

# ACCOUNT APPLICATION

## CABERNET FOODS LIMITED/KINTYRE MEATS LIMITED

The annexed Conditions of Trade, as amended or replaced from time to time, govern the supply by CABERNET FOODS LIMITED and/or KINTYRE MEATS LIMITED (*we and us*) to the person named below (*you*) of Goods or Services, as defined more particularly in any Order or Quote and in Clause 15 of the Conditions of Trade. If you purchase Goods or Services from either Cabernet Foods Limited, or Kintyre Meats Limited and not both of them, the relevant supplying company will be referred to as *the Supplier* in this form and the annexed *Conditions of Trade*.

You agree that by the Conditions of Trade you:

- Apply to us for credit in connection with any purchase or purchases of Goods or Services you might make from the Supplier;
- Agree to purchase Goods and Services from the Supplier on the terms and conditions of any relevant Order or Quote, and the then current Conditions of Trade; and
- Pursuant to the Personal Property Securities Act 1999:
  - grant the Supplier, or, if you are already a customer of ours, confirm the previous grant to the Supplier of, a specific security interest (being a purchase money security interest) over all Goods the Supplier supplies you from time to time and their proceeds, and
  - grant the Supplier a general security interest over all your present and after-acquired personal property and their proceeds.

**Your particulars:**

**Important:** you must promptly notify us of any changes to this information

Legal Name:			
Trading Name: (if different)		Previous trading names:	
Type of entity: (If not a individual party)	<input type="checkbox"/> Company	<input type="checkbox"/> Incorporated Society	<input type="checkbox"/> Other: specify
	<input type="checkbox"/> Trust	<input type="checkbox"/> Incorporated Charitable Trust	<input type="checkbox"/> Partnership
Company Number if a registered company			
<u>OR</u> Date(s) of Birth if not a company			
<b>Postal Address:</b>	<b>Delivery Address:</b>	<b>Registered Office Address:</b>	
<b>Telephone: (W)</b>	<b>Facsimile:</b>	<b>e-mail:</b>	
<b>Telephone: (H)</b>	<b>Mobile:</b>		
Your Directors, Trustees or Partners: attach a separate page if necessary			
<b>Full Name:</b>	<b>Home Address:</b>		
<b>Previous Home Address:</b>	<b>Country of origin:</b>		
<b>Full Name:</b>	<b>Home Address:</b>		
<b>Previous Home Address:</b>	<b>Country of origin:</b>		
<b>Full Name:</b>	<b>Home Address:</b>		
<b>Previous Home Address:</b>	<b>Country of origin:</b>		

**Your credit information:**

**Important:** you must promptly notify us of any changes to this information

<b>Bank:</b>		<b>Branch:</b>		<b>Account Number:</b>	
<b>Accountant:</b>		<b>Solicitor:</b>		<b>Paid up capital:</b>	

Trade References (excluding credit cards, fuel suppliers, landlord, power, and phone): include only trade references that have given you credit and with which you have done business for more than one year

<b>Name:</b>	<b>Address:</b>	<b>Telephone:</b>
1.		
2.		
3.		
4.		

**Authorised signatory:**

The person signing this Application:

- confirms that he/she is duly authorised to apply for credit; and become bound by the Conditions of Trade;
- confirms that the information set out on this page is true, accurate and complete; and
- agrees that all Goods and Services that we supply to you (either in the past or in the future) are supplied on these Conditions of Trade, as amended from time to time.

<b>Full name:</b>		<b>Position:</b>	
<b>Signature:</b>		<b>Date:</b>	

# CONDITIONS OF TRADE

## CABERNET FOODS LIMITED/KINTYRE MEATS LIMITED

### 1. Interpretation

1.1 "Order" means a confirmed order. "Person" includes a firm or incorporation. "PPSA" means the Personal Property Securities Act 1999 and any regulations and amendments. "Purchaser/you" means any person contracting with or offering to contract with us. "Quote" means an accepted quote. "Supplier" means the relevant of Cabernet Foods Limited and/or Kintyre Meats Limited which actually supplies you with Goods and Services. "Transit" includes transportation, shipment, and transfer. "We/us/our" means CABERNET FOODS LIMITED and/or KINTYRE MEATS LIMITED.

