

**TERMS OF TRADE &
CREDIT ACCOUNT APPLICATION
REFERENCE SCHEDULE**

1. CUSTOMER DETAILS

CUSTOMER NAME			
	ABN/ACN	TRADING NAME	
PHYSICAL ADDRESS			
POSTAL ADDRESS			
TELEPHONE		FACSIMILE	
EMAIL		WEBSITE	

2. CUSTOMER CONTACTS

MANAGER/DIRECTOR		MOBILE	
DIRECT PHONE		EMAIL	
ACCOUNTS CONTACT		MOBILE	
DIRECT PHONE		EMAIL	
AUTHORISED PERSONNEL (List here all other persons authorised to place orders on behalf of the Customer)			

3. EFT PAYMENT REQUIRED

All payments must be made direct to the following account:

Account name: Delys Pty Ltd
Bank: Commonwealth Bank of Australia
BSB number: 064 119
Account number: 1025 2545

4. CREDIT LIMIT REQUESTED

CREDIT LIMIT:	
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Please indicate the amount of credit you seek. Please note that the grant of a credit account and the amount of any permitted credit limit remains at the sole discretion of Delys Pty Ltd, and is subject to the attached terms.

5. PLEASE PROVIDE THREE CREDIT REFERENCES

5.1 SUPPLIERS NAME				
ADDRESS				
PHONE		FAX		EMAIL

5.2 SUPPLIERS NAME				
ADDRESS				
PHONE		FAX		EMAIL

5.3 SUPPLIERS NAME				
ADDRESS				
PHONE		FAX		EMAIL

6. CUSTOMER ACCEPTANCE

Delys Pty Ltd (A.C.N. 155 673 797) (“Delys Pty Ltd”) is a manufacturer of breads and other bakery products (hereafter “Bakery Products”). The Customer hereby requests Delys Pty Ltd to supply Bakery Products to the customer from time to time on and subject to the attached Terms of Trade and Credit. The Customer acknowledges that the grant of a credit account is subject to Delys Pty Ltd’ approval, which approval may be granted or withheld by Delys Pty Ltd in its sole and unfettered discretion. Further, the Customer acknowledges that if all or part of the information required in this Reference Schedule or otherwise requested by Delys Pty Ltd (eg a list of the Customer’s assets and liabilities) is not provided, then Delys Pty Ltd may not be able to assess the Customer’s credit application.

 Director/Secretary/Partner/Proprietor

 Director/Secretary/Partner/Proprietor

 Name (print)

 Name (print)

7. GUARANTEE AND INDEMNITY

To Delys Pty Ltd (A.C.N. 155 673 797) ("Delys Pty Ltd"). In consideration of Delys Pty Ltd agreeing to supply bakery products to the Customer subject to the attached Terms of Trade and Credit ("the Terms"), the Guarantor hereby: (a) guarantees to Delys Pty Ltd the due performance and observance by the Customer of all its obligations (whether positive or negative) under the said Terms, including but not limited to the payment of all moneys that the Customer hereafter becomes actually or contingently liable to pay to Delys Pty Ltd on any account whatsoever ("the Relevant Obligations"), and (b) indemnifies and agrees to hold harmless Delys Pty Ltd against any loss or damage, including legal and administrative costs and expenses, incurred or suffered by Delys Pty Ltd that in any way relates to or arises out of the failure of the Customer to observe or perform the said Terms and or Relevant Obligations. This is a continuing guarantee and indemnity, and Delys Pty Ltd may act as though the Guarantor were the principal debtor under the said Terms. The Guarantor hereby waives all its rights as surety and agrees that its liabilities hereunder will not be affected or discharged by any act or omission of Delys Pty Ltd or by anything else that might otherwise affect such liabilities under law or otherwise including but not limited to (i) any variation or replacement of the Terms, (ii) the granting of any extension of time or other indulgence to the Customer, (iii) the release of the Customer or of any one or more Guarantor from their obligations, or (iv) the release, loss of, impairment of, failure to obtain, register or otherwise perfect any security. Clauses 3.5, 6.1, 9, 10, 11 and 13 of the Terms are incorporated into this guarantee and indemnity with appropriate changes, as though references therein to "You" were references to the Guarantor, references therein to "the Application" were to your proposal to act as a Guarantor for the Customer hereunder, and references therein to "the Terms" were references to the terms of this guarantee and indemnity. Each Guarantor executes this guarantee and indemnity as a deed poll for Delys Pty Ltd' benefit.

