

2-4 Dutton Street  
Rosebud West VIC 3940  
PO Box 139  
**Phone:(03) 5986 8248**  
**Fax :(03) 5986 5480**

XSEP97 Pty Ltd  
Trading As  
**Peninsula Dairies**



## APPLICATION FOR CREDIT

The Applicant hereby applies to XSEP97 Pty Ltd ("Peninsula Dairies") ACN 116 345 384 ABN 74 116 645 384 to supply goods and/or services on credit to the Applicant:

### Applicant's Details

Applicant's full name: ..... (**"the Applicant"**)

Trading name (if any):.....

ACN ..... ABN .....

Type of Entity (*tick*)  Company  Sole Trader  Partnership  Trustee

*Note: We do not accept applications in the name of a trust only - the Applicant must be the trustee.*

If trading as a trustee, please provide name of trust: .....

Applicant's Registered Office: .....

Business mailing address: .....

Business Address: .....

Contact person: .....

Telephone number: (...) ..... Fax No: .....

Mobile number: (...) ..... E-mail Address: .....

Type of Business: ..... How long in business: .....

Are Business Premises Owned or Rented? .....

### Bank Details:

Bank: \_\_\_\_\_ Branch: \_\_\_\_\_ Phone: \_\_\_\_\_

Accounts Payable Officer: \_\_\_\_\_

### Trade References:

1) Company: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

2) Company: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

3) Company: \_\_\_\_\_ Contact: \_\_\_\_\_ Phone: \_\_\_\_\_

### Accountant:

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

### Disclosure of Bankruptcy:

Has the Applicant or any of its directors or partners or their respective spouses ever been a bankrupt, or entered into an arrangement under the *Bankruptcy Act* 1966 (Cth) or been a Director or Officer in a company that has been placed under external administration? YES / NO Please *CIRCLE*

If yes, please provide details:

OFFICE USE ONLY	
APPROVED/REJECTED .....	ACCOUNT NO .....
DATE .....	CREDIT LIMIT .....

# **TERMS AND CONDITIONS OF APPLICATION FOR CREDIT**

## **1. Application**

- 1.1. The Applicant hereby applies to establish a credit facility with Peninsula Dairies and agrees to be bound by Peninsula Dairies' terms and conditions of trade in use at the time an order is placed. The Applicant acknowledges by its execution of this application for credit that it agrees to the current Peninsula Dairies' terms and conditions of trade contained in this document and advised to the Applicant by Peninsula Dairies.
- 1.2. A credit facility granted by Peninsula Dairies to the Applicant remains available, regardless of whether or not it is being used, until terminated by written notice from one party to the other. The Applicant acknowledges that Peninsula Dairies in its absolute discretion may reject, grant or vary a credit facility on such conditions as it considers appropriate and suspend or cancel without notice all credit facilities granted to the Applicant. Upon termination or suspension, these terms and conditions continue to apply to all amounts owed by the Applicant to Peninsula Dairies until they have been paid in full.
- 1.3. The Applicant declares that as at the date of this application for credit the Applicant is solvent and able to pay its accounts within allowed trading terms.
- 1.4. The Applicant must advise Peninsula Dairies in writing of any changes to the information supplied by it in this application for credit or any change in its partners, directors, shareholders or unitholders or the contact details of any of them within two (2) business days of such change occurring.
- 1.5. If the Applicant sells its business, it will remain liable for all orders made on its account before it notifies in writing of the completion of the sale of its business.

## **2. Payments**

- 2.1. Each invoice for goods/services provided by Peninsula Dairies to the Applicant must be paid on or before 7 days after the date the invoice was sent to the Applicant.
- 2.2. Unless otherwise stated all of Peninsula Dairies' quotations or charges are exclusive of GST. Peninsula Dairies will provide a tax invoice to the Applicant and the Applicant must reimburse for any GST payable by it on each taxable supply it makes to the Applicant.
- 2.3. If the Applicant fails to pay any amount it owes to Peninsula Dairies by the due date then, in addition to any other rights Peninsula Dairies may have, it may charge the Applicant interest at the rate of 2% per calendar month, calculated daily and capitalised monthly, for each day that the amount is overdue plus all recovery expenses and legal costs (calculated on a full indemnity basis) incurred by Peninsula Dairies in connection with the default in payment.
- 2.4. All payments received by Peninsula Dairies, whether or not purporting to be made for some specific item or invoice, may be applied by Peninsula Dairies in its absolute discretion, first, in full payment of all interest, recovery expenses and legal costs under clause 2.4 and secondly, to the oldest outstanding invoiced amount.