1.2 If there is more than one Purchaser then the purchasers' obligations shall be joint and several.

### 2. Quotes/Orders/Price

2.1 All Quotes and Orders shall be in terms of and subject to our Conditions of Trade (*Terms*) current at the date of acceptance of the Quote or Order. Each accepted Quote or Order constitutes a separate contract incorporating the then current Terms.

2.2 The price Quote or Order includes delivery costs unless expressly excluded in a Quote or Order.

2.3 The price shall be increased by the amount of any GST, other taxes or duties, which may then apply, unless expressly excluded in a Quote or Order.

2.4 Quotes are based on current prices at the date of the Quote. A Quote expires one (1) day after the date of the Quote (unless accepted beforehand).

2.5 An Order may be cancelled only with our prior written consent and only on such terms as we may specify.

2.6 Price is subject to adjustment in terms of clause 4.6.

2.7 Pallets used in delivery shall be charged to and paid for by you at our then current price, unless expressly excluded in a Quote or Order.

2.8 If we charge you for pallets, you will receive a credit for your next Order on return of pallets to us.

2.9 Each Quote and Order will specify whether the Supplier is Cabernet Foods Limited or Kintyre Meats Limited.

### 3. Payment

3.1 Unless we otherwise agree in writing the price is due and payable to us in full, and without set off or deduction or withholding, seven (7) days after delivery (time being of the essence).

3.2 If the credit period is extended beyond 7 days without our agreement, the amount of the extended credit shall become a secured loan on terms identical to those currently standard to the Bank of New Zealand Limited, except as those are expressly varied by these Terms.

3.3 We may recover any amounts owing by you in relation to the Goods and Services even if property in the Goods has not passed to you (refer paragraph 5).

3.4 We reserve the right to charge interest at the rate of 2.5 per cent (2.5%) per month calculated daily, on any overdue amount including costs in terms of clause 17, until any such amounts are paid to us in full. Our monthly account management fee is \$30 for accounts with a balance of up to \$2,000 and \$60 for accounts with a balance over \$2,000. All such interest and account management fees will be compounded monthly.

3.5 The price shall be paid to us in full and you will make no deduction or withholding or set off without our prior written consent (which we may give or decline in our absolute discretion).

3.6 We may apply any payment received from you or on your behalf (where you have not specified the purpose of payment) in reduction of your indebtedness in the priority as we think fit.

### 4. Delivery/Quantity

4.1 The Supplier will arrange delivery of the Goods to the place specified in the Quote or Order.

4.2 Any date for delivery in any Quote or Order is an estimated date only and time shall in no case be of the essence in this contract unless the Supplier has expressly given a firm commitment to deliver by a specific date in writing. A Order is not to operate as such a commitment.

4.3 You will accept and pay for Goods even if we fail to deliver by an estimated date.

4.4 We may deliver by instalments and you will accept such instalment deliveries.

4.5 If you refuse to accept delivery or to uplift Goods from our premises, we may charge you for any resulting extra cost (including storage and transportation).

4.6 The quantity of Goods delivered by us may vary by plus or minus 10% against the quantity specified in a Quote or Order and the price in the invoice or delivery note provided with the Goods shall be charged on the actual quantity delivered.

### 5. Risk/Ownership/Title

5.1 Unless we otherwise agree in writing all Goods will be at your risk on delivery to you (our records of the date and time of delivery being conclusive evidence for the purposes of these Terms).

5.2 Ownership of the Goods remains with the Supplier and does not pass to you until you pay us the full amount of all moneys owing to us by you (including any moneys owing in respect of Goods and Services previously supplied by us to you).

