a security agreement whereas I/We am/are the grantor/s and “the Company” is the secured party in accordance with the *Personal Property Securities Act 2009*. I/We irrevocably appoint “the Company” my/our attorney for the purpose of doing either in its own name or in its capacity as attorney all such acts, matters and things as “the Company” from time to time considers necessary or expedient for the purpose of effecting all the powers and authorities contained herein. I/We understand that I/We are personally liable for not only the debt or interest but also for all “the Company’s” expenses including, for example, its legal costs (on a solicitor and own client basis) and debt collector’s expenses. I/We confirm that before signing this Guarantee Indemnity and Charge we were aware of the availability and desirability of obtaining independent legal advice in relation to this document and were given the opportunity to seek it.

Print Name

Signature

Date

Print Name

Signature

Date

Print Name

Signature

Date

Print Name

Signature

Date

Print Name

Signature

Date

TERMS & CONDITIONS

These are the terms and conditions on which "the Company" ("we" or "us" or "our") is willing to trade with you. These terms and conditions apply to each purchase order you place with us. Any variation to these terms and conditions must be in writing and signed by an authorised officer of the "Company".

1. Price & Description

The price and description of the product you may offer to purchase from us ("our product") is described in our price list. All prices are expressed in Australian dollars. We may change the price list at any time without prior notice. Any description of our product is given by way of identification only and the use of that description does not constitute a sale by description.

2. Account Limit

Normally, we allow you to purchase and continue to purchase our product as long as the total of your account does not exceed your pre-approved account limit and terms and you have provided us with three (3) satisfactory written trade references and/or a satisfactory trade or status report from a credit rating agency acceptable to us.

We may require fresh references/reports from time to time and additional information if you apply to increase your account limit.

You agree that you will, if we request, also provide us further supporting documentation which may include (but is not limited to) any or all of the following:

- evidence that you have been incorporated for at least 12 months; and
- a copy of your audited Financial Statements (which must not be more than 12 months old).

In no circumstances are we obliged to accept any application for an increase in the limit of your account and we are not obliged to give you reasons for our decision.

If any account is not settled within our trading terms, you agree that, in addition to any other right we may have, we may suspend all sales and delivery of our product to you or close your account with us.

You acknowledge that we may decline your application to purchase our products if we are advised by our insurers that they will not grant us appropriate cover in relation to you.

3. Delivery

Delivery takes place at the time our product passes into your or your agent's exclusive physical control or when ownership of our products has passed to you, whichever is earlier.

Any date for delivery of our product indicated by us is an estimated date for delivery only. We will make all reasonable efforts to have the product delivered to you on the date agreed but we are under no liability for any loss or damage, however it arises, if the product is not delivered by that date.

We reserve the right to deliver any products you order from us by instalment and each instalment is sold to you under a separate contract between you and us. Failure by us to deliver any instalment will not entitle you to cancel the balance of your order. In the event you are in default of these terms and conditions in respect of any instalment, we may elect to treat your default as a breach in respect of each other instalment.

4. Risk

At all times from the date of delivery, our product is at your risk of loss or damage and you are responsible for its safe custody. It is up to you to arrange your own insurance.

5. Ownership

You do not own any of our product in your possession until all of our product you have purchased from us at any time and all other amounts owing by you to us on any account have been paid for in full. Until you have given us full payment, you promise to store and deal with our product in a way that it is clearly identifiable as ours. You grant us an irrevocable licence to enter your premises on any business day to inspect our product in your possession and your books or records regarding our product. If you wish, you may promote and on-sell our product in the ordinary course of business even if ownership of our product has not passed to you. You will hold the proceeds of sale in trust and not by way of security, for and as agent for us in a separate account, you will pay the proceeds to us as soon as you receive them and we have the right to trace and claim such proceeds. You have no rights to bind us to any liability to any third party by contract or otherwise. If you use our product in some manufacturing or construction process of your own or some third party, you will hold such part of the proceeds as relates to our product in trust for us. Such part shall be deemed to equal in dollar terms the amount payable or owing by you to us at the time of the receipt of such proceeds. You will also keep separate records and clearly identify in your books your use of our product in such manufacturing or construction process.