## **3. Use of Information**

- 3.1. The Applicant acknowledges that the information provided by the Applicant in this application for credit is subject to Peninsula Dairies privacy procedures.
- 3.2. The Applicant acknowledges that Peninsula Dairies by this clause informs the Applicant that, under section 18E(8)(c) of the Privacy Act ("the Act") Peninsula Dairies is allowed to give a credit reporting agency personal information about this application for credit. The information which may be given to an agency is covered by section 18E(1) of the Act and includes:
  - (a) Identity particulars as permitted by the Privacy Commissioner's determination issued under section 18E(3);
  - (b) The fact that the Applicant has applied for credit and the amount of credit for which the Applicant has applied;
  - (c) The fact that Peninsula Dairies is a current credit provider to the Applicant;
  - (d) Details of payments which become more than 60 days overdue and for which collection action has commenced;
  - (e) Advice that payments are no longer overdue;
  - (f) In specified circumstances, advice that, in the opinion of Peninsula Dairies, the Applicant has committed a serious credit infringement; and
  - (g) Advice that credit provided to the Applicant by Peninsula Dairies has been paid or otherwise discharged.
- 3.3. The Applicant acknowledges and agrees that if Peninsula Dairies considers it relevant to assessing its application for commercial credit, Peninsula Dairies may obtain from a credit reporting agency, a credit report containing personal credit information about the Applicant in relation to commercial credit provided by other creditors.
- 3.4. The Applicant acknowledges and agrees that Peninsula Dairies may at any time receive from a credit reporting agency a credit report containing personal information about the Applicant in relation to overdue payments.
- 3.5. The Applicant agrees that Peninsula Dairies may give information about the Applicant's credit arrangements to and seek information about the Applicant's credit arrangements from any credit provider named in a credit report issued by a credit reporting agency and any existing, previous or future supplier of goods/services to the Applicant or any related entity of the Applicant (as defined in the Corporations Act). The Applicant understands that this information can include details concerning the Applicant's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Act.

- 3.6. The Applicant must authorise its bank, accountant and trade references to release information to assist Peninsula Dairies in considering this application for credit.

#### **4. Charge over real estate**

- 4.1. In consideration of Peninsula Dairies considering this application for credit and/or extending credit to the Applicant, the Applicant charges the interest the Applicant has now or in the future either solely or jointly or as tenant in common in any real estate to secure the repayment of any amount the Applicant owes to Peninsula Dairies from time to time.
- 4.2. The Applicant acknowledges Peninsula Dairies has the right pursuant to the security hereby given to lodge a caveat on any real estate in which the Applicant has such an interest and the Applicant agrees to execute a mortgage in favour of Peninsula Dairies upon request by Peninsula Dairies and do or cause to be done all such things as are necessary to give effect to the security hereby given. The Applicant further acknowledges that the security hereby given will continue until Peninsula Dairies gives a final release in respect of it.
- 4.3. The Applicant further agrees to pay s legal costs and disbursements (calculated on an indemnity basis) of and incidental to the preparation, stamping and registration of the security hereby given and its subsequent discharge or incurred in protecting or exercising its rights in respect of the security hereby given.

#### **5. Security interest over personal property**

- 5.1. In further consideration of Peninsula Dairies considering this application for credit and/or extending credit to the Applicant, the Applicant grants Peninsula Dairies a security interest in all present and after-acquired personal property which is owned solely or jointly by or in the possession of the Applicant from time to time to secure the payment of any amount the Applicant owes to Peninsula Dairies from time to time.
- 5.2. The Applicant acknowledges that the security interest granted to Peninsula Dairies pursuant to clause 5.1 is capable of registration pursuant to the [Personal Property Securities Act 2009 \("PPSA"\)](#). The Applicant waives its right to receive notification of the registration where the security interest is registered over commercial property pursuant to S157(3) of the PPSA and acknowledges that the security interest will continue until Peninsula Dairies gives a final release in respect of it.
- 5.3. The Applicant acknowledges that Peninsula Dairies will take all necessary steps to register its security interest under the PPSA, and hereby consents to Peninsula Dairies doing so. The Applicant further undertakes to promptly provide any information and do all things as required by Peninsula Dairies to enable Peninsula Dairies to perfect its security interest in the secured property.