In this guarantee and indemnity, "**Guarantor**" means each of the following, jointly and severally:

Name and address of First Guarantor:

Name and address of Second Guarantor (if any):

Signed sealed and delivered by the said First Guarantor

Signature of First Guarantor

Witness's name and signature

Signed sealed and delivered by the said Second Guarantor

Signature of Second Guarantor

Witness's name and signature

TERMS OF TRADE AND CREDIT

BAKERY SUPPLIES

1. You hereby request Delys Pty Ltd to agree to supply Bakery Products to you on credit subject to these Terms. Should this request be granted, you acknowledge and agree that: (a) the supply by Delys Pty Ltd of any Bakery Products to you hereafter will be on and subject to these Terms, and (b) these Terms will prevail over and operate to the exclusion of any other terms on which you at any time submit or purport to submit any purchase order to Delys Pty Ltd.
2. If the request in clause 1.1 is granted, Delys Pty Ltd will establish a credit account in your name and set the credit limit for same. The credit limit may, but need not be, the amount specified by you in Item 4. From time to time, on giving prior notice to you, Delys Pty Ltd may (a) withdraw or re-establish this credit facility, or (b) set, increase or reduce the credit limit. Such variation shall commence at the start of the Approved Credit Period immediately following the Approved Credit Period in which such notice is given to you.
3. You warrant that any person named in or for the purposes of Item 2 of the Reference Schedule is authorised to operate the Account on your behalf.

ORDERS

1. Subject to clause 2.2, all orders must be placed with Delys Pty Ltd at least two days prior to the Delivery Date.
2. Large Orders must be placed with Delys Pty Ltd at least one week, and confirmed at least two days, prior to the Delivery Date.
3. Subject to clauses 2.4 and 2.5, all orders are final.
4. Notwithstanding clause 2.3, You may cancel any order provided you give Delys Pty Ltd notice of cancellation by 10:00 pm on that date which is two days prior to the Delivery Date;
5. Notwithstanding anything in these Terms to the contrary, Delys Pty Ltd may at any time prior to the Delivery Date reject any order placed by you or on your behalf if:
 - (i) Delys Pty Ltd forms the opinion that it does not have the resources, or adequate resources, including but not limited to labour, ingredients or available time, to satisfy your order;
 - (ii) Delys Pty Ltd forms the opinion that it cannot comply with any requirements stipulated as part of your order;
 - (iii) You fail to pay for any Bakery Products in the time and in the manner specified in these Terms; or
 - (iv) You are otherwise in default, or deemed to be in default, of any of Your Obligations to Delys Pty Ltd under these Terms or under any other agreement with Delys Pty Ltd.
6. Any Bakery Products ordered, or purportedly ordered, by you or on your behalf shall be deemed to have been duly delivered to you upon Delys Pty Ltd causing same to be left at the business address stated in Item 1 of the Reference Schedule or at such other address nominated in your order, or upon Delys Pty Ltd otherwise causing same to be made available for collection by you at Delys Pty Ltd's principal place of business, regardless of: (a) whether or not such place is attended at the time of such delivery; and (b) whether or not delivery is acknowledged or otherwise accepted by you or on your behalf at the relevant time.

PAYMENT

3. You must pay for all Bakery Products at Delys Pty Ltd's prevailing prices as at the date of your invoice. Delys Pty Ltd may vary its prices at any time without prior notice to you. A copy of Delys Pty Ltd's price list is available upon request.
- 3.2. In addition to the list price for any Bakery Products, you must pay to Delys Pty Ltd any delivery charges and surcharges specified in these Terms from time to time.
- 3.3. Subject to these Terms, the Agreed Price (including GST) in respect of any Bakery Products supplied by Delys Pty Ltd to You on credit from time to time during each week shall be debited to the Account.
- 3.4. You must pay to Delys Pty Ltd, without any setoff, counterclaim, cross-claim, withholding or deduction whatsoever, the outstanding balance of your Account as at 5:00pm on Friday of each week within the Approved Credit Period, whether or not Delys Pty Ltd has delivered a Tax Invoice to you in respect thereof.
- 3.5. You must pay interest calculated at the rate of sixteen per centum (16%) per annum on all overdue amounts under these Terms or any other agreement between You and Delys Pty Ltd.
- 3.6. Unless, Delys Pty Ltd otherwise agrees, you must make all payments only via direct deposit into Delys Pty Ltd's account specified in Item 3 of the Reference Schedule.
- 3.7. If you dispute any Tax Invoice or statement of Account issued by Delys Pty Ltd, you must notify Delys Pty Ltd in writing within three days of receiving same about the existence of any such dispute and your reasons for same, failing which the full amount of the Tax Invoice or statement of account, as the case may be, shall be conclusively deemed to be due and payable by You.
- 3.8. You hereby release and discharge Crust and Co from any Claim you may have from time to time in respect of any alleged overpayment save where you have otherwise paid the whole of the Agreed Price in accordance with clause 3.4 and complied with clause 3.7.
- 3.9. Any objection to the quantity, merchantable quality, fitness for purpose, correspondence with description or correspondence with sample of any Bakery Products supplied by or on behalf of Delys Pty Ltd must be notified in writing by you to the Delys Pty Ltd within three days of delivery, failing which you hereby agree that such Goods shall be deemed to be: (a) reasonably fit for their purpose, or for any specific purpose previously communicated to Delys Pty Ltd; (b) of sound and merchantable quality; (c) without defect; (d) correct in quantity; and (e) consistent with any sample or description by reference to which they were supplied.

GST

4. Unless expressly stated otherwise, all amounts stated in these Terms are GST-exclusive.
- 4.1. If a Supply made under or in connection with these Terms or any other agreement between You and Delys Pty Ltd is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
 - (i) the Recipient of the Supply must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable); and
 - (ii) the Supplier must give the Recipient a Tax Invoice for the Supply.

DEFAULT

6. If you default in your Obligations hereunder, then notwithstanding anything herein to the contrary and in addition to any other Right Delys Pty Ltd may have, the unpaid balance (if any) of the Account shall immediately become due and payable as a liquidated debt, and at Delys Pty Ltd's option Delys Pty Ltd may: (i) enforce any charge or other security granted by you hereunder; and/or (ii) refuse or suspend supply to You, whether on credit or otherwise.
- 6.2. Without limiting the circumstances in which a default may occur, You shall be deemed to be in default of your Obligations hereunder where:
 - (i) You: (a) fail to pay to Delys Pty Ltd any moneys payable by You on any account whatsoever by the due date for the payment thereof, whether or not any formal demand has been made; (b) fail to observe, perform or fulfil any other term, covenant, condition or restriction on Your part (whether positive or negative) under this or any other agreement; (c) being a company, You enter into liquidation or a receiver or official manager or provisional liquidator is appointed to or in relation to You; (d) being a natural person, You commit any act of bankruptcy or have a creditor's petition presented against You or You enter into any personal insolvency agreement; or (e) being a partnership, paragraph 6.2(i)(c) or 6.2(i)(d) hereof applies to You or any of Your partners; or
 - (ii) Any change occurs in Your circumstances or in the circumstances of any Associate of Yours that in the unfettered opinion of Delys Pty Ltd is likely to affect Your ability to perform any of Your Obligations hereunder.

TERMINATION

7. Without limiting any other rights they may have, either party may terminate this agreement for any reason by giving the other party seven days notice in writing.
- 7.1. Notwithstanding anything herein to the contrary, Delys Pty Ltd may terminate this agreement without notice if you are or are deemed to be in default of any of Your Obligations hereunder or otherwise.
- 7.2. Termination of this agreement shall not prejudice the parties' accrued rights or Obligations.

LIABILITY AND INDEMNITIES

8. Although Delys Pty Ltd will endeavour to ensure that all Bakery Products supplied by it satisfy your requirements and are delivered by any Delivery Date specified by you, no Liability is accepted by Delys Pty Ltd, and to the fullest extent permitted by law all Liability is excluded, for any Loss arising from:
 - (i) any failure or delay in performance of any of Delys Pty Ltd's Obligations to you, under these Terms or otherwise, arising from any cause beyond its reasonable control;
 - (ii) any failure by Delys Pty Ltd to deliver Bakery Products which are (a) without defect, (b) correct in quantity, or (c) consistent with any sample or description by reference to which they were supplied;
 - (iii) any personal injury or death to any consumer of any Bakery Products; or
 - (iv) any negligence, dishonesty, misconduct or lack of skill on the part of Delys Pty Ltd or any of its employees or agents or contractors.
- 8.1. You hereby release, discharge and indemnify Delys Pty Ltd from and in respect of any and all Liability to which clause 8.1 applies.
- 8.2. You must ensure that you give Delys Pty Ltd written notice of any specific requirements you may have in relation to any Bakery Products you order, including but not limited to any ingredients which you require to be excluded from the manufacturing process. Unless otherwise agreed in writing with Delys Pty Ltd, you acknowledge and agree that the Bakery Products may include traces of milk, eggs, nut, nut products or other allergens.
- 8.3. You are liable for, and hereby indemnify Delys Pty Ltd from and against, all Loss and Liability incurred or suffered by Delys Pty Ltd in connection with:
 - (i) any act or negligent act or omission by You or Your employees, agents or contractors (including Delys Pty Ltd and its employees, agents or contractors);
 - (ii) any default by You of your Obligations hereunder or otherwise;
 - (iii) Delys Pty Ltd's exercise or purported exercise of any of its Rights, under these Terms or otherwise; or
 - (iv) Delys Pty Ltd's enforcement or attempted enforcement of any provision of these Terms, whether before during or after any legal proceeding.
- 8.4. Each indemnity contained herein is a continuing obligation notwithstanding any settlement of account or the termination of this agreement or the occurrence of any other thing, and it is not necessary for Delys Pty Ltd to incur expense or make payment before enforcing or making a claim under an indemnity.
- 8.5. To the extent that the indemnity in clause 8.4 does not apply and subject to clauses 8.8 and 8.10, any Liability incurred by Delys Pty Ltd, however caused (including by the negligence of Delys Pty Ltd or any of its employees, agents or contractors), in connection with these Terms or any Bakery Products is limited to the lesser of:
 - (i) \$100; and
 - (ii) Delys Pty Ltd supplying the Bakery Products again.
- 8.6. The limitation in clause 8.6(i) is an aggregate limit for all Claims, whenever made.
- 8.7. Subject to clause 8.10, Delys Pty Ltd is not liable for any Consequential Loss however caused.
- 8.8. For clarity, and without limiting clauses 8.6 and 8.8, clauses 8.6 and 8.8 are to apply in connection with a breach of these Terms, anticipated breach of these Terms and other conduct regardless of the seriousness or nature of that breach, anticipated breach or other conduct.
- 8.9. If the *Competition and Consumer Act 2010* (Cth) or any other legislation implies or imposes a condition, warranty or guarantee into (or in addition to) these Terms in respect of the Bakery Products supplied, and Delys Pty Ltd's liability for breach of that condition, warranty or guarantee may not be excluded but may be limited, clauses 8.6 and 8.8 do not apply to that liability and instead Delys Pty Ltd's liability for such breach is limited to Delys Pty Ltd, at its election, supplying the Bakery Products again or paying the cost of having the Bakery Products supplied again.

PPSA

9. You hereby:
 - (i) grant to Delys Pty Ltd a security interest in all your present and after-acquired real and personal property, including any proceeds arising in respect of any dealing in any personal property aforesaid (collectively, the "*Collateral*");
 - (ii) consent to Delys Pty Ltd effecting and maintaining a registration on the PPSR (in any manner as Delys Pty Ltd deems fit in its sole and unfettered discretion) in relation to any security interest granted under or contemplated or constituted by these Terms;
 - (iii) agree to sign any documents and provide all assistance and information to Delys Pty Ltd as Delys Pty Ltd may request to facilitate the registration and maintenance or perfection of any security interest in the Collateral;
 - (iv) acknowledge and agree that Delys Pty Ltd may register a financing statement or a financing change statement (hereafter a "*Statement*") in respect of a security interest in the Collateral, and waive the right to receive notice of a verification statement in relation to any registration on the PPSR of a security interest in respect of any Collateral;
 - (v) undertake to do anything (in each case, including executing any new document or providing any information) that is required by Delys Pty Ltd to acquire and maintain one or more perfected security interests in the Collateral, to register a Statement, or to ensure that Delys Pty Ltd's security position or its Rights or obligations are not adversely affected; and
 - (vi) undertake not to register, or permit to be registered, a Statement, in relation to the Collateral in favour of a third party without Delys Pty Ltd's written consent.
- 9.1. If Chapter 4 of the PPSA would otherwise apply and section 115(1) or 115(7) of the PPSA allows for the contracting out of provisions of the PPSA, the following sections of the PPSA will not apply and You will not have a right under them:
 - (i) 118 (to the extent that it allows a secured party to give notices to the grantor), 121(4), 130 (to the extent that it allows a secured party to give notices to the grantor), 132(3)(d), 132(4), 135, 142 and 143; and
 - (ii) 127, 129(2), 129(3), 130(1), 132, 134(2), 135, 136(3), 136(4), 136(5), and 137.
- 9.2. Unless otherwise agreed, to the extent permitted by the PPSA:
 - (i) You and Delys Pty Ltd agree to keep confidential and not to disclose information of the kind referred to in section 275(1) of the PPSA to an interested person, or any other information requested by an interested person; and
 - (ii) You hereby waive any right that You may have under section 275(7)(c) of the PPSA to authorise the disclosure of any information to which clause 9.3(i) applies.
- 9.3. The security interest granted hereunder is a charge. If for any reason it is necessary to determine the nature of this charge, it is a fixed and floating charge over Revolving Assets and a fixed charge over all other Collateral.
- 9.4. You must not register a security interest in any of Delys Pty Ltd's personal property. Unless the context otherwise requires, words or expressions used in this clause 9 which are defined in the PPSA shall have the meanings ascribed to them under the PPSA.

CREDIT REPORTING AND PRIVACY

10. You acknowledge and agree that before, during or after the provision of commercial credit ("credit") to You, Delys Pty Ltd may disclose information collected in the course of the Customer's application for credit hereunder ("the Application") to a credit reporting agency ("CRA") for the purpose of obtaining a credit report about You and/or allowing the CRA to create or maintain a credit information file containing information about You. Information which may be disclosed includes Your identity and the fact (if it be the case) that: You have applied for credit and the amount; Delys Pty Ltd is a provider of credit to You; payments have become overdue for more than 60 days for which recovery proceedings have been commenced; payments are no longer overdue; cheques drawn by You have

TERMS OF TRADE AND CREDIT

been dishonoured more than once; and/or in Delys Pty Ltd's opinion You have committed a serious credit infringement. To enable Delys Pty Ltd to assess the Application, You authorise Delys Pty Ltd to obtain a credit report containing personal information from Your credit information file from a CRA and to obtain information concerning Your commercial activities or commercial credit worthiness from a business which provides information about the commercial credit worthiness of persons. You authorise Delys Pty Ltd to disclose any report or personal information relating to You in Delys Pty Ltd's possession or control to a person who is currently or is required to be a Guarantor, or whom You indicate or have indicated is considering becoming a guarantor in respect of Your obligations hereunder, for the purposes of enabling any prospective guarantor to decide whether or not to act as a guarantor, or for the purposes of keeping any Guarantor, from time to time, informed about the Guarantee. You authorise Delys Pty Ltd to give to and obtain from credit providers named in the Application or in any credit report issued by a credit agency relating to You or any other creditor of Yours, information about Your credit arrangements. Such information may be used for assessing an application by You for credit; assisting You to avoid defaulting on Your credit obligations; notifying credit providers of a default by You; and/or assessing Your credit worthiness. You acknowledge that: (a) information which may be given to any current or prospective guarantor or to any other credit provider includes any information about Your credit worthiness, credit standing, credit history or credit capacity, and (b) unless the context otherwise requires, words and phrases not defined in these Terms but which are defined in the *Privacy Act 1988* (Cth) ("the Act") have the meanings in this clause as given in the Act. Subject to the Act, You irrevocably authorise and direct any supplier identified in the Application to disclose to Delys Pty Ltd such information as Delys Pty Ltd requires to assess the Application, including information regarding Your account, account history, or commercial credit worthiness. Delys Pty Ltd has no obligation to inform any Guarantor of any matter.

10.2. Individuals may request access to the personal information that Delys Pty Ltd has collected about them. Delys Pty Ltd may refuse access as permitted by the Act. If any individual thinks that the personal information Delys Pty Ltd holds about them is incorrect or out-of-date, he/she should contact Delys Pty Ltd.

11. GENERAL

11.1. Title to any Bakery Products supplied by Delys Pty Ltd to you or at your request shall not pass to you unless and until Delys Pty Ltd has received in full all moneys payable by you to Delys Pty Ltd on any account whatsoever. For the purposes of this clause, you agree that Delys Pty Ltd shall be deemed to not have received any moneys that are repaid or become payable or repayable by Delys Pty Ltd for any reason whatsoever to any personal representative, trustee in bankruptcy, receiver or liquidator appointed to you or in respect of any part of your goods or your estate, as the case may be.

11.2. Notwithstanding clause 11.1, all Bakery Products shall at your risk immediately upon delivery or deemed delivery of same to you.

11.3. You acknowledge and agree that, subject to any law to the contrary, Delys Pty Ltd does not guarantee that Bakery Products will appear exactly as they do in any photograph on any website or brochure published by Delys Pty Ltd or on its behalf.

11.4. Any amendment to these Terms must be agreed in writing. Any amendment proposed by Delys Pty Ltd shall commence on and from the date specified by Delys Pty Ltd or, in the absence of any such specification, on the date of your acceptance of same. If you do not accept any amendment proposed by Delys Pty Ltd within seven days after the date of such proposal, Delys Pty Ltd may terminate this agreement forthwith.

11.5. Any individual ("the Agent") accepting or purporting to accept these Terms on behalf of any corporation or partnership hereby warrants, in his or her personal capacity, that he or she is duly authorised to do so on behalf of the Customer and indemnifies Delys Pty Ltd from and in respect of any and all Loss or Liability Delys Pty Ltd incurs or sustains if the Customer fails to observe and perform all its Obligations under these Terms, including any Obligation to pay money. This is a continuing indemnity, and the Agent hereby waives all rights as surety.

11.6. You may not assign Your rights under these Terms.

11.7. These Terms supersede all previous agreements about their subject matter and embody the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in these Terms.