6. Assignment

You must not assign any rights or benefits under these terms and conditions unless you have obtained our prior written consent. Any assignment by you without our consent shall entitle us to avoid any liability we may have to you under these terms and conditions.

7. Recovery

If at any time you owe us money on any account in excess of our trading terms then in addition to any other rights we have you agree we may enter any premises owned, possessed or controlled by you where our product is stored and remove our product and re-sell all or any of them. We are not liable to you for any loss and damage caused if we take such action.

8. Claims

When we deliver our product to you, you must inspect it immediately. You must report to us in writing any damage or incorrect supply within 24 Hours of delivery otherwise we may refuse any claim you make. If our product is damaged when we deliver it to you we may accept its return and replace it with an equivalent product or credit you with the price paid, at our option. In all circumstances our product must be in its original packaging and proof of purchase must be supplied. If you have a dispute with us, you must notify our credit department in writing of your dispute prior to the due date of your payment for our product.

You agree that you shall make no claim against us for any delay in delivery or any product delivered to you damaged as a direct or indirect result of events beyond our control.

9. Overdue Accounts

Any account which is not settled by the due date of its invoice will attract interest at the rate of interest (however described) equivalent to 2% per month calculated daily. You agree that any discounts, rebates or other concessions are lost if payment is not made in time and are made without prejudice to any other right we have including to charge interest unless otherwise agreed upon in writing. If you are in breach of any of our terms and conditions you agree that you are also responsible for all of our expenses of any kind including our legal costs on a solicitor client basis and any commission or other expense incurred by any debt collection agency we retain to recover the monies you owe us.

We may commence legal proceedings against you for the recovery of any account which is 14 days outside of terms and are not required to give you any prior notice.

10. Replacement or Money Back

To the full extent of the law all warranties are excluded. Warranties do not apply if the product has received maltreatment, inattention or interference or the product has not been used in accordance with any performance ratings and product safety instructions. To the extent that the law does not allow us to exclude warranties (other than a warranty as to title) our liability for any claim is limited to a refund of the purchase price actually paid, the replacement of the damaged product or the supply of equivalent product at our absolute discretion. In no circumstances are we liable for special, indirect or consequential loss, even if you advise us of any special circumstances.

11. The Competition and Consumer Act 2010 ("CCA")

These terms and conditions of trade are not intended to have the effect of contracting out of any provisions of the CCA, except where permitted by law. If the Customer buys Product as a consumer these terms of trade shall be subject to protection of consumers' rights legislation and shall not affect the consumer's statutory rights. If any clauses in these terms and conditions of trade contravene any provisions in these acts such clause or clauses shall be deleted without affecting the validity of the remaining clauses of these terms and conditions of trade.

12. Priority

These terms and conditions override your terms and conditions. To the extent of any discrepancy between these terms and conditions and any third party (including your own) terms and conditions these terms and conditions prevail.

13. Orders

All communications between you and us including all purchase orders must be in writing (which includes by e-mail).

Unless we agree special arrangements, such as an authorisation code, we assume any order received from anyone in your employ has been placed with your authority and is binding on you.

No quote is binding on us unless we have prepared and accepted a written confirmation of order.

14. Your Relationship with Us

Nothing in these terms and conditions creates any relationship of employment, agency or partnership between you and us.

15. Intellectual Property

These terms and conditions do not give you any intellectual property rights in our product.

Your details and information that you provide us about yourself may be retained by us on our database. You have no rights in that database. We may use such database in the conduct of our business, subject to privacy and other relevant laws.

We are not liable for any infringement or unauthorised use of any intellectual property rights arising from these terms and conditions. If any dispute or claim is made in respect of any infringement or unauthorised use of intellectual property we may terminate these terms and conditions by notice to you and without liability to you or any other person.