5.3 While ownership of the Goods remains with the Supplier:

5.3.1 It will be your duty to take all reasonable care of the Goods, to store them separately and keep them ascertainable.

5.3.2 We authorise you to use or sell the Goods for full consideration in the ordinary course of your business. We may revoke this authority at any time and with immediate effect by sending you notice in writing by e-mail or other means.

5.3.3 In the event that:

- (a) you are in default of any amounts owing to us; or
- (b) we have reasonable grounds to believe that the Goods have been or are at risk of being, destroyed, damaged, endangered, disassembled, removed, concealed, sold or otherwise disposed of contrary to these Terms

we may enter your premises to remove the Goods or take control or possession of the Goods in Transit.

5.3.4 We will not be responsible for any damage caused by the use of reasonable force in entering and removing the Goods. You will indemnify us for the costs of any damage.

5.3.5 You will be liable to us for all costs we incur (including transportation and storage) in entering and removing the Goods or in taking possession or control of the Goods.

5.3.6 We may resell any of the Goods (as we think fit) and apply the proceeds of sale in reduction of any indebtedness of yours.

5.3.7 You must advise us immediately of any action by any third party (including any of your creditors) that may affect our interest in the Goods.

5.4 If you use or resell the Goods before ownership of the Goods passes to you, the proceeds of use or sale shall be received and held by you (in whatever form) in trust for both you and us. Our interest as beneficiary under that trust shall be that portion of the proceeds which does not exceed your total indebtedness to us. The balance of the proceeds (if any) shall be your beneficial interest under that trust.

5.5 We may at any time by notice in writing require you to pay the proceeds into a bank account nominated by us for disbursement in accordance with these Terms.

### 6. Undertaking as to title

6.1 The Supplier undertakes that at the time of the passing of the property in the Goods to you:

- 6.1.1 It will have the right to sell the Goods;
- 6.1.2 The Goods will be free from any charge or encumbrance in favour of any third party.

### 7. Sale by Description, Purpose or Sample/ Accuracy or Artwork

7.1 If Goods are to correspond with a description, the description must be agreed in writing by us and you and confirmed in a written Quote or Order.

7.2 If Goods are to be for a specific purpose the purpose must be agreed in writing by us and you and confirmed in a written Quote or Order.

7.3 If Goods are to correspond with a sample the sample must be agreed in writing by us and confirmed in a written Quote or Order.

7.4 You will be solely responsible for the checking, accuracy and signing off of descriptions, specific purposes and/or samples.

7.5 Any claims to be made in writing and lodged directly with our sale office no more than 1 day after delivery. We will notify you whether or not we accept your claim.

### 8. Quality/Fitness/Recall

8.1 Goods shall be manufactured to our quality standard and reviewed by us from time to time except as specifically agreed in writing by us and you.

8.2 We do not undertake the quality or fitness of Goods for any particular purpose except where you make known to us in terms of clause 7 the particular purpose for which you require the Goods and you show that you have relied on our skill or judgment.

8.3. Where the Goods are to a description, purpose or sample in terms of Clause 7, the Goods shall be of merchantable quality, but you will examine the Goods and we shall have no liability for any defects, which ought to have been revealed but which you do not detect by such examination.

8.4 We may voluntarily recall any Goods that we supply to you, if we reasonably believe in our absolute discretion that:

- (a) the Goods will, or may, cause injury to any person; or
- (b) a reasonably foreseeable use (including misuse) of the Goods will, or may, cause injury to any person; or
- (c) the Goods do not comply with a product safety standard.

8.5 The Supplier shall meet all costs associated with the recall, including the cost of destruction (if applicable) and replacement of the Goods recalled, transportation costs, remediation costs and all costs incurred in connection with any claims made by third parties in respect of the recalled goods.

