

MOCO Representative: _____

Confidential - COD Commercial Trading Application

I/We hereby apply to Pebmac Pty Ltd ABN: 48 010 621 851 trading as MOCO Food Services (“the Supplier”) for a Credit Account and submit the following information.

Fax completed form to 07 3375 2055 or email to credit@mocofoodservices.com.au

TRADING NAME: _____ (“The Customer”)

TRADING ADDRESS: _____

TELEPHONE NO.: _____ FAX NO.: _____ EMAIL: _____

POSTAL ADDRESS: _____ POST CODE: _____

NATURE OF BUSINESS (e.g. Restaurant, Club, Caterer etc.) _____

DATE WHICH YOU COMMENCED IN THIS BUSINESS: _____ ABN: _____

Type of Business: SOLE TRADER PARTNERSHIP COMPANY PUBLIC COMPANY

Personal details of: SOLE TRADER PARTNERS DIRECTORS

If a **COMPANY** please complete the following:

REGISTERED COMPANY NAME: _____ A.C.N. _____

REGISTERED OFFICE ADDRESS: _____

INCORPORATION: Date _____ State _____ PAID UP CAPITAL \$ _____

Surname:				Christian Names:			
Date of Birth:			Licence No:			Telephone No.:	
Residential Address:							
Mobile Number:			Email:			Private Residence	<input type="checkbox"/> Owned <input type="checkbox"/> Rented
Surname:				Christian Names:			
Date of Birth:			Licence No:			Telephone No.:	
Residential Address:							
Mobile Number:			Email:			Private Residence	<input type="checkbox"/> Owned <input type="checkbox"/> Rented
Surname:				Christian Names:			
Date of Birth:			Licence No:			Telephone No.:	
Residential Address:							
Mobile No:			Email:			Private Residence	<input type="checkbox"/> Owned <input type="checkbox"/> Rented

Please Note: Directors personal guarantees included with this form must be signed by all directors of the company in order for this application to be processed. If the Applicant is a Sole Director Company, guarantees from other parties may be required in order for this Application to be processed.

NAME OF PERSON TO CONTACT REGARDING PAYMENT OF ACCOUNT: _____

TELEPHONE: _____ EMAIL: _____

1. PAYMENT TERMS ("TERMS")

- 1.1. All goods or services delivered to the customer specified overleaf ("the Customer") by the Supplier must be paid for in full by the Customer on delivery of Goods ("the Due Date").
- 1.2. All discounts and/or rebates granted on this invoice are conditional on payment within the agreed terms.
- 1.3. If the Customer presents a cheque which is not honoured, the Customer shall be immediately liable to the Supplier for any monies owing to the Supplier by the Customer ("the Default Event"). A dishonour fee of \$25.00 shall be payable by the Customer for any cheque received from the Customer which is not honoured on presentation.
- 1.4. If a Default Event occurs, the Customer shall be liable to pay the Supplier interest at the rate of fourteen percent (14%) per month until paid, both before and (as a separate and independent obligation) after any judgment. This will not affect any other rights of the Supplier.
- 1.5. While any moneys are owed by the Customer to the Supplier as a result of a Default Event, the Customer is not entitled to set off any amounts owed by the Supplier or withhold any payments to the Supplier.
- 1.6. The Supplier is entitled to recover from the Customer, in addition to the price, any GST on the supply of the Goods and Services except to the extent that the prices expressly include GST.
- 1.7. The Customer is liable to pay to the Supplier and the Supplier may recover in full from the Customer a default fee, such default fee being an amount that is calculated at a rate of up to 12% of the amount payable at the time of the Default Event, but the default fee may not exceed \$750. It is acknowledged that the purpose of the default fee is to defray expense and cost that will be incurred by the Supplier as result of the Default Event, including by the Supplier exercising or enforcing or seeking to exercise or enforce a right under these Terms. Such default fee may be collected by the Supplier as a liquidated debt.
- 1.8. The Customer shall pay to the Supplier any and all of the Supplier's expenses including but not limited to any legal costs (on an indemnity basis) and other expenses payable under these terms and conditions together with any collection costs or dishonoured cheque fees incurred in connection with the enforcement of, or the preservation of any rights under these Terms. Such costs and other expenses as well as interest payable at the rate mentioned in clause 1.4 may be recovered as a liquidated debt.
- 1.9. Should a Default Event occur, the Supplier may terminate this Agreement forthwith.

