



## APPLICATION FOR A COMMERCIAL ACCOUNT

The Applicant (set out below) hereby applies to French Hat Small Good ABN.37727864992 FOODSERVICE their success or sand assign sand all off heir associated and subsidiary companies (collectively herein after referred to as "the Company") fora commercial account and the Applicant provides the following information in support of same:

### APPLICANT DETAILS

Trading Name:	Company Name(legal):
Business Commencement Date:	ABN:  ACN:
Trading Address:	Postal Address (If different to Trading address):
Store Opening Time for Deliveries: (nb. Clause 5 Terms Conditions)	Business Ph:  Business Fax:  Business Email:
Orders Contact Name:  Ph:  Email:	Accounts Contact Name:  Ph:  Email:

**DIRECTOR/PARTNER/SOLE TRADER DETAILS**

Full Name:	
Home Address:	
Mobile:	
Phone (H):	
Email:	

Gender	Date of Birth	Driver Lic.	Own Home

Full Name:	
Home Address:	
Mobile:	
Phone (H):	
Email:	

Gender	Date of Birth	Driver Lic.	Own Home

Full Name:	
Home Address:	
Mobile:	
Phone (H):	
Email:	

Gender	Date of Birth	Driver Lic.	Own Home

Estimated Weekly Purchase Amount Requested: \$..... Limit (office use): \$.....

Have you had previous dealings with us: yes/no account name: .....

**Method of Payment: COD- Cash ONLY OR Bank Internet Transfer 48 hr. before delivery. No Delivery on Credit**

**TRADE REFERENCES**

Supplier Name	Contact Person	Phone Number

**ACKNOWLEDGEMENTS& CONSENTS**

In support of the Application for a Commercial Account, the Applicant and the Proposed Guarantor(s) hereby provide the following Acknowledgements and Consents -

- a. I/we understand that I/we need not give any of the personal information requested in this application. However, I/we acknowledge that without the provision of such information it may not be possible to process his application or to provide us with an appropriate level of service.
- b. I/We acknowledge that at the time I/we provided to the Company any personal information, I/we have been made aware of the identity of the Company and how the Company can be contacted, the fact that I/we and/or the Company can gain access to the personal information, the purposes for which the personal information is collected, the organizations (or the types of organizations) to which the Company usually discloses information of that kind and the main consequences if all the information is not provided in accordance with clause 1.3 of the Australian Privacy Principles. See our website for our Privacy Policy statement.
- c. I/we consent to the use or disclosure of any personal information provided to or collected by or accumulated by the Company for any purposes whether it is related to the primary purpose of collection of the information or not and including disclosure of the personal information to the Company’s parent company, if any, which may be located overseas. Including but not limited to advising them of a default in payment.
- d. I/we agree that if any personal information provided to the Company is inaccurate, incomplete or not up to date, or such personal information becomes inaccurate, incomplete or not up to date at a later time, I/we shall inform the Company within 21days of the changes that need to be made to make that information accurate, complete and up to date.
- e. If the Company considers it relevant to assessing this application and/or the credit worthiness of me/us:
  - I. The Company may seek credit information – I/we agree to the Company obtaining from any credit reporting agency or body, a credit report containing personal credit information about me/us in relation to commercial credit provided or to be provided by the Company;
  - II. Exchanging information with other credit providers – I/we agree to the Company obtaining personal information about me/us from other credit providers whose names have provided or who may be names in a credit report; and
  - III. Agreement to a credit provider being given a consumer credit report to collect overdue payments on commercial credit – I/we agree that the Company may obtain a consumer credit report about me/us from any credit reporting agency or body, for the purpose of collection of overdue payments relating o commercial account owed by me/us.
- f. I/We acknowledge:
  - I. That I/we have read all of the pages making up this application (including the Trading Terms and Conditions and the Terms and Conditions of
  - II. Guarantee Indemnity that follow – and agree to be bound by them);
  - III. That the Trading Terms and Conditions will apply to the supply of any goods and/or services by the Company to the Applicant;
  - IV. That I/we am/are authorized to sign (and make) this application on behalf of the Applicant;
  - V. That all the information provided by me/us in this application is correct;
  - VI. And agree that if the Company approves and accepts this application and the accompanying offer to guarantee then:
    - The Applicant waives any requirement of communication of any such approval and acceptance by the Company to the Applicant; and
    - I/we the Proposed Guarantor’s waive(s)and requirement of communication of any such approval and acceptance to the Guarantor(s).

**(NOTE CLAUSE 11 RELATING SPECIFICALLY TO PAYMENT TERMS)**

**PERSON/S COMPLETING THIS APPLICATION AS PROPOSED GUARANTORS/OWNERS**

Name:  Position:	Signature:	Date:
Name:  Position:	Signature:	Date:
Name:  Position:	Signature:	Date:

**SECURED DEED OF GUARANTEE & INDEMNITY**

**NOTE: THIS IS A LEGALLY BINDING DOCUMENT - PLEASE READ & ALL OWNERS &/OR GUARANTORS TO SIGN**

This Deed Poll is given to Hat Chef SMALLGOODS ABN 37727864992 FOODSERVICE their successors and assigns and all of their associated and subsidiary companies (collectively referred to as the "Company") in this document.

From: The person/s who sign below as guarantor/s (collectively referred to as "Guarantor/s"). INCONSIDERATION of the Company providing or continuing to provide goods and/or services (herein after referred to as "Goods") to the Applicant (defined herein as the Applicant in the Application for Commercial Account accompanying this Secured Deed of Guarantee & Indemnity) I/we the Guarantor/s hereby irrevocably jointly and severally (if there is more than one of us) enter into this Secured Deed of Guarantee & Indemnity with the Company on the basis of the terms and conditions set out herein.

## TERMS AND CONDITIONS OF SECURED DEED OF GUARANTEE & INDEMNITY

Guarantor/s agree to be unconditionally bound to the following terms and conditions of this Guarantee & Indemnity:

1. If there is more than one Guarantor/s the obligations under this Guarantee & Indemnity are joint and several.
2. Guarantor/s hereby guarantees payment by the Applicant of all monies owing by it to the Company at any time for any reason, including for the supply of Goods to the Applicant by the Company.
3. In addition to 2 above and as a separate obligation, Guarantor/s hereby indemnify the Company against any loss suffered by the Company as a result of dealing with the Applicant, including but not limited to any loss suffered as a result of accepting an order for Goods from the Applicant and, should the Company have to take any action against the Applicant or the Guarantor/s, any and all expenses, costs, disbursements, legal costs (on a full indemnity basis); search fees and/or commercial agent's debt collection fees (including any commission that would be payable if the Applicant makes payment of the amount owing) incurred or to be incurred by the Company.
4. Guarantor/s acknowledge and agree that, in addition to the liabilities arising elsewhere in this Guarantee & Indemnity, if the Applicant fails to pay for Goods it orders from the Company they will make payment to the Company for the Goods as though they ordered them from the Company.
5. Guarantor/s acknowledges and agrees that they will be liable under this Guarantee & Indemnity without the need for any notice being given to them.
6. Guarantor/s acknowledge and agree that: (a) this Guarantee & Indemnity is given to the Company for a business and/or trade purpose on behalf of the Applicant; (b) they have undertaken their own enquiries into the ability of the Applicant to pay for Goods it orders from the Company; (c) they are satisfied that the Applicant is able to pay for Goods it orders from the Company now and in the future; and (d) should circumstances arise that will mean the Applicant will be unable to make payment for Goods it orders from the Company they will immediately advise the Company of same in writing.
7. Guarantor/s acknowledge and agree that this Guarantee & Indemnity will not be affected by: (a) the granting of any indulgence to the Applicant or any Guarantor/s including an extension of time for payment, the amount of credit allowed, amendment of the amount of credit allowed, acceptance of a lesser amount in full settlement or an amount owing or any other settlement (none of which require notice to the Guarantor/s).
8. In order to secure monies owing by the Applicant to the Company and compliance with their obligations under this Guarantee & Indemnity, Guarantor/s hereby unconditionally agree to charge all of their beneficial interest (either freehold or leasehold) in real or personal property held by the min favour of the Company.
9. Guarantor/s agree that by signing this Guarantee & Indemnity they are making an express representation as to a future matter for the purposes of section 4 of the CCA and that this representation is being relied upon by the Company as a basis for providing a Commercial Account to the Applicant.
10. Clauses 1, 16, 18, 19, 20, 21, 22 and 23 of the Trading Terms and Conditions that form part of the Application for Commercial account accompanying this Deed of Secured Guarantee & Indemnity shall apply to this Guarantee & Indemnity as though reproduced herein -- though with any reference to Applicant is to be read as a reference to the Guarantor/s.

### EXECUTED AS A DEED POLL

Signed, sealed and delivered in the presence of:

Signature of Witness:	Signature of Guarantor:                      Date:
	Address:
Name of Witness:	Name of Guarantor:

  

Signature of Witness:	Signature of Guarantor:                      Date:
	Address:
Name of Witness:	Name of Guarantor:

  

Signature of Witness:	Signature of Guarantor:                      Date:
	Address:
Name of Witness:	Name of Guarantor:

# TRADING TERMS AND CONDITIONS

## 1. Definitions

In these Trading Terms and Conditions the following definitions apply:

Agreement means any agreement for the supply of Goods by the Company to the Applicant; Applicant means the Person making the application for commercial account; Company means French Hat SMALLGOODS T/AS French Hat FOODSERVICE their successors and assigns and all of their associated and subsidiary companies; Account means any commercial account opened by the Company in favour of the Applicant by which the Applicant is able to purchase Goods from the Company on credit and/or COD basis; C h a r g e d Property means all of the rights, property, title, estate and interest of whatever kind and wherever situated and whether present or future in any freehold or leasehold property and/or real estate and in any Land which the Applicant now has or may hereafter have; Goods means goods and/or services supplied or to be supplied to the Applicant by the Company; Land means land and includes but is not limited to land as defined in the Real Property Act 1900 (NSW) and/or the Conveyancing Act 1919 (NSW) and/or their equivalents in other States or Territories of the Commonwealth of Australia; Loss includes but is not limited to any direct or indirect losses, consequential loss, claims, legal costs, demands, damages, consequential damage, liabilities, expenses, charges, suits, actions and/or penalties; Other Property means all presently existing and after-acquired legal or equitable right, estate or interest of the Applicant in any personal property, licenses, water rights, choses in action, goodwill, uncalled capital and called up (but unpaid) capital, wherever situated; Person includes natural persons, firms, incorporated associations, unincorporated associations, registered charities, partnerships, joint ventures, trusts, government or statutory authorities and corporations; and Terms and Conditions means these Trading Terms and Conditions.

## 2. Interpretation:

In these Terms and Conditions reference to:

- a. One gender includes others and the singular includes the plural;
- b. A Statute, regulation or provision of a statute (Law) includes (i) that Law as amended or re-enacted; (ii) a statute, regulation or provision enacted in replacement of that Law, and (iii) another regulation or statutory instrument or amendment made or issued under that Law;
- c. Payment includes repayment, discharge or satisfaction; and
- d. If the Applicant comprises two or more Persons, (i) a reference to the Applicant includes each and any two or more of them; and (ii) these Terms and Conditions bind each of them jointly
- e. and severally.

## 3. In consideration of the Company agreeing to provide a Commercial Account to the Applicant:

- a. The Applicant acknowledges and expressly agrees that these Terms and Conditions apply to and form part of each and every Agreement;
- b. The Applicant acknowledges and expressly agrees that these Terms and Conditions will prevail over any other terms and conditions.
- c. The Applicant acknowledges and expressly agrees that any request and/or order by the Applicant to the Company for Goods shall constitute confirmation by the Applicant of its acceptance and the operation of these Terms and Conditions;
- d. The Applicant warrants to the Company that the Commercial Account and/or any Agreement and/or any Goods are for commercial, business and/or trade purposes only;
- e. The Applicant acknowledges and agrees that the Company can vary the level of credit allowed (including to nil requiring cash on delivery or prior to delivery) to the Applicant by the Company at any time and in its absolute discretion without having to give notice to the Applicant;
- f. The Applicant shall provide written notification to the Company of any change in the Applicant's corporate structure or the sale of any business operated by the Applicant; and
- h. Should the Applicant provide written notification in accordance with (f) above it will still be liable for any Goods purchased on its Account opened for or on behalf of the Applicant until written notice is received by the Company and full payment is made with respect to all amounts owing.

## 4. Retention of Title

- a. It is the intention of the Company and agreed by the Applicant that (i) property in the Goods shall not pass until the Applicant has paid all amounts owing for the particular Goods and the Applicant has met all other obligations due to the Company under these Trading Terms and Conditions and; (ii) the Goods or the proceeds of the sale of the Goods shall be kept separate until the Company has received payment and all other obligations of the Applicant are met.
- b. It is further agreed that: (i) The Applicant shall not deal with the money of the Company in any way which may be adverse to the Company; and (ii) Until such time as ownership of the Goods shall pass from the Company to the Applicant the Company may give notice in writing to return the Goods or any of them to the Company (upon which notice the rights of the Applicant to obtain ownership or any other interest in the Goods shall cease); and (iii) If the Applicant fails to return the Goods that are the subject of such a notice then the Company (including through its agent/s and/

or attorney/s) may enter any land and/or premises owned or occupied by the Applicant at which the Company in its absolute discretion believes the Goods may be situated as the invitee of the Applicant (and the Applicant hereby irrevocably extends such an invitation) and take possession of such Goods without being responsible for any damage thereby caused; and (iv) The Applicant shall not charge the Goods in any way nor grant any interest in the Goods whilst they remain the property of the Company; and (v) The Company may commence proceedings to recover monies owing for the Goods as sold and delivered notwithstanding the fact that ownership of the Goods may not have passed to the Applicant because of these Trading Terms and Conditions.

## 5. Delivery of Goods

- a. The Company shall not be liable for any Loss arising in any way from any delay in delivery or any failure to deliver any Goods no matter how such delay or failure arises.
- b. Goods shall be deemed to be delivered to the Applicant as soon as they are ready for physical delivery to or collection by the Applicant.
- c. The Applicant agrees that the Company shall not be responsible for or under any duty to physically deliver or arrange for delivery of any Goods to the Applicant.
- d. The Company may elect to arrange such delivery at its discretion, which shall be without liability and at the Applicant's risk in all respects. Further to (c) above, if the Company elects to arrange delivery and there is nobody present at the delivery address at the time of attendance (whether or not it is before the opening time nominated by the Applicant) the Applicant hereby requests that the Company leave the Goods at the delivery address and, should the Company comply with such a request, the Company will not be held liable in any way for any loss that results from same – including any loss or damage to the Goods.
- e. The time for delivery of any Goods shall not, in any circumstances, be of the essence notwithstanding any representations (oral and/ or written) by the Company to the Applicant or any other person.
- f. The Applicant could pay the Company a delivery fee, such fees to be either the Company's Standard Delivery Fee (which may vary from time to time and which the Applicant is taken to know).
- g. The Applicant authorizes the Company to use the services of sub- contractors to undertake deliveries
- h. of Goods to the Applicant from time to time and the Applicant indemnifies the Company against any loss suffered as a result thereof.

## 6. The PPSA

- a. The Applicant may sell the Goods and/or Specific Collateral in the ordinary course of business but any proceeds of sale received by the Applicant must be held in trust for the Company and held separately and not mixed with any other funds.
- b. These Trading Terms and Conditions constitute a

security agreement for the purposes of the Personal Properties Security Act ("PPSA") and the Purchase Money Security Interest ("PMSI") is taken by the Company in all the Goods and/or Specific Collateral supplied by the Company to the Customer now or in the future and in addition the security includes all Goods and/or Specific Collateral sold by the Applicant to its customers. The Goods and/or Specific Collateral supplied by the Company to the Applicant constitute Collateral for the purposes of the PPSA.

- c. To the maximum extent permitted by law, the Applicant and the Company agree that the following provisions of the PPSA do not apply to the enforcement by the Company of its Security Interest in the Goods and/or Specific Collateral: sections 95, 118, 121(4), 125, 130, 132, 135, 137, 142 and 143.
- d. The Applicant also waives all requirements for the Company to give notices under the sections referred to in the preceding paragraph pursuant to section 144 of the PPSA.
- e. The Applicant acknowledges and agrees that the Company may apply to register a PMSI or Security Interest in the Goods and/or Specific Collateral at any time before or after delivery of the Goods and/or Specific Collateral.
- f. The Applicant waives its right under section 157 of the PPSA to receive notice of any Verification of the Registration.
- g. The Applicant and Customer agree that they will not disclose to any Interested Person any information pertaining to the Company's PMSI or Security Interest or these Trading Terms and Conditions. This obligation constitutes a Confidentiality Agreement for the purposes of section 275(6) of the PPSA.

## 7. Defects

- a. The Applicant agrees that it shall inspect the Goods upon delivery and must, within 48 hours of delivery, provide notification to the Company of any alleged defects, any short deliveries or any failure to fulfil any quotation or order.
- b. Should the Applicant fail to provide Notice of Defect to the Company as required then the Applicant expressly agrees that the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

## 8. Passing of Risk and When Goods Taken to be Sold

- a. Notwithstanding any statutory or other provision to the contrary, Goods are taken to be sold by the Company to the Applicant when there has been a delivery of the Goods, whether or not title or property in them has passed from the Company to the Applicant.
- b. Notwithstanding the retention of title provisions below, the risk of loss or damage to Goods shall pass to the Applicant upon delivery of the Goods.

## 9. Return of Goods

- a. The Company may, in its sole discretion and subject to any conditions it deems appropriate, agree to accept the return of Goods which remain in good order and condition, however any restocking fee levied by a third party as well as any applicable restocking fee charged by the Company may be debited to the Commercial Account of the Applicant.

## 10. Fees & Taxes

Except as may be expressly stated otherwise, the prices quoted by the Company for the supply of the Goods do not include sales tax, stamp duty or any other tax or duty (including, but not limited to, any GST) and the cost of sales tax, stamp duty, GST or any other tax shall be borne by the Applicant.

## 11. Payment Terms, Set Off & Discounts etc.

- a. The Applicant agrees to pay the Company for all Goods in accordance with these Terms and Conditions.
- b. The amounts listed on statements of account or invoices issued by the Company are payable in full within agreed payment terms.
- c. The Applicant agrees that should the Applicant fail to make any payment in accordance with (b) above: (i) all amounts that have been listed on statements of account or invoices issued to the Company to that time that have not been paid will become immediately due and payable; and (ii) the Company will be entitled to charge the Applicant interest on any amounts owing at the standard rate 15% per annum from the date they became due for payment; and (iii) At its complete discretion the Company may refuse to supply further Goods to the Applicant.
- d. The Applicant expressly agrees and acknowledges that it shall not be entitled to set-off in law or in equity or to apply any deduction from the amount payable to the Company, including without limitation any damages, losses, costs and/or expenses alleged to be recoverable from the Company by the Applicant as a consequence of any alleged breach of this Agreement or any credit claim or for any other reason until such time as the full payment of all monies set out on any invoices or statements of account is made to the Company.
- e. Any discount, rebate, special pricing etc. provided by the Company to the Applicant are granted at the sole discretion of the Company and are also conditional upon the Applicant making payment for any Goods in accordance with these Terms and Conditions. They will be removed at the discretion of the company if accounts are in arrears.
- f. The Applicant agrees to pay an Administration Fee of \$50.00 should a cheque provided to the Company by the Applicant not be met on presentation.

## 12. Warranties

Subject to clause 18, the Company warrants that Goods will, under proper use and/or installation, be free from any defects in construction or operation arising solely from faulty design, manufacture or workmanship on the part of the Company. Those parts and/or components which constitute Goods (or which form part of Goods) and which are not manufactured by the Company shall be warranted by the Company only to the extent that they are warranted by the relevant supplier or manufacturer in circumstances where the Company is able to pass the benefit of such warranty to the Applicant. In any event, the period of such warranties shall not exceed 3 months from the date of delivery.

## 13. Exclusions

The warranty set out in clause 17 does not apply where: (a) a defect arises from ordinary wear and tear, excessive heating, neglect, misuse, accident, lack of care or incorrect installation; (b) the Applicant has in any way modified, serviced or repaired the Goods; or (c) the Applicant has not complied with any written or oral instructions from either the manufacturer or the Company concerning the installation, use, operation or maintenance of the Goods or any training with the respect to the use of the Goods.

## 14. Acknowledgement

To the full extent permitted by law the Applicant acknowledges and agrees that: (a) it relies on its own skill and judgment in relation to the Goods, including but not limited to the intended use of the Goods and the cost of the Goods; and (b) the Company shall be under no liability for any unsuitability for any purpose of Goods irrespective of any knowledge it may possess as to the purpose for which the Goods were required by the Applicant; and (c) the Company would not provide a Commercial Account to the Applicant if the Applicant did not agree strictly to abide by these Terms and Conditions.

## 15. Indemnity

The Applicant unconditionally and irrevocably indemnifies and keeps indemnified the Company from and against any and all Loss which may be made or brought against or suffered or incurred by the Company, the Applicant and/or any third party including but not limited to:

- a. (Property damage): for any and all Loss which may be made or brought by or suffered or incurred by any person (including but not limited to the Company, the Applicant and/ or any third party) for any and all damage to that person's property (whether real or personal) arising in any way whatsoever out of or in connection with the carriage, use, installation, storage or keeping of any Goods;
- b. (Personal injury): for any and all Loss which may be made or brought by or suffered or incurred by any person (including but not limited to the Company, the Applicant and/ or any third party) for any injury such person may sustain arising in any way whatsoever out of or in connection with the carriage, use, installation,



- storage or keeping of any Goods;
- c. All expenses, costs, disbursements, legal costs (on a full indemnity basis); search fees and/or commercial agent's debt collection fees (including any commission that would be payable if the Applicant makes payment of the amount owing) incurred or to be incurred by the Company in relation to any action taken by the Company to attempt recovery of any monies owing by the Applicant to the Company or to attempt to take possession of any Goods pursuant to these Terms and Conditions (or otherwise) or to enforce any of its rights under these Terms and Conditions or any Agreement and
- d. Any Loss caused, whether directly or indirectly, by the unauthorized use of the Commercial Account.

## 16. Waiver

- a. Any waiver by the Company of strict compliance with these Terms and Conditions shall not be a deemed waiver by the Company unless it is in writing and: (i) it specifies the specific right which is being waived; and (ii) it is specifically referred to as a waiver; and (iii) it is signed by the Credit Manager of the Company.
- b. A single or partial exercise or waiver by the Company of a right will not prevent the Company from exercising that right or any other right at any time.

## 17. Unauthorized Use of Commercial Account

The Applicant acknowledges that: (a) The Company will not be liable in any way whatsoever for any unauthorized use of the Applicant's Commercial Account; and (b) the Applicant will nevertheless be liable to the Company for payment of any Goods ordered on the Applicant's Commercial Account even if such orders were made without the authority of the Applicant.

## 18. Amendment of Terms and Conditions

- a. The Applicant acknowledges and agrees that these Terms and Conditions may be amended by the Company at any time by providing written notice of such amendment to the Applicant; or
- b. Any such amendments to these Terms and Conditions shall apply to orders of Goods from the time notice is given.

## 19. Invalid or Unenforceable Terms etc.

Should any of these Terms and Conditions or any part of these Terms and Conditions be illegal, invalid or unenforceable for any reason they shall be severed from the other Terms and Conditions and shall not effect the remaining Terms and Conditions.

## 20. Service of Documents etc.

- a. Service of any documents, including but not limited to, notices, demands, originating process of legal proceedings or any other document required to be served or provided by the Company to the Applicant

under these Terms and Conditions or any law (collectively referred to as "Documents") shall be effected upon the Applicant by any of the following methods:

- (i) sending it by pre-paid ordinary post to the Applicant's principal place of business, trading address, postal address or registered office; (ii) sending it by email to the Applicant; (iii) sending it by facsimile to the Applicant; or (iv) delivering it to the Applicant's principal place of business, trading address, postal address or registered office. The addresses, email address or facsimile number used for the methods in (a) above may be the most recent ones provided by the Applicant to the Company in written form or may be the most recent ones ascertained by the Company through its own investigations.
- b. The method in (a) above chosen to serve Documents shall be at the absolute discretion of the Company.
- c. The methods in (a) above do not limit the use of any other methods for service of Documents available to the Company under any statute and/or law.
- d. Service of Documents in accordance with one of the methods in (a) is deemed to have been effective when the Company (by its authorized officers, agents or lawyers) does the thing required whether or not the Documents are received by the Applicant.
- e. The Applicant agrees not to dispute the service of Documents that have been served in accordance with this clause.
- f. An affidavit or statutory declaration on behalf of the Company will be conclusive proof of service of Documents under this clause.

## 21. Evidence in Legal Proceedings

A Certificate given by any authorized person on behalf of the Company in legal proceedings that certifies as to an amount of monies ("Debt") owing to the Company by the Applicant shall be prima facie evidence of: (i) the formation of any Agreement that relates to that Debt, including the ordering of the relevant Goods by the Applicant; and (ii) the delivery of the Goods to which that Debt relates to the Applicant by the Company; and (iii) the fact that the Goods where/are fit for the purpose for which they where supplied; and (iv) the fact that the Debt has not been paid; and (v) the fact that the Debt is owed by the Applicant to the Company.

## 22. Jurisdiction

- a. The Applicant expressly agrees that it is an essential term of these Terms and Conditions that any legal proceedings between the Company and the Applicant will be governed by the laws of the State of New South Wales and the Commonwealth of Australia, as applicable.
- b. The Applicant expressly agrees that it is an essential term of these Terms and Conditions that it will irrevocably submit to the exclusive jurisdiction of the courts of New South Wales for any legal proceedings between the Company and Applicant.
- c. The Applicant expressly agrees that it shall not

attempt to interfere in any way whatsoever with the choice of jurisdiction herein.

- d. The Applicant expressly agrees that it will not attempt to intervene with the jurisdiction of any court of New South Wales of the operation of these Terms and Conditions by seeking a stay (for example, under the Service and Execution of Process Act 1992) or by seeking to transfer the proceedings or by seeking the striking out or dismissal of the proceedings on the basis that they should be held and determined in a State or Territory other than New South Wales.
- e. The Applicant and the Company expressly agree that the Company is entitled to rely on these Terms and Conditions as a plea in bar to any application brought by the Applicant to have proceedings heard in the State other than New South Wales or to interfere with the operation of these Terms and Conditions.

### **23. Charging Clause**

- a. The Applicant, in order to secure all monies owing by the
- b. Applicant to the Company, hereby charges all of its beneficial interest in Charged Property in favor of the Company ("the Charge");
- c. The Applicant hereby irrevocably authorizes the Company to lodge a caveat over any or all of the Charged Property noting the Company's interest on the title(s) of the Charged Property, Land or Other Property until all monies payable have been paid to the Company;
- d. The Applicant here by agrees that if more than one Person comprises the Applicant, then each such Person separately grants the Charge;
- e. The Applicant hereby agrees and consents to the Company taking all actions necessary to give prompt effect to this security including by the lodging of any caveat upon the title of the Charges Property or Land or Other Property; and
- f. The Applicant consents to and requests the Company to appoint any such person which the Company deems fit to be the attorney of the Applicant for the execution of any document necessary to give effect to this charging clause.