### 9. Our Liability Limited

9.1 Our liability shall be limited, at our option, to any one or more of the following:

- 9.1.1 The replacement of the Goods or the supply of equivalent Goods or Services;
- 9.1.2 The cost of replacing the Goods or of acquiring equivalent Goods; or
- 9.1.3 The cost of having the Services supplied again.

9.2 You acknowledge and agree that, despite anything else in these Terms, if either of Cabernet Foods Limited or Kintyre Meats Limited breaches these conditions:

- (a) you shall only have recourse against, and may only exercise any legal rights and remedies against, the relevant company which is the Supplier; and
- (b) you hold the other of us, being the company which is not the Supplier, harmless from, and indemnify them against, the consequences of any such breach.

9.3 We will not be liable for any consequential damage, loss of profit or business revenue.

9.4 We and you agree that all Orders are for business purposes and, as a result, to the maximum extent permitted by law the Consumer Guarantees Act 1993 does not apply.

#### 10. Return of Goods to us

10.1 You are considered to have accepted the Goods unless immediately on finding defect(s) you lodge a claim in writing to our sale office describing the defect(s) and of your intention to return the Goods. We will notify you whether or not we accept your claim.

10.2 You have no right to make a claim to return Goods more than 1 day after delivery.

10.3 Goods returned to us must be in their original packaged and sealed form, or repackaged by you, along with the original label and bar coding, and we must be satisfied that the quality and condition of the Goods has not deteriorated.

10.4 If the Goods returned are not in their original package and do not include their original label and bar coding, then you must provide evidence of purchase of the Goods from us, and we must be satisfied that the Goods returned by you are the Goods that we supplied you and that they form part of our usual stock in trade.

#### 11. Our Rights of Disposal / Payment of Price Due

11.1 In the event that:

11.1.1 We retain possession or control of Goods; and

11.1.2 Payment of the price is due to us; and

11.1.3 We have made written demand for payment of the price; and

11.1.4 We have not received payment of the price in full;

We may dispose of the Goods and may claim from you any loss to us as a result of such disposal (including costs of disposal), and any general security agreement granted to you, your shareholder or other associated person is assignable to us pursuant to any personal guarantee we obtain and for so long as any amount payable to us remains overdue.

#### 12. Grant of Security (Personal Property Securities Act 1999(PPSA))

12.1 Pursuant to the Personal Property Securities Act 1999 –

- (a) you grant the Supplier (or, if you have previously granted to the Supplier, you confirm the grant to the Supplier of) a security interest (being a purchase money security interest) over all Goods supplied by us to you from time to time; and
- (b) grant the Supplier a general security interest over all of your present and after-acquired personal property

Including, in each case, any proceeds of sale pursuant to the PPSA, in order to secure the performance of your obligations under these Conditions from time to time.

12.2 You agree that sections 114(1)(a), 116, 120(2), 121, 129, 133, and 134 of the PPSA shall not apply to any contract of which these Terms form part.

12.3 You undertake to:

12.3.1 sign any further documents and/or do such further acts and/or provide any further information which we may reasonably require to enable registration of a security interest including registering a financing statement or financing change statement on the Personal Property Securities Register and/or a caveat or mortgage on any real property;

12.3.2 not give us a written demand or allow any other person to give us a written demand requiring us to register a financing change statement under the PPSA or enter into or allow any other person to enter into the Personal Property Securities Register a financing change statement under the PPSA in respect of the Goods; and

12.3.3 Give us not less than 14 days prior written notice of any proposed change to your name and/or other change in your details (including but not limited to changes to address, facsimile number, trading name or business practice); and

12.3.4 Not allow any of the secured property to become an accession with other property; and

12.3.5 If our security interest in the Goods is lost because of any breach by you of these Terms we shall be entitled to a registerable mortgage security on any of your land and on the land of any Guarantor for the full value of our entitlement and indemnity costs.