11.8. Queensland law governs this agreement. Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts.

11.9. You may have other or additional rights under an applicable law of Australia. These Terms are to be read down or modified so as to avoid any inconsistency with such law, but only to the extent that the law does not permit Your rights to be excluded, restricted or modified. Subject to the foregoing, should any term, covenant, condition, provision, stipulation or restriction herein be or become void, illegal or unenforceable, in whole or in part, then this agreement shall be read and construed as if that whole or part had been severed from the beginning and the remainder of this agreement shall remain in full force and effect.

11.10. A certificate signed by any director or senior manager of Delys Pty Ltd shall be conclusive evidence of any fact, matter or circumstance to which it relates.

11.11. Time is of the essence under this agreement.

11.12. Delys Pty Ltd's waiver of a default hereunder or of any Right arising upon such default must be in writing and signed by Delys Pty Ltd. Any such waiver shall not be construed or operate as a licence to You to repeat or continue any default, or as a waiver of any subsequent default whether of the like nature or not. This clause is solely for Delys Pty Ltd's benefit.

11.13. You must pay all fees, duties, charges or taxes (including stamp duty and GST) payable in respect of: (a) this agreement; (b) any thing supplied by Delys Pty Ltd to You hereunder; and (c) any security granted hereunder or the registration of same. In addition to its other Rights, if You fail to pay any amount hereunder then Delys Pty Ltd may pay it and recover same from You as a liquidated debt immediately due and payable.

11.14. You: (a) warrant that the information supplied by you in connection with your entry into these Terms is complete and not misleading; (b) agree to provide such details of Your financial position as may be required by Delys Pty Ltd from time to time; (c) charge all of Your real and personal property (present and future) with and to secure Your obligations hereunder; and (d) agree to execute and return within two days such other instruments deeds or documents of whatever kind as Delys Pty Ltd may demand to perfect such security, and in default thereof You hereby irrevocably appoint the officers of Delys Pty Ltd from time to time jointly and severally to execute same as Your attorney.

11.15. Without limiting clause 3.7, You shall have no entitlement in respect of, and Delys Pty Ltd shall have no Liability in relation to, any Claim against Delys Pty Ltd (whether presently known to or in the contemplation of either party) unless You commence proceedings in respect of any such Claim within six (6) months after the first occurrence of the events or circumstances on which the Claim is based. You hereby release and discharge Delys Pty Ltd from any and all Liability in respect of any Claim in respect of which you have no entitlement by virtue of this clause 11.15, and you agree that all such Claims are barred.

11.16. If You are a corporate entity, not being a public company, you must ensure that each of Your directors from time to time promptly execute and deliver to Delys Pty Ltd a Guarantee (with appropriate changes) whether or not any such Guarantee has been specifically requested by Delys Pty Ltd.

12. ACCEPTANCE

12.1. You may accept these Terms (or any amendment of same proposed by Delys Pty Ltd) by:
(i) signing and returning the acceptance contained in the Reference Schedule or accompanying any amendment of these Terms proposed by Delys Pty Ltd;
(ii) ordering additional Bakery Products from Delys Pty Ltd after Delys Pty Ltd has provided You with a copy of these Terms (or any amendment of same proposed by Delys Pty Ltd);
(iii) orally accepting these Terms (or any amendment of same proposed by Delys Pty Ltd); or
(iv) acting in any way that impliedly acknowledges an awareness and acceptance of these Terms (or any amendment of same proposed by Delys Pty Ltd).

13. DEFINITIONS AND INTERPRETATION

13.1. In this agreement, unless the context otherwise requires:

"Account" means the credit account established in accordance with clause 1.2.

"Approved Credit Period" means the period of 7 days from 5:00 pm Friday each week.

"Agreed Price" means any moneys payable by you under clauses 3.1 and 3.2, and includes any interest payable by you pursuant to clause 3.5.