2. GENERAL

- 2.1. The Customer warrants that the Goods supplied under cover of this invoice are for use in a commercial operation and are not for personal (consumer) consumption.
- 2.2. In the event that the whole or any part or parts of any Clause in these Terms is found to be unenforceable by a Court then such Clause or part thereof shall be to that extent severed from these Terms without effect to the validity and enforceability of the remainder of these Terms.

3. CREDIT CARD SURCHARGE

Payment of transactions by credit card will incur a surcharge, being a percentage of the invoice value, as follows – VISA, MasterCard, Bankcard 1.2% and – Amex 2.7%.

4. PRICES

All Goods will be invoiced at the price ruling at the time of dispatch, as all Goods purchased by the Supplier from its suppliers are subject to increase at any time.

5. RETURNS

The Supplier shall not allow credit for returns unless the return of Goods is specifically authorised by the Supplier and the product is returned in a condition (original packaging and deemed to be re-saleable) which is satisfactory to the Supplier. Returned Goods and returned requested "buy ins" if accepted by the Supplier, may attract a restocking fee of 25% in certain situations.

6. DELIVERY

- 6.1. Delivery dates are estimates only. The goods will be dispatched to an address or addresses nominated by the Customer or the Customer's employee/agent. If the Customer, employee or agent do not provide payment for the Goods upon delivery, the Supplier will instruct its employee or contractor to return the Goods to the warehouse.
- 6.2. The Supplier may at its discretion levy an "uneconomic delivery charge" for deliveries below a certain value. This charge will be itemized on the invoice.
- 6.3. The Supplier may at its discretion levy a separate "delivery charge" the purpose for which will be itemized on the invoice.

7. LIABILITY OF THE SUPPLIER

- 7.1. If under any law, any terms which apply to the supply of goods or services under these Terms cannot legally be excluded, restricted or modified then those terms apply to the extent required by that law.
- 7.2. All terms which would otherwise be implied are excluded except as stated in these Terms.
- 7.3. The only remedy of the Customer against the Supplier for any loss, damage or liability whether in contract, tort, negligence or otherwise in connection with these Terms and/or goods and services, the Supplier's supply of the goods and services, or the Supplier's failure to supply the goods and services to the Customer, shall be limited to, in the Supplier's absolute discretion:-
 - 7.3.1. The replacement of the goods or supply of equivalent goods;
 - 7.3.2. The payment of the cost of replacing the goods or acquiring equivalent goods;
 - 7.3.3. Re-performing the services.
- 7.4. The Customer must satisfy itself as to the truth and accuracy of and may not rely for any purpose on any representation, warranty or other term made by or on behalf of the Supplier which is not set out in these Terms.
- 7.5. The Supplier is not liable for any damage, economic loss or loss of profits whether direct, indirect, general, special or consequential:-
 - 7.5.1. Arising out of a breach of an implied or expressed term; or
 - 7.5.2. Suffered as a result of the negligence of the Supplier or its employees or agents, apart from liability as set out in this clause.
- 7.6. If the Customer is a Consumer ("Consumer" has the meaning defined in Section 3 of the Competition and Consumer Act 2010) the goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the goods and services repaired or replaced if the goods and services fail to be of acceptable quality and the failure does not amount to a major failure.