#### 13. Privacy and Use of Personal Information

13.1 We will hold all personal information about you, collected by us, in accordance with the requirements set out in the Privacy Act 1993. In particular:

13.1.1 You agree that we may obtain information about you from you or any other person relating to any matter in the course of our business, including credit worthiness and credit statements and you consent to any person providing us with such information.

13.1.2 When we collect information about you, we shall ensure that you are aware of –

- (a) the fact that information about you is being collected;
- (b) the purpose for which the information is being collected; and
- (c) the intended recipients of the information (if any).

13.1.3 You agree that we may use any information we have about you relating to your credit worthiness and give that information to any other person, including any credit or debt collection agency, for credit assessment and debt collection or other legal purposes.

13.1.4 Such personal information will be held by us at our registered address for service:

530 Gladstone Road  
RD 2  
Carterton 5792

13.1.5 We shall ensure that all personal information we hold about you shall be stored safely and securely and shall be protected against –

- (a) loss;
- (b) access, use, modification, or disclosure, except with our authority; and
- (c) other misuse.

13.1.6 If you are an individual (i.e. a natural person), you have rights under the Privacy Act 1993 to access and request the correction of any personal information which we hold about you.

13.1.7 You agree that we may send you commercial electronic messages. You will notify us by email if you no longer agree to receive these messages.

13.1.8 If you fail to provide any information requested by us in respect of any credit application, we may be unable to process your credit application.

#### 14. Force Majeure

Neither of us shall be liable to the other, because of any delay in performance, or non-performance, of any obligations (apart from any inability to pay any amount due to the other party due to a lack of funds) to the extent that the delay or non-performance is due to any circumstances not caused or contributed to by either of us and beyond the reasonable control of either of us which has been notified by one of us to the other, and the time for performance of the obligation shall be extended accordingly.

#### 15. Goods and Services Definition

15.1 "Goods" means all goods that the Supplier supplies to you from time to time, including but not limited to: animal carcasses, cuts of meat and processed meat of sheep, beef, venison, pork and any other animal.

15.1.1 For the purpose of the application of the PPSA, where the Goods supplied are your inventory, all reference to Goods shall be read as reference to inventory while they are held as inventory; and

15.1.2 You agree that where the Goods supplied are not or are no longer held as your inventory, all references to Goods shall, in respect of those Goods, mean that the Goods described in any relevant Order, packing slip or invoice prepared by us describes the Goods protected by our security interest and (unless the context requires otherwise) includes all proceeds of the sale of such Goods and any product or mass within which the Goods subsequently become packaged.

15.2 "Services" means all services the Supplier supplies to you from time to time.

#### 16. Assignment

You are not entitled to assign your rights under any contract with us without our prior written consent.

#### 17. Costs

All costs and expenses incurred by us to remedy any breach by you of obligations contained or implied in the Terms including enforcement of any rights under these Terms or any associated guarantee(s), and the collection, and legal costs on a full solicitor and client indemnity basis shall be recoverable from you in addition and without prejudice to our right to damages for breach of the Terms or breach of any agreement arising between us and you for the supply of Goods and Services.

#### 18. No Set Off

You have no right of set off in payment of any amounts due to us.

#### 19. Governing law

The laws of New Zealand including the Companies Act 1993, the Sale of Goods Act 1908, the Personal Property Securities Act, the Land Transfer Act 1952, the Property Law Act 2007 and their amendments shall apply to any contract of which the Terms are part except to the extent expressly negated or varied by the Terms or in writing by the parties to such contract.

#### 20. Conditions/Changes/Termination

20.1 Quotes and Orders shall be in terms of and subject to the Terms – refer to clause 2.1 above.

20.2 We are entitled to alter and update the Terms without needing to give advance notice. It is your duty to ascertain our current and effective version of the Terms by written enquiry to any of our available communication addresses or by checking on our website ([www.cabernet.co.nz](http://www.cabernet.co.nz)).