"Associate" has the meaning in s318 of the *Income Tax Assessment Act 1936* (Cth).

"Bakery Products" means such breads and other bakery products as are manufactured by Delys Pty Ltd from time to time.

"Claim" means any claim, action, cause of action, suit, demand proceeding, notice, litigation, investigation or judgment whether based in contract, tort including negligence, restitution, or arising at law, in equity or under statute or otherwise.

"Customer" means the person identified as such in Item 1 of the Reference Schedule.

"Consequential Loss" includes but is not limited to direct or indirect loss, loss of revenue, loss of reputation, loss of profit, loss of actual or anticipated savings, lost opportunities (including opportunities to enter into arrangements with third parties), loss or damage in connection with Claims by third parties against You, or loss or corruption of data.

"Delivery Date" means the date specified in your purchase order as being the date by which You require any Bakery Products to be delivered or made available for collection.

"Delys Pty Ltd" means Delys Pty Ltd (A.C.N. 155 673 797).

"GST" has the meaning given in the GST Act.

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"Guarantee" means a guarantee and indemnity in terms of Item 7 of the Reference Schedule.

"Guarantor" means the person or persons (if any) giving or required to give a Guarantee hereunder, and includes but is not limited to any person named as such in the Reference Schedule.

"Large Orders" means any order exceeding 300 items.

"Liability" includes any and all liability whatsoever whether arising in contract, tort including negligence, under statute or otherwise, and includes liability for any Loss.

"Loss" includes all losses, Claims, damages, outgoing, charges, penalties, fines, delays, costs and expenses (including lawyers fees and expenses) of whatever description and whether present, unascertained, contingent or prospective and whether or not in the nature of Consequential Loss.

"Obligation" includes any legal, equitable, contractual, statutory or other obligation, commitment, covenant, duty, undertaking or Liability (in any case, whether positive or negative).

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"PPSR" means the Personal Property Securities Register established under the PPSA.

"Reference Schedule" means the Reference Schedule to which these Terms are attached.

"Revolving Assets" means any Collateral which is inventory, a negotiable instrument, plant machinery or equipment which is not inventory and has a value of less than \$1,000 or its equivalent, and money.

"Right" includes any legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, immunity, remedy, discretion or cause of action.

"Terms" means these Terms of Trade and Credit, and includes any price list, delivery fees and surcharges published by Delys Pty Ltd from time to time in relation to its Bakery Products.

13.2. In this agreement, unless the context otherwise requires:

(a) References to the singular includes the plural and vice versa;

(b) References to the whole include the part;

(c) References to "You", "you", "Your", "your", "Yours" or "yours" is a reference to the Customer.

(d) A reference to "the parties" is a reference to You and Delys Pty Ltd collectively, and a reference to "a party" is a reference to either of them;

(e) A reference to a party includes that party's successors, executors, administrators and assigns and, in the case of a trustee, any substituted or additional trustee;

(f) A reference to a "day" is a reference to a calendar day;

(g) A reference to a "business day" is to a day other than a Saturday, Sunday or public holiday in the place in which any act is required to be done hereunder;

(h) A reference to a clause or schedule is a reference to a clause in or schedule to these Terms;

(i) Other grammatical forms of a defined word or phrase have corresponding meanings;

(j) A reference to a document or agreement (including these Terms) is to that document or agreement as amended, supplemented, varied or replaced;

(k) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;

(l) a reference to a person includes an individual or natural person, a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity or organisation whether or not it comprises a separate legal entity;

(m) a reference to 'month' means calendar month;

(n) to the fullest extent permitted by law, every right, power or discretion granted to Delys Pty Ltd under these Terms is unfettered;

(o) headings are to be disregarded in interpreting these Terms;

(p) these Terms must not be construed *contra proferentum*; and

(q) words or expressions words not defined herein but which are defined in the GST Act have the same meaning in these Terms as given in the GST Act.