#### **6. Interpretation**

- 6.1. A statement by Peninsula Dairies or signed by any person duly authorised from time to time by Peninsula Dairies shall be conclusive evidence that the amount stated therein is owing by the Applicant to Peninsula Dairies except to the extent of any demonstrable error.
- 6.2. This application for credit shall be read and construed in accordance with the laws of the State of Victoria and both Peninsula Dairies and the Applicant agree to submit to the jurisdiction of the courts and tribunals of that State.

#### **THE APPLICANT:**

- 1) **DECLARES** that the statements contained in this application for credit are true and correct in every particular.
- 2) **ACKNOWLEDGES** having read and understood the terms of this application for credit and Peninsula Dairies' terms and conditions of trade.
- 3) **COVENANTS AND AGREES** with Peninsula Dairies to be bound by the terms and conditions of this application for credit and terms and conditions of trade as in force from time to time.
- 4) **ACKNOWLEDGES AND AGREES** that every sale of goods or services by Peninsula Dairies or transaction between the Applicant and terms and conditions of trade will be subject to Peninsula Dairies' terms and conditions.
- 5) **AUTHORISES** Peninsula Dairies to:
  - (a) obtain trade references from any one or more of the companies/businesses nominated by it in this application for credit; and/or
  - (b) obtain a solvency reference from the bank identified in this application for credit.
- 6) **WARRANTS** that the Applicant signs this application for credit freely, voluntarily and without any duress on the part of Peninsula Dairies.



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## **GUARANTEE, INDEMNITY & CHARGE**

TO: XSEP97 Pty Ltd ("Peninsula Dairies ")  
ACN 116 645 384 ABN 74 116 645 384

We, ..... (name)  
of .....(residential address)  
..... (driver's licence number)  
.....(DOB)

and ..... (name)  
of .....(residential address)  
..... (driver's licence number)  
.....(DOB)

and ..... (name)  
of.....(residential address)  
..... (driver's licence number)  
.....(DOB)

and ..... (name)  
of .....(residential address)  
..... (driver's licence number)  
.....(DOB)

(collectively called "**the Guarantors**")

In consideration of at our request supplying and/or agreeing to supply the party described in the attached application for credit as the "Applicant" from time to time with goods and/or services on credit or otherwise, we, the Guarantors, HEREBY JOINTLY AND SEVERALLY agree:

### **1. Guarantee**

- 1.1. We hereby guarantee to Peninsula Dairies the punctual payment of all accounts and indebtedness now due or to become due by the Applicant to Peninsula Dairies whatsoever and howsoever arising including all costs, charges, expenses whatsoever which Peninsula Dairies may incur by reason of any default on the part of the Applicant notwithstanding that we, the Guarantors, may not have notice of any neglect or omission on the part of the Applicant to pay for such goods/services.
- 1.2. Peninsula Dairies shall have the fullest liberty without affecting this Guarantee either to enforce or forebear the enforcement of the obligations imposed on the Applicant. We, the Guarantors will not be released by any exercise by Peninsula Dairies of any liberty or discretion under the Application for Credit or by any extension of time or other indulgence given to the Applicant or by any other thing whatsoever which under the law relating to sureties would, but for this provision, have the effect of so releasing us the Guarantors.
- 1.3. This Guarantee shall be a continuing guarantee to Peninsula Dairies in respect of goods and services sold by Peninsula Dairies and shall be unlimited in amount, shall extend to any amount payable by the Applicant by way of damages or otherwise and shall extend to any payment initially paid by the Applicant but which Peninsula Dairies subsequently is requested to disgorge or is required to disgorge to a liquidator of the Applicant as a preference.
- 1.4. Until Peninsula Dairies receives all moneys payable by the Applicant and the Applicant has carried out all of its obligations to Peninsula Dairies, the Guarantors, in the event of the Applicant being wound up or if an administrator is appointed and a deed of company arrangement is approved by creditors, will not be entitled to prove or claim in the liquidation of the Applicant or deed of company arrangement in competition with Peninsula Dairies so as to diminish any payment which but for such proof Peninsula Dairies would be entitled to receive out of such liquidation or deed. The receipt of any payment which Peninsula Dairies may receive from such liquidation or deed shall not prejudice Peninsula Dairies' rights to recover from the Guarantors the full amount payable under this Guarantee.
- 1.5. No demand or notice needs to be made or delivered to the Guarantors prior to the commencement of any action against them to enforce the terms of this Guarantee.

- 1.6. The liability of the Guarantors shall not be abrogated prejudiced or affected by:
- (a) the sale by the Applicant of its business;
  - (b) any change in the constitution of the Applicant;
  - (c) Peninsula Dairies obtaining a judgment against the Applicant;
  - (d) the liability of the Applicant ceasing for any cause;
  - (e) any security held or taken by Peninsula Dairies to secure the Applicant's or the Guarantors' obligations being void defective or informal;
  - (f) the acceptance by Peninsula Dairies of a repudiation of the Application for Credit by the Applicant; or
  - (g) Peninsula Dairies making any variation or alteration to the terms of the Application for Credit.
- 1.7. The rights of Peninsula Dairies under this Deed are not affected by anything which might otherwise affect them at law or in equity including, without limitation, any one or more of the following:
- 1.7.1.1. granting time or other indulgence to, compounding or compromising with or releasing in any way the Applicant;
  - 1.7.1.2. acquiescence, delay, acts, omissions or mistakes of any person;
  - 1.7.1.3. any novation of a right of a party or the Applicant;
  - 1.7.1.4. any variation of this Deed; or
  - 1.7.1.5. the invalidity or unenforceability of an obligation or liability of a person other than the Guarantors.
- 1.8. The Guarantors may not, without the consent of Peninsula Dairies:
- 1.8.1.1. raise a set off or counterclaim available to them or the Applicant against Peninsula Dairies in reduction of their liability under this Deed;
  - 1.8.1.2. claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by Peninsula Dairies in connection with this Deed;
  - 1.8.1.3. seek to recover any amount from the Applicant which the Guarantors are obliged to pay or have paid to Peninsula Dairies under this Deed until Peninsula Dairies has been paid all amounts owed to it by the Applicant under the Application for Credit.
- 1.9. If Peninsula Dairies releases any Guarantor from his obligations under this Guarantee or if this Guarantee otherwise ceases to bind for any reason any Guarantor as a continuing security, this Guarantee shall continue to bind every other Guarantor not so discharged from his obligations under this Guarantee.

## **2. Indemnity**

- 2.1. As a separate and independent agreement and for the consideration aforesaid the Guarantors agree with Peninsula Dairies that in the event the whole or any part of any debt of the Applicant shall not be recoverable from the Applicant by reason of any legal limitation, disability or incapacity on or of the Applicant or by reason of any other fact or circumstance whatsoever and whether known to Peninsula Dairies or not, the Guarantors shall nevertheless hold Peninsula Dairies fully indemnified at all times against any loss or damage which Peninsula Dairies may suffer or incur by reason of the operation of such limitation, disability, incapacity, fact or circumstance.
- 2.2. The indemnity in this Deed is a continuing obligation despite any settlement of account or occurrence of any other thing, and remains in full force and effect until all money owing, contingently or otherwise, under the indemnity has been paid in full, is additional, separate and independent from the other obligations of the parties and survives termination of this Deed.
- 2.3. It is not necessary for Peninsula Dairies to pay an expense it has incurred before it enforces its right of indemnity conferred by this Deed.

## **3. Charge over real estate**

- 3.1. To better secure Peninsula Dairies' rights under this Guarantee, each Guarantor charges the interest he or she has now or in the future may have either solely or jointly or as tenants in common in any real estate to secure the payment of any amount he or she must pay to Peninsula Dairies under this guarantee indemnity and charge from time to time.
- 3.2. The Guarantors acknowledge Peninsula Dairies' right pursuant to the security hereby given to lodge a caveat on any real estate in which he or she has such an interest now or in the future and each Guarantor agrees to execute a mortgage in favour of Peninsula Dairies upon request by Peninsula Dairies and do or cause to be done all such things as are necessary to give effect to the security hereby given. The Guarantors further acknowledge that the security hereby given will continue until Peninsula Dairies gives a final release in respect of it.
- 3.3. The Guarantors further agree to pay Peninsula Dairies' legal costs and disbursements, (calculated on an indemnity basis) of and incidental to the preparation, stamping and registration of the security hereby given and its subsequent discharge or incurred in protecting or exercising its rights in respect of the security hereby given.

