# **Application For Credit Account**

## Nature of Organisation:

## Sole Trader 🞏 Partnership 🞏 Proprietary Company 🞏 Trust 🞏 Other 🞏

Trade Name:

Legal Name:

Delivery Address:

Postal Address:

Telephone: ( ) Fax: ( ) Mobile: ( )

Registered Office: E-Mail:

ACN Number: ABN Number:

Monthly Credit Limit:

Previous Address Details (If less than 2 years): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Details of Partners (if Partnership) Details of Directors (If Proprietary Company)**

**1.** Full Name: **1.** Full Name:

Home Address: Home Address:

Home Phone: Home Phone:

**2.** Full Name: **2.** Full Name:

Home Address: Home Address:

Home Phone: Home Phone:

Contact Person for Accounts:

Name and Branch of Bank:

Bank Account Number:

Solicitors Name and Address:

Accountants Name and Address:

Trade References: (excluding Credit Cards, Fuel Suppliers, Landlord, Power & Phone)

1. Phone No:

2. Phone No:

3. Phone No:

I certify that the above information is true and correct and that I am authorised to make this application for credit. In accordance with the Privacy Act (1988) I authorise any person or company to give information as may be required in response to credit Inquiries. I have read and understand the GENERAL TERMS AND CONDITIONS OF TRADE (overleaf) of Entyce Food Ingredients Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Application and agree to be bound by these conditions.

Signed: Date:

(Proprietor / Partner / Director / Authorised Signatory) Circle One

Full Name: Position:

**Guarantors Details (if required):**

Full Name: Occupation:

Address: Signature:

# **Corporate Guarantee and Indemnity**

IN CONSIDERATION of Entyce Food Ingredients Pty Ltd and its successors and assigns (“the Contractor”) at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_“the Customer” **“The Guarantor” UNCONDITIONALLY AND IRREVOCABLY:**

1. **GUARANTEE** the due and punctual payment to the Contractor of all moneys which are now owing to the Contractor by the Customer and all further sums of money from time to time owing to the Contractor by the Customer in respect of goods and services supplied or to be supplied by the Contractor to the Customer or any other liability of the Customer to the Contractor, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Contractor. If for any reason the Customer does not pay any amount owing to the Contractor the Guarantor will immediately on demand pay the relevant amount to the Contractor.
2. **HOLDS HARMLESS AND INDEMNIFIES** the Contractor on demand as a separate obligation against any liability (including but not limited to damages costs losses and legal fees (as defined hereunder in paragraph b hereof)) incurred by or assessed against the Contractor in connection with:
3. the supply of goods and/or services to the Customer; or
4. the recovery of moneys owing to the Contractor by the Customer including the enforcement of this guarantee, and including but not limited to the Contractor’s nominees costs of collection and legal costs calculated on a solicitor and own client basis; or
5. moneys paid by the Contractor with the Customer’s consent in settlement of a dispute that arises or results from a dispute between, the Contractor, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Contractor to the Customer.
6. **THE GUARANTOR FURTHER ACKNOWLEDGES AND AGREES THAT:**
7. This Guarantee and Indemnity shall constitute an unconditional and continuing guarantee and indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Contractor by the Customer and all obligations herein have been fully paid satisfied and performed.
8. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Contractor’s part (whether in respect of the Customer or any one or more of any other guarantor(s) or otherwise) and no failure by any named guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any guarantor. Without affecting the Customer’s obligations to the Contractor, each guarantor shall be a principal debtor and liable to the Contractor accordingly.
9. If any payment received or recovered by the Contractor is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Contractor shall each be restored to the position in which they would have been had no such payment been made.
10. This Guarantee and Indemnity shall bind each of the signatories notwithstanding that one or more of the persons named, as a “Guarantor” may never execute this Guarantee and Indemnity.
11. The term “Guarantor” whenever used in this Guarantee and Indemnity shall, if there is more than one person named as guarantor, mean and refer to each of them individually and both of them together unless the context otherwise requires, and the obligations and agreements on the part of the guarantor contained in this guarantee and Indemnity shall bind them jointly and severally.
12. Guarantor has been advised to obtain independent legal advice before executing this Guarantee but has either waived or declined to take independent legal advice. The Guarantor understands that it is liable for all amounts owing (both now and in the future) by the Customer to the Contractor.
13. The above information is to be used by the Contractor for all purposes in connection with the Contractor considering this guarantee and the subsequent enforcement of the same.
14. The Guarantor makes the representations and warranties set out in the Schedule. Each of the representations and warranties made by the Guarantor will be deemed to be repeated by the Guarantor continuously whilst this Guarantee and Indemnity remains in effect by reference to the facts and circumstances then existing.
15. The Guarantor irrevocably authorise the Contractor to obtain from any person or company any information, which the Contractor may require for credit reference purposes. The Guarantor further irrevocably authorises the Contractor to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Contractor as a result of this guarantee being actioned by the Contractor.