20.3 We may discontinue our trading relationship at any time (without affecting any previous Orders and our respective obligations under them) without needing any reason to do so.

**TO: CABERNET FOODS LIMITED/KINTYRE MEATS LIMITED (the *Supplier*)**

**PERSONAL GUARANTEE AND INDEMNITY**

**PURCHASER:**

(Print full name and address of PURCHASER)

In consideration of the Supplier agreeing to supply the Purchaser with Goods –

**I, we** (Print full name(s) of *GUARANTOR(S)*):

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**of** (Print full address(es) of *GUARANTOR(S)*):

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Hereby:

1. **Personally Guarantee** as principal debtor to the Supplier, if more than one of us jointly and severally, the due and punctual payment of all moneys payable now or in the future by the Purchaser to the Supplier in respect of the Goods and Services and the due observation and performance by the Purchaser of all its obligations in respect of any agreements with the Suppliers relating to the Goods and Services; and
2. **Agree** to restore this guarantee if any payment(s) from the Purchaser to the Supplier is later avoided by law for which sum(s) the Supplier's invoice to me / us shall be conclusive proof against me / us; and
3. **Agree** that my / our liability under this guarantee shall not be discharged, abrogated, prejudiced or affected by any of the following:
  - (a) the granting of time, credit or any indulgence or other concession to the Purchaser;
  - (b) the release, abandonment, waiver, variation, relinquishment of any securities or any rights that the Supplier may have against the Purchaser;
  - (c) any alteration, modification, variation or addition to any agreement relating to the supply of Goods and Services; or
  - (d) any other act, event or omission which but for this clause might operate to discharge, impair or otherwise affect this guarantee and my / our obligations contained in this guarantee or any of the rights, powers or remedies conferred upon the Supplier by this guarantee or by law; and
4. **Assign** any general security agreement granted to me / us by the Purchaser for so long as any amount payable to the Supplier remains overdue; and consent to the registration of any real or personal security interest granted by me / us now or in the future; and
5. **Indemnify**, if more than one of us jointly and severally, the Supplier against any liability incurred in the supply of Goods and Services to the Purchaser, and the recovery of all moneys owed to the Supplier by the Purchaser or myself / us; and
6. **Acknowledge** that this guarantee shall be a continuing guarantee and shall remain in full force and effect until the Purchaser has paid the Supplier all moneys due in respect of the Goods and Services; and
7. **Consent** to all information contained in the guarantee and account application being used by the Supplier and the Supplier's agents to assess the application and any enforcement relating to the credit account and guarantee and consent to the Supplier and the Supplier's agents providing the information provided to third parties for the purpose of credit enquiries; and
8. **Confirm** that if there is more than one guarantor we are each jointly and severally liable for any moneys owing and all obligations under this guarantee; and
9. **Confirm** that I / we have read and understood this document; and
10. **Confirm** that the information contained in the guarantee and account application is true and correct; and
11. **Acknowledge** that I / we have been advised to obtain professional advice of my / our choice before signing this continuing guarantee; and
12. **Either**, my / our professional advisor(s) witness(es) my / our signature(s) below and my / our advisor's / advisors' name(s) and occupation(s) is / are stipulated **or** I / we understand your recommendation to obtain independent advice and I / we waive the requirement for that independent professional advice.

Guarantor Name \_\_\_\_\_

Witness Name \_\_\_\_\_

Guarantor Signature \_\_\_\_\_

Witness Signature \_\_\_\_\_

Witness Address \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_

Guarantor Name \_\_\_\_\_

Witness Name \_\_\_\_\_

Guarantor Signature \_\_\_\_\_

Witness Signature \_\_\_\_\_

Witness Address \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_

Guarantor Name \_\_\_\_\_

Witness Name \_\_\_\_\_

Guarantor Signature \_\_\_\_\_

Witness Signature \_\_\_\_\_

Witness Address \_\_\_\_\_

Dated \_\_\_\_\_

\_\_\_\_\_