In these terms and conditions, intellectual property includes the full benefit of any rights in any copyright, trademark, registered design, patent, trade and business names, inventions, know-how, inventions, improvements, discoveries, confidential processes and information and includes without limitation artistic works, images, designs, motifs and photographs and any adaptation or concept relating to it.

16. **Governing Law**

These terms and conditions are governed by the laws of Victoria, Australia, and you agree to submit to the non-exclusive jurisdiction of the Courts of Victoria and the Commonwealth of Australia.

17. **Whole Agreement**

These terms and conditions form the entire agreement on which we are willing to trade with you and all or any previous agreements or understandings we may have had with you are superseded by these terms and conditions. We may alter these terms and conditions at any time upon one (1) months written notice. All transactions after the date specified in such notice will be subject to the altered terms and conditions. If you continue to trade with us after the date such alterations become effective you will be deemed to have agreed to the altered terms and conditions.

18. **Your Obligations**

You acknowledge that:

- you are not an associate or related body corporate or related party or related entity of ours (as such terms are defined in the *Corporations Act 2001*); and
- the Consumer Credit Code does not apply to these terms and conditions.

If, at any time:

- you believe that you may not or may be unable to perform or comply with your obligations under these terms and conditions;
- you are unable to pay your accounts as they fall due for payment;
- a cheque or bill of exchange received from you is dishonoured;
- you are or become insolvent or you have an administrator appointed; or
- your account is overdue and is not settled within our trading terms,

you agree that:

- you will immediately notify us that one or more of the above notifiable events has occurred and you will keep us notified on a monthly basis until such notifiable event no longer exists;
- we have no obligation and will cease to deliver to you any product you have purchased while a notifiable event exists;
- we may close your account with us;
- we may request payment in advance for all products you have ordered from us; and
- we have no obligation to respond to any offer you make to purchase any of our product while a notifiable event exists.

For the purpose of these terms and conditions, you are insolvent if:

- a receiver or receiver and manager or an agent for a mortgagee in possession has been appointed over all of your assets and undertakings;
- you have passed an effective resolution for your voluntary winding-up;
- an order has been made by a Court of competent jurisdiction for you to be wound up;
- a compromise arrangement (excluding a voluntary administration) has been made legally binding on you and your creditors;
- you have presented a debtor's petition and it has been accepted by the Registrar in Bankruptcy;
- you have entered into a composition, deed of assignment or deed of arrangement under Part X of the Bankruptcy Act (or equivalent) with your creditors; or
- a legally binding sequestration order has been made against your estate.

19. **Severance**

If any of these terms and conditions are determined invalid, unlawful or unenforceable to any extent such term or condition shall be severed from the remaining terms and conditions which shall continue to be valid to the fullest extent permitted by law.

20. **Off Set**

We shall be entitled to set off against any monies owed to you an amount equal to the total of all monies at such time then owed by you or on your behalf to us.

21. **Interpretation**

In these terms and conditions unless otherwise indicated by the context: (i) reference to a party to a document includes that party's successors and permitted assigns; (ii) "including" and other similar words are not words of limitation; (iii) an agreement, deed, covenant, representation or warranty on the part of two or more persons binds them jointly and severally; and (iv) general words following words describing a particular class or category are not restricted to that class or category.

Personal Property Securities Act 2009 ("PPSA")

22. If any clauses in these terms contravene any provisions in the PPSA or any amendments thereto such clause or clauses shall be deleted without affecting the validity of the remaining clauses of these terms. The following definitions of the PPSA and amendments thereto apply to these terms and conditions of trade:

- (a) Financing statement. This has the same meaning as defined by the PPSA;
- (b) Financing change statement. This has the same meaning as defined by the PPSA;
- (c) Security agreement. This has the same meaning in these terms and conditions of trade as the security agreement created between you and us in the PPSA;
- (d) Security interest. This has the same meaning as defined by the PPSA

23. You hereby assents that by placing orders for Product with us you acknowledge and agree that our terms and conditions of trade:

- (a) Constitute a security agreement for the purposes of the PPSA in such Product;
- (b) Create a security interest in such Product and in Product previously supplied which have not been fully paid for and for Product that will be supplied in the future.
You agree to:
 - (c) Sign and provide without delay any documents and/or accurate information we may require to register a financing statement or financing change statement concerning a security interest on the Personal Property Securities Register and to register any other document required to be registered by the PPSA and to correct any defects in such documents or information.
 - (d) Indemnify and reimburse us for all costs for a financing statement or financing change statement on the Personal Property Securities Register or releasing Product charged thereby;
 - (e) Not to register a financing change statement in respect of a security interest on Product supplied by us that have not been fully paid for without our prior written consent;
 - (f) Not to register, or permit a third party to register, a financing statement or a financing change statement concerning Product supplied by us that have not been fully paid for without our prior written consent;
 - (g) Promptly tell us of any material change in your methods and policies of selling and/or reselling Product supplied by us which would change the nature of proceeds of such sales.

24. You waive your rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

25. With regard to sections 142 & 143 of the PPSA you waive your rights as a grantor and/or a debtor under the PPSA.

26. With regard to section 157 of the PPSA, unless otherwise agreed in writing by us, you waive your right to receive a verification statement.

27. You shall unconditionally approve any actions taken by us under clauses 33 to 38.

PRIVACY STATEMENT

We respect your privacy and we are committed to the protection of personal information.

We collect personal information to assist us in providing you with services as well as information on products and services offered by us.

We collect personal information from you in a number of ways including:

- directly from you, such as when you apply for credit, place an order, become involved in any of our promotional activities, enter your personal details on our websites (for example during registration or application for products and services), when you provide information by phone or in documents such as an application form;
- from our affiliated companies;
- from your representatives;
- from publicly available sources of information;
- from credit-reporting and fraud-checking agencies and credit providers for credit related purposes such as credit worthiness, credit rating, credit provision and financing;
- from our own records of your dealings with us; or
- when legally required to do so.

Your details including your purchases will be added to our database, and will be used by us:

- to identify you;
- in providing services to you including but not limited to the processing of this Application and the giving of credit to you and the administration and management of those services;
- to provide you with information on products and services offered by us;
- in undertaking risk assessment and management; and
- in gathering data and disclosing data to third parties which is relevant to your application such as:
 - insurance brokers and insurers;
 - credit reporting agencies;
 - financial institutions including our own bankers;
 - service providers; and
 - industry groups having a legitimate reason to receive such information,

as necessary from time to time for our organisation's functions.

If you provide us with personally identifiable information, you may receive from time to time, telephone calls, emails or direct marketing containing promotional material. You agree to receiving e-mailings from us including information not only on the areas of interest you have indicated but all types of news and information on our other products. If you do not want to receive them, you may contact us at any time to be removed from our direct marketing list. You may be asked to indicate your preference to receiving promotional material, when submitting information to us.

We may employ other companies or individuals to provide certain services such as analysing customer lists, providing marketing assistance or consulting services. These third parties may have access to information needed to perform their function but can not use that information for other purposes.

We do not provide any personal information provided by you to any third parties other than to our affiliated companies or where required by law or as set out in this Privacy Statement. We will not sell, trade or rent your personal information to others. We may provide aggregate statistics on our customers to third parties such as advertisers, but these statistics will include no personally identifying information.

We co-operate with law enforcement agencies as required by law.

All reasonable steps are taken to correct the information we hold where that information is not accurate, up-to-date and complete.

All reasonable steps are taken to ensure that all information is treated confidentially, kept secure and protected against unauthorised use and is maintained only for the purpose for which it is intended.

You have the rights given by the *Privacy Act 1988* as amended.

You have the right to access your personal information and requests for information about our Privacy Statement are welcomed.

Office Use Only

Section 7 - Finance Manager Approval

Credit Limit: _____

Payment Terms: _____

Approved By: _____ **Date:** _____

Signature: _____