8. RISK

- 8.1. For the purposes of the *Personal Property Securities Act 2009* (the "PPSA") (as amended from time to time) "goods" in this clause means any and all present and after acquired goods supplied by the Supplier to the Customer;
- 8.2. The goods shall be entirely at the risk (including loss, damage or deterioration) of the Customer as soon as they are dispatched from the Supplier's premises (the carrier of the goods shall be taken to be the agent of the Customer even if engaged or paid by the Supplier).
- 8.3. The Supplier retains full title to the goods until the Supplier receives payment in full for the goods and all other amounts owed by the Customer to the Supplier on delivery.
- 8.4. If a Default Event occurs and until all Monies have been paid:
 - 8.4.1. The Supplier has the right to call for or recover possession of the goods (for which purpose the Supplier's employees or agents may enter onto the Customer's premises) and the Customer must deliver up the goods if so directed by the Supplier;
 - 8.4.2. the Customer:
 - 8.4.2.1. agrees that the relationship between the Customer and the Supplier shall be fiduciary and the Customer shall keep the goods safely, securely and separately stored and marked in a manner which clearly indicates that they belong to the Supplier;
 - 8.4.2.2. has the right to resell the goods in the ordinary course of the Customer's business as the Supplier's fiduciary agent but must not otherwise dispose of or encumber the goods;
 - 8.4.2.3. shall not mix the goods with or attach them to other materials or otherwise make them unable to be returned to the Supplier in their original state;
 - 8.4.2.4. agrees that if the goods are incorporated with goods of the Customer, the resultant product shall become and be deemed to be the sole property of the Supplier. If the goods are incorporated in any way with the property of a party other than the Customer, the resultant product shall become and be deemed to be owned in common by the Supplier with that other party (or parties) on a pro-rata basis to be calculated by reference to the cost to the Customer of the incorporated materials; and

8.4.2.5. will hold any proceeds (as that term is defined in the PPSA) of any resale, disposal or other dealing with the goods or any product incorporating the goods (including sale or supply to a party other than the Customer) in trust for the Supplier and shall pay the proceeds into a separate fiduciary account to be held in trust for the Supplier until accounted for to the Supplier at the demand of the Supplier.

- 8.5. To avoid any doubt, for the purposes of the PPSA, it is the intention of the parties by this clause 8 that there is created for the benefit of the Supplier a Purchase Money Security Interest in the goods.
- 8.6. The Customer agrees that the Supplier may register any personal property security interest created by these Terms on the Personal Property Securities Register and the Customer waives its rights to receive a verification statement (as that term is defined in the PPSA) for any financing statement or financing change statement (as those terms are defined in the PPSA) registered by the Supplier in respect of any personal property of the Customer. The parties agree that, insofar as the provisions of Chapter 4 of the PPSA are for the benefit of the Customer or place an obligation on the Supplier, those provisions will apply only to the extent that they cannot be contracted out of or to the extent that the Supplier otherwise agrees in writing.
- 8.7. Despite this clause 8, the Supplier will be entitled to maintain an action against the Customer for the purchase price of the goods plus any interest, costs, charges and expenses notwithstanding the ownership of the goods delivered to the Customer has not yet passed or been transferred to the Customer.
- 9. If the Customer fails to pay the purchase price of the goods in full in accordance with the Terms, then the goods must be returned to the Supplier immediately on request. The appointment of a receiver, manager, administrator, provisional liquidator, liquidator or trustee in bankruptcy or if any proceedings are instituted for the bankruptcy or winding up of the Customer, is taken to be inconsistent with the rights of the Supplier. Failure to return the goods upon request entitles the Supplier to enter upon the premises containing the goods without liability for trespass or resulting damage and remove the goods whether they are fixed to land or a building and the Supplier may on taking possession resell the goods

10. FORCE MAJEURE

The Supplier shall not be liable for any delay or for the consequences of any delay in performing or failure to perform any of its obligations under these terms if such delay is due in full or in part to any cause whatsoever beyond its reasonable control. Such delay or failure shall not constitute a breach of these terms and the Supplier shall be entitled at its option to either extend the time for delivery or performance for a reasonable period or to determine the contract without any recourse by the Customer to any claim for damages.