GUARANTOR

SIGNED BY THE DIRECTORS:

FULL NAMES:

ADDRESS:

SIGNATURE OF WITNESS:

NAME OF WITNESS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ OCCUPATION: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

ADDRESS:

Contact Number: \_\_\_ Witness email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXECUTED as a Deed this\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_

**If there is only one director, that director’s signature must be witnessed.**

SCHEDULE

1. **POWERS**

 The Guarantor has the power to enter into, and exercise its rights and perform and comply with its obligations under, this Guarantee and Indemnity;

1. **Corporate Action, Authorisations and Consents**

 Everything required to be done, including the taking of all necessary corporate action and the obtaining of all necessary consents, has been duly done in order to:

* 1. enable the Guarantor to lawfully enter into, exercise its rights and perform and comply with its obligations under, this Guarantee and Indemnity; and
	2. ensure that those obligations are legal, valid, binding and enforceable in accordance with their respective terms; and
1. **Obligations Binding**

The obligations of the Guarantor under this guarantee and Indemnity are legal, valid, binding and enforceable in accordance with their respective terms.

# **Personal/Directors Guarantee and Indemnity**

IN CONSIDERATION of Entyce Food Ingredients Pty Ltd and its successors and assigns (“the Contractor”)

At the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to

 (“The Customer”)

**I/WE UNCONDITIONALLY AND IRREVOCABLY:**

1. **GUARANTEE** the due and punctual payment to the Contractor of all moneys which are now owing to the Contractor by the Customer and all further sums of money from time to time owing to the Contractor by the Customer in respect of goods and services supplied or to be supplied by the Contractor to the Customer or any other liability of the Customer to the Contractor, and the due observance and performance by the Customer of all its obligations contained or implied in any contract with the Contractor. If for any reason the Customer does not pay any amount owing to the Contractor the Guarantor will immediately on demand pay the relevant amount to the Contractor.
2. **HOLD HARMLESS AND INDEMNIFY** the Contractor on demand as a separate obligation against any liability (including but not limited to damages costs losses and legal fees (as defined hereunder in paragraph b hereof)) incurred by or assessed against the Contractor in connection with:
3. The supply of goods and/or services to the Customer; or
4. The recovery of moneys owing to the Contractor by the Customer including the enforcement of this guarantee, and including but not limited to the Contractor’s nominees costs of collection and legal costs calculated on a solicitor and own client basis; or
5. Moneys paid by the Contractor with the Customer’s consent in settlement of a dispute that arises or results from a dispute between, the Contractor, the Customer, and a third party or any combination thereof, over the supply of goods and/or services by the Contractor to the Customer.

**I/WE FURTHER ACKNOWLEDGE AND AGREE THAT**

3. This Guarantee and Indemnity shall constitute an unconditional and continuing guarantee and indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the Contractor by the Customer and all obligations herein have been fully paid satisfied and performed.

4. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Contractor’s part (whether in respect of the Customer or any one or more of any other guarantor(s) or otherwise) and no failure by any named guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any guarantor. Without affecting the Customer’s obligations to the Contractor, each guarantor shall be a principal debtor and liable to the Contractor accordingly.

5. If any payment received or recovered by the Contractor is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Contractor shall each be restored to the position in which they would have been had no such payment been made.

1. This Guarantee and Indemnity shall bind each of the signatories notwithstanding that one or more of the persons named, as a “Guarantor” may never execute this Guarantee and Indemnity.
2. The term “Guarantor” whenever used in this Guarantee and Indemnity shall, if there is more than one person named as guarantor, mean and refer to each of them individually and both of them together unless the context otherwise requires, and the obligations and agreements on the part of the guarantor contained in this guarantee and Indemnity shall bind them jointly and severally.
3. I/We have been advised to obtain independent legal advice before executing this Guarantee but have either waived or declined to take independent legal advice. I/we understand that I/we am/are liable for all amounts owing (both now and in the future) by the Customer to the Contractor.

9. The above information is to be used by the Contractor for all purposes in connection with the Contractor considering this guarantee and the subsequent enforcement of the same.

1. I/we irrevocably authorise the Contractor to obtain from any person or company any information, which the Contractor may require for credit reference purposes. I/We further irrevocably authorise the Contractor to provide to any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this Guarantee and Indemnity and any subsequent dealings that I/we may have with the Contractor as a result of this guarantee being actioned by the Contractor.

GUARANTOR-1

SIGNED:

FULL NAME:

PRESENT ADDRESS:

SIGNATURE OF WITNESS:

NAME OF WITNESS: OCCUPATION:

PRESENT ADDRESS:

EXECUTED as a Deed this \_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20\_\_\_\_

GUARANTOR-2

SIGNED:

FULL NAME:

PRESENT ADDRESS:

SIGNATURE OF WITNESS:

NAME OF WITNESS: OCCUPATION:

PRESENT ADDRESS:

EXECUTED as a Deed this \_\_\_\_\_\_\_\_\_\_\_ day of\_\_\_\_\_\_\_\_ 20\_\_\_\_

 Note: 1. If the Customer is a sole trader or partnership the guarantor(s) should be some other suitable person(s).

2. If the Customer is a club or incorporated society the guarantor(s) should be the president and secretary or other committee member.

**WARNING: this is an important document**

**You should see your own lawyer or advisor before signing it**

**TERMS AND CONDITIONS OF SUPPLY**

**GENERAL**

1. Unless the Supplier otherwise agrees in writing and to the extent permitted by law, these terms and conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of Goods, and contain the only terms and conditions of supply (**Terms and Conditions**) to which the Supplier will be bound in connection with the supply of Goods to the Customer, and the Customer agrees that these Terms and Conditions will in all circumstances prevail over the Customer’s terms of purchase (if any) and any other documentation issued by the Customer.

**CREDIT APPLICATION**

1. The Supplier may in assessing the Customer’s application for credit or if the application is accepted and subsequently any payment becomes overdue, obtain and exchange personal information and seek from a credit reporting agency or other credit providers or a franchisor under any franchise agreement to which the Customer is a party, information about the Customer’s credit arrangement and the Customer understands that this information may include the Customer’s information regarding credit worthiness, credit history or credit capacity that these parties are allowed to give or receive pursuant to the *Privacy Act 1988* (Cth) & Privacy Amendment Act 2004.
2. The Supplier at its discretion reserves the right to refuse the Customer credit facilities.
3. The Customer must inform the Supplier in writing of any alteration to the Customer’s name, business or corporate structure not less than seven (7) days before the alteration.

