

# TOKYO FOOD COMPANY LIMITED

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Email: waikato@tokyofood.co.nz

## ACCOUNT APPLICATION FORM

### ENTITY DETAILS(\*Mandatory Fields):

\*APPLICANT'S FULL LEGAL BUSINESS NAME (i.e. ABC Limited): .....("the Customer")

(Please tick) Sole Trader  Individual  Partnership  Ltd Company  Other  (please state): .....

\*Trading Name of Business: ..... \*Postal Address of Business: .....

\*Physical Address of Business: ..... \*Physical Address of Business: (Last 3 years): .....

\*Nature of Business(i.e. Restaurant): ..... \*Years in Business: .....

\*Telephone: ..... \*Fax: ..... \*E-Mail: .....

\*Contact Name & Position: .....

\***OWNERSHIP** please insert Owner(s) / Directors Name(s) in full

1: ..... Address: .....  
Home Phone..... Personal ID Number (i.e. driver's licence or passport number).....

2: ..... Address: .....  
Home Phone..... Personal ID Number (i.e. driver's licence or passport number).....

IF LIMITED LIABILITY COMPANY - Address of Registered Office: .....

Date of Incorporation: ..... Incorporation No: .....

### FINANCIAL & PROFESSIONAL ADVISORS

Name of Accountant: ..... Solicitor: .....

Bank: ..... Branch: ..... Acct No: .....

*TRADE REFERENCES			
*Company	*Contact Name	*Phone Number	*Account open since

**General Description of Goods/Products/Services to be Provided:** .....

### Acceptance and Personal Guarantee

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Tokyo Food Company Limited that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/are responsible for the Customer's finances and am/are duly authorised to enter into this account application form and future agreements on behalf of the Customer. I/we also acknowledge that pursuant to the personal guarantee contained in clause 14 of the terms and conditions of trade that, where relevant, I/we am/are also signing this account application form in my/our personal capacity.

Signed ..... Print Name ..... Position.....

Date .....20..... Date of Birth.....

# TERMS & CONDITIONS OF TRADE

## 1. DEFINITIONS

- 1.1 "Agreement" shall mean the account application form and these terms and conditions of trade.
- 1.2 "Tokyo Food Company" shall mean Tokyo Food Company Limited, or any agents or employees thereof.
- 1.3 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing Products from Tokyo Food Company.
- 1.4 "Products" shall mean:
  - 1.4.1 all Products of the general description specified on the front of this Agreement and supplied by Tokyo Food Company to the Customer;
  - 1.4.2 all Products supplied by Tokyo Food Company to the Customer;
  - 1.4.3 all inventory of the Customer that is supplied by Tokyo Food Company;
  - 1.4.4 all Products supplied by Tokyo Food Company and further identified in any invoice issued by Tokyo Food Company to the Customer, which invoices are deemed to be incorporated into and form part of this Agreement;
  - 1.4.5 all Products that are marked as having been supplied by Tokyo Food Company or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Tokyo Food Company; and
  - 1.4.6 all of the Customer's present and after-acquired Products that Tokyo Food Company have performed work on or to or in which goods or materials supplied or financed by Tokyo Food Company have been attached or incorporated.
  - 1.4.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.5 "Products" shall also mean without limitation the importation, export, wholesale, retail and distribution of foods and food products and associated products and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Products by Tokyo Food Company to the Customer.
- 1.6 "Price" shall mean the cost of the Products as agreed between Tokyo Food Company and the Customer and includes all disbursements e.g. charges Tokyo Food Company pays to others on the Customer's behalf subject to clause 4 of this Agreement.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Tokyo Food Company from the Customer for the supply of Products shall constitute a binding agreement and acceptance of the terms and conditions of trade contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Tokyo Food Company to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this Agreement, or marketing any Products provided by Tokyo Food Company to any other party.
- 3.2 The Customer authorises Tokyo Food Company to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing the Products shall be deemed to be sold at the current amount as such Products are sold by Tokyo Food Company at the time of this Agreement.
- 4.2 The price may be increased (due to exchange rate fluctuations) by the amount of any reasonable increase in the cost of supply of the Products that is beyond the control of Tokyo Food Company between the date of this Agreement and delivery of the Products.

## 5. PAYMENT

- 5.1 Unless otherwise agreed payment for Products shall be made:
  - 5.1.1 In full in advance of delivery of Products;
  - 5.1.2 In cash on delivery of Products;
  - 5.1.3 In full within seven (7) days of receipt of Products; or
  - 5.1.4 In full on or before the 20<sup>th</sup> of the month following the date of invoice ("the Due Date").
- 5.2 Tokyo Food Company may at its discretion elect to enforce a method of payment set out in clauses 5.1.1 to 5.1.4 if the Customer has failed to pay all amounts owing after the Due Date within a reasonable period of time.
- 5.3 Interest may be charged on any amount owing after the Due Date at the rate of 2.5% per month or part month.
- 5.4 Any expenses, disbursements and legal costs incurred by Tokyo Food Company in the enforcement of any rights contained in this Agreement shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.5 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.6 A deposit may be required.

## 6. QUOTATION

- 6.1 Where a quotation is given by Tokyo Food Company for Products:
  - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue;
  - 6.1.2 The quotation shall be exclusive of Goods and Services Tax unless specifically stated to the contrary; and
  - 6.1.3 Tokyo Food Company reserves the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such goods.

## 7. RISK

- 7.1 The Products remain at Tokyo Food Company's risk until delivery to the Customer.
- 7.2 Delivery of Products shall be deemed complete when Tokyo Food Company gives possession of the Products directly to the Customer or possession of the Products is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.

## 8. AGENCY

- 8.1 The Customer authorises Tokyo Food Company to act either as principal or agent for the provision of Products that are the subject matter of this Agreement
- 8.2 Where Tokyo Food Company enters into an agreement of the type referred to in clause 8.1 it shall be read with and form part of this Agreement and the Customer agrees to pay any amounts due under that agreement.

## 9. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 9.1 Title in any Products supplied by Tokyo Food Company passes to the Customer only when the Customer has made payment in full for all Products provided by Tokyo Food Company and of all other sums due to Tokyo Food Company by the Customer on any account whatsoever. Until all sums due to Tokyo Food Company by the Customer have been paid in full, Tokyo Food Company has a security interest in all Products.
- 9.2 If the Products are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Products shall remain with Tokyo Food Company until the Customer has made payment for all Products, and where those Products are mixed with other property so as to be part of or a constituent of any new Products, title to these new Products shall be deemed to be assigned to Tokyo Food Company as security for the full satisfaction by the Customer of the full amount owing between Tokyo Food Company and Customer.
- 9.3 The Customer gives irrevocable authority to Tokyo Food Company to enter any premises occupied by the Customer or on which Products are situated at any reasonable time after default by the Customer or before default if Tokyo Food Company believes a default is likely and to remove and repossess any Products and any other property to which Products are attached or in which Products are incorporated. Tokyo Food Company shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a

result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Tokyo Food Company may either resell any repossessed Products and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Products and credit the Customer's account with the invoice value thereof less such sum as Tokyo Food Company reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.

- 9.4 Where Products are retained by Tokyo Food Company pursuant to clause 9.3 the Customer waives the right to receive notice under section 120 of the Personal Property Securities Act 1999 ("PPSA") and to object under section 121 of the PPSA.

- 9.5 The following shall constitute defaults by the Customer:

- 9.5.1 Non payment of any sum by the Due Date.
- 9.5.2 The Customer intimates that it will not pay any sum by the Due Date.
- 9.5.3 Any Products are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Products.
- 9.5.4 Any Products in the possession of the Customer are materially damaged while any sum due from the Customer to Tokyo Food Company remains unpaid.
- 9.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distrains against any of the Customer's assets.
- 9.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 9.5.7 Any material adverse change in the financial position of the Customer.

- 9.6 If the Credit Contracts and Consumer Finance Act 2003 applies to any transaction between the Customer and Tokyo Food Company, the Customer has the rights provided in that Act despite anything contained in these terms and conditions of trade.

## 10. PAYMENT ALLOCATION

- 10.1 Tokyo Food Company may in its discretion allocate any payment received from the Customer towards any invoice that Tokyo Food Company determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Tokyo Food Company, payment shall be deemed to be allocated in such manner as preserves the maximum value of Tokyo Food Company's purchase money security interest (as defined under section 16 of the PPSA) in the Products.

## 11. DISPUTES

- 11.1 No claim relating to the Products shall be considered unless it is made within seven (7) days of delivery.
- 11.2 If the Products are not accepted in accordance with clause 11.1, the Customer shall pay all costs of the returns to Tokyo Food Company.
- 11.3 No Products that have been opened will be accepted for return.

## 12. LIABILITY

- 12.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Tokyo Food Company which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Tokyo Food Company, Tokyo Food Company's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 12.2 Except as otherwise provided by clause 12.1 Tokyo Food Company shall not be liable for:
  - 12.2.1 Any loss or damage of any kind whatsoever including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Products provided by Tokyo Food Company to the Customer; and
  - 12.2.2 The Customer shall indemnify Tokyo Food Company against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Tokyo Food Company or otherwise, brought by any person in connection with any matter, act, omission, or error by Tokyo Food Company, its agents or employees in connection with the Products.

## 13. CONSUMER GUARANTEES ACT

- 13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Products from Tokyo Food Company for the purposes of a business in terms of sections 2 and 43 of that Act.

## 14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 14.1 If the Customer is a company or trust, the director(s), trustee(s) or authorised person(s) signing this Agreement, in consideration for Tokyo Food Company agreeing to supply Products and grant credit to the Customer at their request, also sign this Agreement in their personal capacity and jointly and severally personally undertake as principal debtors to Tokyo Food Company the payment of any and all monies now or hereafter owed by the Customer to Tokyo Food Company and indemnify Tokyo Food Company against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligation contained in this Agreement. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this Agreement and for payment of all sums due hereunder.

## 15. MISCELLANEOUS

- 15.1 Tokyo Food Company shall not be liable for any delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 15.2 Failure by Tokyo Food Company to enforce any of the terms and conditions contained in this Agreement shall not be deemed to be a waiver of any of the rights or obligations Tokyo Food Company has under this Agreement.
- 15.3 If any provision of this Agreement shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.4 The client shall not assign all or any of its rights or obligations under this Agreement without the written consent of Tokyo Food Company.
- 15.5 Where these terms and conditions of trade are at variance with the order or instructions from the Customer these terms and conditions of trade shall prevail.
- 15.6 The Laws of New Zealand applies to this Agreement.

I/we confirm as the duly authorised person(s) and personal guarantor(s) of the Customer that I/we have read these terms and conditions of trade

Signed \_\_\_\_\_

Print Name \_\_\_\_\_