11. ACCEPTANCE

- 11.1. The Customer authorises his/her/its servants and agents to take delivery on the Customer's behalf goods and services sold or provided to the Customer by the Supplier, and such authority shall continue until written notice of its revocation is expressly served upon the Supplier.
- 11.2. The Customer must within 24 hours after delivery inspect the goods and give the Supplier written notice of damage, shortages or anything else not in accordance with these Terms.
- 11.3. The Customer agrees to keep goods referred to in a notice given under this clause (and in the case of shortages the remainder of the goods delivered) in the condition in which they were delivered until the Supplier has inspected them. The Supplier agrees to inspect the goods as soon as reasonably practicable after receipt of the notice.
- 11.4. Goods are taken to be as ordered if:-
 - 11.4.1. The Customer does not give the notice referred to in this clause; or
 - 11.4.2. The goods referred to in a notice are used or damaged after delivery.
- 11.5. If the Supplier delivers less than the full quantity of goods the Customer may not reject those goods delivered.
- 11.6. If the Supplier delivers extra or different goods the Customer may reject only the extra or different goods.
- 11.7. If the Customer does not comply with this clause 11, the Customer shall be taken to have unconditionally accepted the goods and services.

12. JURISDICTION

These terms and conditions shall be governed by and construed in accordance with the laws of the State of Queensland. The parties submit to the exclusive jurisdiction of the Courts in Brisbane and agree that proceedings may be commenced in any court in Brisbane and consent to that court having jurisdiction by virtue of this Clause notwithstanding that the court would not have such jurisdiction without this consent.

13. NOTICE

- 13.1. Notice required to be given by the Customer to the Supplier pursuant to these Terms may be delivered to the Supplier personally to the Supplier at 75 Ebberrn Street Darra, QLD 4076, or sent by post to the Supplier's postal address at PO Box 3076, Mt Ommaney, QLD, 4074, or sent by facsimile to the Supplier at 07 3375 2055.
- 13.2. Notice will be taken as delivered when received by the Supplier.
- 13.3. Notice required to be given by the Supplier to the Customer pursuant to these Terms may be delivered by post to the Customer's last known address (and shall be taken as delivered on the second business day following posting), or by facsimile to the Customer's last known facsimile number (and will be taken to be received when a successful facsimile transmission is notified by the Supplier's fax machine), or by email to the last notified email address of the Customer (which will be taken to be received within 24 hours of the Supplier sending the email to the correct email address).

14. ENTIRE AGREEMENT

These Terms constitute the entire Agreement between the Supplier and the Customer notwithstanding any terms to the contrary on any documents supplied by the Customer or the Supplier. These Terms also apply notwithstanding all other negotiations, understandings, agreements, written or oral, express or implied.

15. ACKNOWLEDGEMENTS, DECLARATION AND CONSENTS

I/WE, the undersigned, acknowledge and declare and/or consent to:

- 15.1 that I/we have read and understood the Supplier's Terms and which form part of this Commercial Trading Application and agree that, if a Commercial Trading Application is granted, the Customer is bound by and subject to those Terms.
- 15.2 that the information provided in this Commercial Trading Application is true and correct, that no trader, partner or director has been bankrupt, executed a Scheme or Deed of Arrangement or compromised with creditors, or been a Director of any Company which has had an Agent for Mortgagee in Possession, Receiver or Official manager appointed, or entered into a Scheme of Arrangement or Composition with its creditors or gone into Liquidation.
- 15.3 that any account that may be provided by the Supplier pursuant to this Commercial Trading Application (and any goods and services provided by the Supplier pursuant to the account) is for business and commercial purposes and will be used wholly or predominantly for business and commercial purposes.
- 15.4 **SIGNING** (Note: for partnerships, all partners must sign; for companies, all directors are required to sign)

Name	Signature	Witness Name	Signature	Date:
Name	Signature	Witness Name	Signature	Date:
Name	Signature	Witness Name	Signature	Date: