



**PO Box 3096
BUNDABERG
QLD 4670**

Setlex Pty Ltd
ACN 010 483 600 as Trustee
ABN 38 509 899 256

**30 Production Street
BUNDABERG
QLD 4670**
TEL: (07) 41 534 222
FAX: (07) 41 534 296

Email: foodservice@rumcityfoods.com.au

PLEASE NOTE NO STOCK WILL BE SUPPLIED UNTIL THE COMPLETION OF A CREDIT APPLICATION

The following information **MUST** be completed before an account can be issued:

1. Name: The registered entity of the business.
2. Full Trading Name: Either the name the business is registered as or the physical name on the building. If these names differ, we require both.
3. ABN: If you are a new business waiting for your ABN to be issued, please mark this on your application and inform one of the Rum City Foods office staff. You will be required to provide your ABN to us as soon as it has been issued.
4. Registered Address: The registered address is normally the address of the business' accountant.
5. Full Trading Address: The address of the business where the stock is to be physically delivered.
6. Invoice Address: The invoice address should be either the physical address of the business or a Post Office Box.
7. Accounts Contact: Please ensure we have a name as well as a contact phone number and either a fax or email address for all account enquiries should we require them.
8. Private Address: The personal address of the registered owner/s of the business. If the business is in partnership, please list the private addresses of all those who are attached to the business, as well as license numbers.
9. Credit References: We require at least two (2) credit references with a phone or fax contact for all accounts seeking terms greater than C.O.D. If no credit references are supplied, Cash on Delivery account will be given.
10. Privacy Authority: This section needs to be signed in order for Rum City Foods to access information on your account history from the credit references provided. If no credit references are provided, the privacy authority does not need to be signed.
11. Guarantee: This must be signed by all registered owners of the business for all accounts regardless of the terms.
12. Terms and Conditions: The Terms and Conditions annexed will apply should your application be accepted.



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QLD 4670

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THE APPLICANT

Date of Application: _____

- ☐ Registered Company ☐ Partnership ☐ Sole Trader ☐ Govt Department
☐ Club/Association ☐ Trustee ☐ Other

Name: _____ ACN: _____

ABN: _____

Full Trading Name: _____

Registered Office Address: _____

Full Trading Address: _____

Address for Invoicing: _____

Accounts Contact: _____ Business Phone: _____

Fax: _____ Email: _____ Website: _____

Full Name and Private Address of Directors/Proprietors/Owners:

1. _____ Licence No: _____ DOB: _____

Private Address: _____ Postcode: _____

2. _____ Licence No: _____ DOB: _____

Private Address: _____ Postcode: _____

3. _____ Licence No: _____ DOB: _____

Private Address: _____ Postcode: _____

4. _____ Licence No: _____ DOB: _____

Private Address: _____ Postcode: _____

Credit References (Major Suppliers)

1. _____ Phone: _____ Fax: _____

2. _____ Phone: _____ Fax: _____

3. _____ Phone: _____ Fax: _____

AGREEMENT AND PRIVACY AUTHORITY

In consideration of Rum City Foods ("the Distributor") providing goods on credit (should this application be successful):

I/we apply to trade with the Distributor in accordance with the attached Terms and Conditions of Business and shall observe and perform those Terms and Conditions if this application is accepted.

I/We acknowledge that the Distributor has informed me/us, in accordance with s.18E(8)(c) of the Privacy Act 1988, that certain items of personal information about me/us contained in this application and permitted to be kept on a credit information file might be disclosed to a credit reporting agency and to Parmalat Australia Ltd (Parmalat). This information includes among other things, particulars as to my/our identity, the fact that an application for credit was made and the amount of credit sought, details of current providers of credit and details of any credit at least 60 days overdue, cheques dishonoured and serious credit infringements.

To assist in the processing of this credit application, I/we hereby authorise the distributor, its successors and/or assigns to:

- (a) Obtain information about my personal or commercial credit worthiness from my bank or any trade referee disclosed in this document and any other credit provider and credit reporting agency for the purpose of assessing the application for credit, or in connection with any guarantee;

- (b) Use, disclose or exchange with other credit providers information about my personal or commercial credit arrangements in order to assess the application for credit (including whether to accept as Guarantor any person signing), monitor credit worthiness and collect overdue accounts;
- (c) Disclose the contents of the credit report b a credit reporting agency to the Distributor's solicitors or mercantile agents.

To assist in the efficient distribution of products to me by the Distributor, I/we herby authorise the Distributor, its successors and/or assigns to
Disclose to Parmalat any information, including personal, credit and sales and trading information about me, stored or held by the Distributor.

I/We agree that if the Distributor approves the borrower's application for credit, this agreement remains in force until the credit facility covered by
the borrower's application ceases in accordance with s.18K(1)(c) of the Privacy Act 1988.

Please sign below to confirm your written consent to the Agreement and Privacy Act consent above.

DATED THIS day of 20

NAMES AND SIGNATURES (all Parties must sign)

Name: _____ Title: _____ Signature: _____

Name: _____ Title: _____ Signature: _____

Name: _____ Title: _____ Signature: _____

DEED OF GUARANTEE AND INDEMNITY

In consideration of the Franchisee its successors and/or assigns ("the CREDITOR") agreeing from the date hereof to supply goods and/or services on credit to the Applicant. I,

Name: _____ Title: _____ Signature: _____

Name: _____ Title: _____ Signature: _____

Name: _____ Title: _____ Signature: _____

HEREBY JOINTLY AND SEVERALLY GUARANTEE, AND AGREE TO BE RESPONSIBLE for the punctual payment of all monies owing to the CREDITOR and compliance with all obligations (including but not limited to the obligations set out in the Terms and Conditions) which the APPLICANT owes now or may in the future owe to the CREDITOR for all goods and services that the CREDITOR may hereafter from time to time supply to the APPLICANT on any account whatsoever, subject to the following provisions:

1. I will indemnify the CREDITOR against any losses, costs, charges, expenses and/or damages of any nature, arising from any past, present and/or future dealing which it might incur as a result of any default by the APPLICANT or arising under this Guarantee.
2. This GUARANTEE is a continuing security and will not be affected and shall remain enforceable notwithstanding:
 - a) any failure of me to sign this GUARANTEE properly;
 - b) the APPLICANT incurring any obligations to the Creditor without the knowledge or consent of me;
 - c) any monies being unrecoverable by the CREDITOR from the APPLICANT for any reason at all;
 - d) the CREDITOR not complying with any agreement with the APPLICANT;
 - e) the CREDITOR failing to take any step to perfect, protect or enforce any right it may have, or granting any extension of time, release or other indulgence to the APPLICANT or to me;
 - f) any change in status, ownership or membership of the APPLICANT or of any of the GUARANTORS;
 - g) the death, incapacity, administration, bankruptcy, liquidation, receivership or insolvency of the APPLICANT or of one or more of the GUARANTORS;
 - h) that I cease to be a director of, or to have any relationship with the APPLICANT or there is a change in status or structure of the APPLICANT;
 - i) any variations to the terms of the credit provided by the CREDITOR to the APPLICANT (even if this increases my liability under this GUARANTEE);
 - j) the CREDITOR refusing further credit to the APPLICANT; or
 - k) by the release of any of the GUARANTORS or if this GUARANTEE is unenforceable against any one or more of the GUARANTORS.

3. I warrant, where the APPLICANT is a trust, that the APPLICANT has full authority as trustee to enter into agreements for the supply to it of goods or services, or both, on credit.

4. I irrevocably consent to service of any notices and/or court documents relating to this GUARANTEE by:

- a) posting it to or leaving it at my address as set out below; or
- b) posting it to or leaving it at another address as advised in writing by me to the CREDITOR at anytime.

5. I confirm that I have read the Privacy Authority in this Application and I agree to be bound by its terms.

6. I agree that any payment made to the CREDITOR and later avoided by the application of any statutory provisions shall be deemed not to discharge my liability hereunder and in any such event, the CREDITOR is to be restored the rights it would have had if the payment had not been made.

7. I agree that the CREDITOR may apply any payment it receives in reduction of any indebtedness of the APPLICANT in such manner and amount as the Creditor may decide irrespective of the age of the debt.

8. I/We hereby charge and grant a security interest in all my/our right, title and interest (whether existing or future) in any property of any nature whatsoever ("Property") to secure the payment of any money that I/we become liable to pay to the CREDITOR ("Charge"). To give further effect to the Charge I/we deliver to the CREDITOR within seven days of written request by the CREDITOR, an executed mortgage over any Property in registrable form that incorporates the CREDITOR'S standard covenants as prepared by the CREDITOR'S solicitors. I/we irrevocably appoint the CREDITOR and any solicitor nominated by the CREDITOR severally as my/our attorney to execute, obtain and/or register a mortgage, caveat or other instrument or thing to support the Charge in respect of the Property. If the Charge created by this clause is or becomes void or unenforceable, it may be severed from this GUARANTEE without any effect on its validity and I will not be exonerated from this GUARANTEE in whole or part, Nor will the CREDITOR'S rights, remedies or recourse against me in any way be prejudiced or adversely affected by such severance.

9. This GUARANTEE may be withdrawn by the GUARANTOR (or in the case of my death, by my legal representative) only upon the expiry of thirty (30) days from the day on which written notice of withdrawal is actually received by the CREDITOR but will continue in force in respect of the liability incurred up to the time the withdrawal takes effect. Upon receipt of the notice, the CREDITOR may no longer provide credit or supply goods or services to the Applicant.

10. If any provision of this GUARANTEE is unenforceable, the provision will be ineffective to the extent of the unenforceability, but will not invalidate the remainder of the GUARANTEE which will continue to have full force and effect.

11. I submit to the jurisdiction of the Courts of the State in which the CREDITOR resides.

12. Subject to the provisions of this GUARANTEE, this GUARANTEE and the Terms and Conditions constitute the sole and entire agreement between the parties and any representation, warranty, guarantee or other terms of any nature not contained in this GUARANTEE shall have no force or effect.

13. I confirm that I understand the nature and effect of this GUARANTEE and that I have had the opportunity of obtaining independent legal advice before signing this GUARANTEE.

14. in this GUARANTEE:

- a) 'APPLICANT' means the applicant named in this Application and any related entity to the applicant as defined in the Corporations Act 2001.
- b) 'Application' shall mean this Credit Account.
- c) 'GUARANTEE' means this Guarantee and indemnity.

'GUARANTOR' means the person(s) identified below as 'guarantor' and if more than one jointly and severally and in any event (to the extent applicable) the joint and several successors and/or assigns of each.

OTHER MATTERS

15. The Guarantor and the Franchisee agree that they contract out the following provisions under the Personal Property Securities Act 2009 (PPSA) in relation to the goods and that the following provisions under the PPSA will not apply to this agreement – Section 95,96,125,128,129,130,132 (3) (d),132 (4),134 (1),135,142 and 143.

16. Subject to section 275 (7) of PPSA, the Guarantor and the Franchisee agree that neither the Franchisee nor the Guarantor will disclose information of the kind mentioned in Section 275 (1) PPSA.

SIGNED SEALED AND DELIVERED BY

Director/Proprietor _____

Date: _____



SIGNED SEALED AND DELIVERED BY

Witness _____

Name of Witness: _____

SIGNED SEALED AND DELIVERED BY

Director/Proprietor _____

Date: _____



SIGNED SEALED AND DELIVERED BY

Witness _____

Name of Witness: _____

SIGNED SEALED AND DELIVERED BY

Director/Proprietor _____

Date: _____



SIGNED SEALED AND DELIVERED BY

Witness _____

Name of Witness: _____

OFFICE USE ONLY

☐ APPROVED

☐ DECLINED

Signature: _____ Date: _____

ACCOUNT NUMBER: # _____

APPROVE TERMS: _____

TERMS AND CONDITIONS OF BUSINESS

DEFINITIONS

- 1) In these Terms and Conditions:
Supply Agreement means any Agreement made between the Distributor and the Customer, which governs the purchase and/or distribution of Dairy/Food Service products by the Customer other than these Terms and Conditions or any terms and conditions of the Customer:
'The Distributor' means Setlex Pty Ltd as Trustee ABN38 509 899 256], its successors and/or assigns:
'Customer' means the legal entity or entities named in the Distributor Application for Commercial Credit as applying to trade with the Distributor Application for Commercial Credit as applying to trade with the Distributor on a commercial credit basis; 'Terms and Conditions' means these Terms and Conditions of Business as well as any Letter of Acceptance sent by the Distributor to the Customer accepting an application for credit.
- 2) The sale of all goods and services by the Distributor is made upon these Terms and Conditions. Except as regards clauses 7 to 14, if there is any inconsistency between these Terms and Conditions, any terms and conditions of the Customer (whether on the Customer's order form or otherwise), and any Supply Agreement, the following documents will prevail in descending order of precedence:
 - a) Supply Agreement;
 - b) Terms and Conditions;
 - c) Terms and Conditions of the Customer.Notwithstanding the above, to the extent of any inconsistency between clauses 7 to 14 of this Agreement, and any other Agreement including any Supply Agreement between the Distributor and the Customer, clauses 7 to 14 of this Agreement will prevail unless any Supply Agreement specifically provides otherwise.
- 3) By taking delivery of goods supplied by the Distributor the Customer affirms that these Terms and Conditions are the Terms and Conditions on which the Customer has agreed to purchase from the Distributor. All purchases of goods from the Distributor are deemed to have been made by the legal entity which is designated as the Customer on the application for credit as well as its successors and assigns, and that the Customer contracts with the Distributor both in its individual capacity and as trustee for any trust. The customer agrees that the Distributor may have recourse against the assets of any trust of which the Customer is a trustee.
- 4) The Distributor may change these Terms and Conditions at any time by notice in writing to the Customer. At least twenty-one days notice of such change shall be given.
- 5) The customer must notify any proposed change of ownership of the Customer's business in writing to the Distributor at least twenty-one days prior to such change. The Customer will remain liable for all purchases of goods and services from the Distributor made in the name of the business prior to the change of ownership of the Customer's business.
- 6) Unless otherwise specified by the Distributors, either party may terminate the trading arrangements between the Distributor and the Customer at any time, by notice in writing. If such notice is given any monies owing by the Customer to the Distributor will become immediately due and payable and any guarantees given are not revoked until all outstanding indebtedness is paid in full.

RESERVATION OF TITLE AND PASSING OF RISK

- 7) The Customer acknowledges that the title of goods delivered by the Distributor to the Customer ("the goods") is only transferred to the Customer once all sums owing to the Distributor on any account whatsoever have been paid. Until all such sums have been paid, the Distributor has the right to call for or recover the goods (for which purpose employees or agents may enter the Customer's premises) and the Customer is obliged to deliver up the goods if so directed by the Distributor.
- 8) The Customer agrees to keep the goods and any proceeds of sale of the goods in a fiduciary capacity for the Distributor until such time as title is transferred to the Customer.
- 9) Notwithstanding the foregoing, the Customer may sell the goods to a third party in the ordinary course of business.
- 10) Notwithstanding the previous three provisions the Customer accepts all risk of loss and damage to the goods, whether caused by the Customer or not, following delivery or dispatch of the goods to the Customer.

PAYMENT

- 11) Subject to the performance by the Customer of all its obligations under these Terms and Conditions, and of any of its obligations under any Supply Agreement with the Distributor, the Distributor agrees to supply products to the Customer on a credit basis within any credit terms approved by the Distributor from time to time.
- 12) The Distributor shall have the sole right and discretion to establish credit limits for the Customer, and any such credit limits may be modified or terminated without notice in whole or in part by the Distributor from time to time in its sole and unilateral discretion with respect to all orders not accepted as of the date of such modification or termination. Any modifications or terminations of previously established credit limits for the Customer shall be applicable to all orders accepted by the Distributor on or after the date of such modification or termination and until such time as further modifications may be effected.

- 13) The Customer agrees to make all payments within the date specified by an invoice or statement of account supplied to it by the Distributor.
- 14) If the Customer fails to comply with clause 13, without prejudice to the other rights of the Distributor:
 - a) The Customer will, if so required by the Distributor, pay interest at the Commonwealth Bank overdraft rate (or its successor), as published from time to time, per month compounded on any amount overdue, such interest being computed from the date of supply of the subject goods or services;
 - b) The Distributor may thereafter require the Customer to pay in cash on delivery for any further orders placed by the Customer for goods or services;
 - c) The Distributor may refuse to accept orders from the stop deliveries to the Customer;
 - d) The Distributor may require the immediate payment of all monies then owing by the Customer to the Distributor; and;
 - e) The Distributor may take such action as it deems appropriate for the recovery of all monies owing by the Customer to the Distributor, including the Distributor's legal costs on a solicitor client basis and any costs involved in recovering the outstanding monies including debt collection costs.

CHARGING CLAUSE

- 15) We hereby charge and grant a security interest in all my/our right, title and interest (whether existing or future) in any property of any nature whatsoever including but not limited to the goods delivered to the Customer pursuant to this or any other agreement, and whether real or personal ("Property") to secure the payment of any money that I/we become liable to pay to the Distributor ("Charge"). To give further effect to the Charge I/we deliver to the Distributor within seven days of written request by the Distributor, an executed mortgage or other form of security over any Property in registrable form that incorporates the Distributor's standard covenants as prepared by the Distributor's solicitors. I/we irrevocably appoint the Distributor and any solicitor nominated by the Distributor severally as my/our attorney to execute, obtain and/or register a mortgage, caveat or other instrument or thing to support the Charge in respect of the Property. If the Charge created by this clause is or becomes void or unenforceable, it may be severed from these Terms and Conditions without any effect on its validity and I will not be exonerated from these Terms and Conditions in whole or part, Nor will the Distributor's rights, remedies or recourse against me in any way be prejudiced or adversely affected by such severance.

PERSONAL PROPERTY SECURITIES ACT

- 16) I/We agree and undertake to do anything the Distributor requires (such as obtaining consents and signing and producing documents) in connection with the registration of this document or any other document on any register established pursuant to the Personal Property Securities Act 2009 ("PPSA"). In the event that I/We fail to deliver such document, I/We hereby appoint the Distributor to be its lawful attorney for the purpose of executing and registering such documents. I/We acknowledge and agree that these Terms and Conditions constitute a security agreement for the purposes of section 20 of the PPSA and that a security interest exists in all goods (and their proceeds) and all property charged by me/us to the Distributor and in all future such property (and their proceeds). I/We contract out of and waive our rights in the following provisions of Chapter 4 of the PPSA: sections 95,118,120,121(4), 123,125,129,130,132(2),132(4),134(2),135(2),137(2),142,143,157(1),157(3). Where the Distributor has rights under Chapter 4 of the PPSA, those rights will continue to apply. I/We acknowledge that we have received value as at the date of first delivery of any goods from the Distributor to the Applicant and have not agreed to postpone the attachment of the security interest granted to the Applicant under these Terms and Conditions. I/We irrevocably grant to the Distributor the right to enter upon our premises or property, without notice, and without in any way being liable to me/us or to any third party, if the Distributor has cause to exercise any of the Distributor's rights under s123 and/or 128 of the PPSA and I/We agree to indemnify the CREDITOR from any claims made by any third party as a result of the Distributor exercising such rights.

DELIVERY AND ACCEPTANCE

- 17) If a delivery date is specified by the Customer, the Distributor will in no circumstances be liable for any loss or damage of any kind whatsoever suffered or incurred by the Customer as a consequence or part, or late delivery. Any delay in delivery will not constitute grounds for cancellation of the subject order or any other order by the customer.

CLAIMS AND ALLOWANCES

- 18) Any claims for credit for faulty stock, over charges, or any similar claims must be received in writing by the Distributor within five days of the date of supply or the Customer will be considered to have waived any right to claim against the Distributor in respect to the relevant goods. It is the Customer's responsibility to ensure that goods are checked at the time of delivery. Faulty goods must be returned to the Distributor if credit is claimed for such goods. Return of goods does not necessarily entitle the Customer to a credit in respect of those goods.

LIABILITY UNDER COMPETITION AND CONSUMER ACT

- 21) The Customer acknowledges that the Distributor's liability for breach of any condition or warranty for breach of any condition or warranty which may be implied under the Competition and Consumer Act 2010 in connection with the supply of any products or services by the Distributor to the Customer shall be limited to any one of the following as determined by the Distributor::
- a) In the case of goods, any one or more of the following:
 - (i) the replacement of the goods or the supply of equivalent goods
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (iv) the payment of the cost of having the goods repaired; or
 - b) In the case of services:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

INSOLVENCY

- 22) If the Customer becomes bankrupt or makes any arrangements with or assignments for the benefit of its creditors, or being company, becomes the subject of any proceedings for, or makes arrangements or composition with its creditors, or if a receiver, or receiver or manager, administrator or liquidator is appointed to the Customer, or in respect of any of its assets, then, In addition to any other rights which the Distributor may have either by virtue of the foregoing Terms and Conditions or by law generally, the Distributor may:
- a) refuse to accept further orders from the Customer;
 - b) refuse to supply goods or services pursuant to any existing order from the Customer;
 - c) take such action as it thinks fit for recovery of all monies owing by the Customer to the Distributor including the Distributor legal costs on a solicitor client basis and any costs involved in recovering the outstanding monies including debt collection costs.

FORCE MAJEURE

- 23) If for any reason beyond the control of the Distributor (including without limitation as the result of any strike, trade dispute, fire, tempest, theft or breakdown) orders cannot be filled at the time stipulated by the Customer, the Distributor shall be entitled to determine the contract and the Customer shall not have any claims for damages arising out of such cancellation, without prejudice to the rights of the Distributor to recover all sums owing to it in respect of deliveries made or services provided prior to the date of such determination.

GOVERNING LAW

- 24) All contracts arising between the Distributor and the Customer shall be governed by and constituted in accordance with the laws of the State or Territory in which each Agreement for the supply of products is made and the Customer and the Distributor will submit to the jurisdiction of the Courts of that State or Territory.

PRIVACY

- 25) All personal information gathered by the Distributor will be handled in accordance with the Privacy Act 1988.

CERTIFICATE

- 26) A certificate signed by an officer of the Distributor about any matter or sum payable to the Distributor is prima facie evidence of the matters stated within it.