**PRICES & PAYMENT**

1. Unless otherwise expressly agreed by the Supplier in writing all Goods will be charged at the Supplier's prices current as at the dates of order. Prices are subject to change without notice.
2. Unless otherwise agreed in writing, payment of all Goods shall be made on or prior to the 1st day of the month following that in which the Goods are invoiced.
3. Non-payment of any or all Goods by the due date will be considered by the Supplier to be a breach of these Terms and Conditions and, in addition to any other rights, the Supplier may undertake to:
	1. cancel the Customer's right to operate a commercial credit account with the Supplier, and
	2. charge interest on any outstanding amount, calculated from the day following the date upon which payment should have been made, at a rate equal to the Supplier's then current overdraft rate, as varied from time to time.
4. Monies owed by the Customer to the Supplier shall become due immediately upon the commencement of any act or proceeding in which the Customer’s solvency is involved.
5. The Supplier reserves the right to charge various fees and levies from time to time.
6. The Customer is liable for and must indemnify the Supplier against any and all losses, damages, liabilities costs, charges and expenses suffered or incurred by the Supplier arising directly or indirectly from or in connection with the Customer’s default, failure to pay, or breach of any of these Terms and Conditions and the Customer must pay all such amounts on demand.

**ORDERS & DELIVERY**

1. The Supplier may refuse to accept a purchase order, or part of a purchase order, placed by the Customer.
2. Delivery of the Goods shall be considered effected upon unloading at the Customer’s premises or upon collection by the Customer or the Customer's agent or courier (as the case may be).

**WARRANTY & LIABILITY**

1. Except where the Customer is a Consumer under the Australian Consumer Law (Schedule 2 Competition & Consumer Act 2010) and the Goods are subject to the Consumer Guarantees and other than as expressly set out in these Terms and Conditions, the Supplier excludes all implied terms, conditions, warranties and guarantees (whether statutory or otherwise) and all liability however arising for any loss or damage whether direct, indirect, special or consequential (including loss of profits or loss of goodwill) arising in any way out of or in connection with the Goods and/or these Terms and Conditions, except to the extent that the Customer suffers direct loss or damage (excluding any indirect, special or consequential loss, loss of profits and loss of good will) as a result of any negligent or willful act or omission of the Supplier.
2. Without prejudice or admission as to the operation of the Australian Consumer Law or any other legislation, if any term, condition, warranty or guarantee is implied into these Terms and Conditions or applies to the Goods which by law cannot be excluded, but may be limited, the Supplier's liability for any breach of any such term, condition, warranty or guarantee (including to any person claiming through the Customer) is limited, at the Supplier’s option, to:
	1. the replacement of the goods or the supply of equivalent goods; or
	2. the payment of the cost of replacing the goods or acquiring equivalent goods.

**PROPERTY & RISK - Retention of Title**

1. Property in and ownership of the Goods does not pass to the Customer until the Supplier has received payment in full of all monies owing to the Supplier by the Customer on all accounts.
2. The risk of loss or damage to the Goods shall pass to the Customer upon delivery to the Customer or upon collection of the Goods by the Customer or the Customer's agent or courier (as the case may be).
3. If the Customer fails to pay for any Goods within the period of credit extended by the Supplier to the Customer the Supplier may recover possession of all Goods (in which property has remained with the Supplier) at any site owned, possessed or controlled by the Customer and the Customer agrees that the Supplier has an irrevocable license to do so without incurring any liability to the Customer or any person claiming through the Customer.

**PERSONAL PROPERTY SECURITY ACT 2009**

1. The Customer consents to the Supplier maintaining, protecting and perfecting its right, title and interest in any Goods or other personal property supplied by the Supplier to the Customer and the proceeds of such Goods or other personal property, by registration under the PPS Law, and agrees to do anything reasonably requested by the Supplier to enable it to do so (including without limitation amending these Terms and Conditions or executing a new agreement).
2. For the purposes of the PPS Law, the Customer and Supplier contract out of each provision which, under section 115(1) of the PPSA, they are permitted to contract out of (except sections 117, 118, 120, 123, 125, 126, 128, 129 and 134 of the PPSA), and the Customer waives its right to receive each notice or statement which, under section 157(3) of the PPSA, it is permitted to waive.
3. The Customer waives its right to receive anything from the Supplier under section 275 of the PPSA, inclusive of any Verification Statement and/or confirmation of registration of a Financing Statement and agrees not to make any request of the Supplier under that section. The Supplier and the Customer agree for the purposes of section 275(6) of the PPSA that neither of them will disclose information of the kind mentioned in section 275(1) of the PPSA.
4. All costs and expenses arising as a result of actions taken pursuant to clause [19](#_Ref311797107) of these Terms and Conditions will be for the account of the Customer.

**FORCE MAJEURE**

1. An obligation of the Supplier under these Terms and Conditions (including without limitation the obligation to supply Goods) is suspended for the time and to the extent the Supplier is prevented from or delayed in performing the relevant obligation by any circumstances beyond the reasonable control of the Supplier including without limitation an act of God, war, acts of terror, unlawful acts against public order or authority, restraint of a government agency, strikes, lockouts, raw material shortages, accidents or breakdowns in plant or machinery or failure of delivery by the Supplier's suppliers (**Force Majeure Event**).
2. The Supplier shall not under any circumstances be liable to the Customer for any loss or damage suffered or incurred by the Customer arising from or in connection with the Supplier's failure or delay in performing the relevant obligation.
3. The Supplier may terminate any purchase order or these Terms and Conditions if, in the Supplier's reasonable opinion, it believes a Force Majeure Event will prevent the Supplier from supplying Goods indefinitely.

**TERMINATION**

1. These Terms and Conditions shall terminate immediately upon written notice from the Supplier to the Customer.
2. The termination of these Terms and Conditions shall be without prejudice to the rights of either party against the other in respect of anything done or omitted under these Terms and Conditions prior to such termination or in respect of any sum and/or other claims outstanding at the time of termination.

**WAIVER**

1. Failure by the Supplier to enforce any of these Terms and Conditions shall not be construed as a waiver of any of the Supplier’s rights hereunder or a waiver of a continuing breach.
A waiver of any right of the Supplier must be in writing and signed by the Supplier.

**ACCEPTANCE**

1. Acceptance by the Customer of these Terms and Conditions as amended from time to time may be by any one of the following ways:
	1. By signing and returning a copy of these Terms and Conditions
	2. By performing an act that is done with the intention of adopting or accepting these Terms and Conditions after receiving them, including but not limited to continuing to order goods.

**JURISDICTION**

1. The proper law of all agreements arising between the Supplier and the Customer is the law of the State of Victoria and the parties agree that all claims and disputes relating to the Goods shall be determined in the Court of competent jurisdiction nearest Melbourne.

**I/We, the undersigned, declare that:**

I/We acknowledge and agree to the Terms and Conditions of Supply, and acknowledge that the Terms and Conditions of Supply may be amended by Entyce from time to time. I/We are duly authorized to agree to the Terms and Conditions of Supply on behalf of the Customer;

1. All of the information supplied herein is true in every detail;
2. I/We acknowledge that if credit is given by the Supplier this will be done in reliance upon the information supplied by me/us hereon;
3. I/We have the authority to pledge credit on behalf of the applicant;
4. I/We agree, at the request of the Supplier, to enter into a security agreement with the Supplier to grant in favour of the Supplier, a Security Interest (as per Section 18 above) in all of our present and after acquired property relating to that which is supplied by Entyce Food Ingredients Pty Ltd;
5. I/We, being individual applicants, hereby charge all of the applicants' interest in real property both present and future in favour of Entyce Food Ingredients Pty Ltd as security for all monies outstanding to Entyce Food Ingredients Pty Ltd from time to time;
6. Consent is given to the Supplier to lodge a caveat if deemed necessary due to payment default.

Signature: Name: Date: / / Position:

Signature: Name: Date: / / Position.

Signature: Name: Date: / / Position:

Signature: Name: Date: / / Position:

(IF A COMPANY - To be signed by all directors. IF A PARTNERSHIP - To be signed by all partners).

**VERIFICATION OF IDENTITY (VOI):**

ALL CUSTOMER SIGNATORIES MUST ATTACH A COPY OF THEIR CURRENT:

1. Driver’s License, OR
2. Passport