## **4. Charge over personal property**

- 4.1. To better secure Peninsula Dairies' rights under this Guarantee, each Guarantor grants Peninsula Dairies a security interest in all present and after-acquired personal property which is owned solely or jointly by or in the possession of the Guarantor from time to time to secure the payment of any amount he or she must pay to Peninsula Dairies under this guarantee indemnity and charge from time to time.
- 4.2. Each Guarantor acknowledges that the security interest granted to Peninsula Dairies pursuant to clause 4.1 is capable of registration pursuant to the *Personal Property Securities Act 2009* ("PPSA"). Each Guarantor waives its right to receive notification from Peninsula Dairies of the registration where it is registered over commercial property of the security interest pursuant to S157(3) of the PPSA and acknowledges that the security interest will continue until Peninsula Dairies gives a final release in respect of it.

- 4.3. Each Guarantor acknowledges that Peninsula Dairies will take all necessary steps to register its security interest under the PPSA, and hereby consents to Peninsula Dairies doing so. Each Guarantor further undertakes to promptly provide any information and do all things as required by Peninsula Dairies to enable Peninsula Dairies to perfect its security interest.

## **5. Use of information**

Each Guarantor acknowledges and agrees that Peninsula Dairies may:

- (a) seek from a credit reporting agency a credit report containing personal information about the Guarantor in order to assess whether to accept him or her as a guarantor for credit applied for, or provided to, the Applicant; and
- (b) give information about the credit arrangements of the Applicant or the Guarantor and seek information about the credit arrangements of the Applicant or the Guarantor from any credit provider named in any credit report issued by a credit reporting agency or any existing or previous provider of credit to the Applicant or the Guarantor or any company in which the Guarantor is or was an officer. This information may include any information about the credit worthiness, credit standing, credit history or credit capacity of the Applicant or the Guarantor or any company in which the Guarantor is or was an officer of the nature that credit providers are allowed to give or receive from each other under the Privacy Act.

## **6. Miscellaneous**

- 6.1. A certificate signed by Peninsula Dairies or a representative of Peninsula Dairies stating that a sum of money is owing under this guarantee or that there has been a default by the Applicant or pursuant to this guarantee or specifying any other matter or fact, the nature of which is relevant to any of the rights or obligations of Peninsula Dairies, the Applicant or a Guarantor shall be admissible in any proceeding and shall be conclusive evidence of the matters so stated or specified in such certificate.
- 6.2. In this Guarantee, Indemnity and Charge the singular shall include the plural and vice versa and a reference to a gender will include all genders.
- 6.3. This Guarantee, Indemnity and Charge shall be read and construed in accordance with the laws of the State of Victoria and both Peninsula Dairies and the Guarantors agree to submit to the jurisdiction of the courts and tribunals of that State.
- 6.4. In the event that any provision of this Guarantee, Indemnity and Charge or its application for credit to any person or circumstance is or is found to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the other provisions of this Guarantee, Indemnity and Charge or the application for credit of such provisions to any persons or circumstances and the said other provisions shall remain in full force and effect.
- 6.5. This Guarantee, Indemnity and Charge shall enure to the benefit of Peninsula Dairies, its successors and assigns and shall not be determined by the death of any of the Guarantors and shall be binding upon the Guarantors and the legal personal representatives, successors and assigns of the Guarantors.
- 6.6. This guarantee, indemnity and charge will bind each Guarantor who executes it regardless of whether any one or more other Guarantors fails to execute it.
- 6.7. A failure by Peninsula Dairies at any time or from time to time to make demand for monies due or to enforce a right conferred by this guarantee shall not prejudice or in any way affect Peninsula Dairies' ability or entitlement at any time or from time to time in the future to make any such demand or enforce any such right.
- 6.8. The Guarantors agree to pay or reimburse on demand for all costs, charges and taxes payable by Peninsula Dairies in connection with enforcing or doing anything in connection with this Deed including, without limitation, legal costs on a full indemnity basis.
- 6.9. Money paid to Peninsula Dairies by the Guarantors under this Deed may be applied first against payment of the costs, charges and taxes referred to in clause 6.8 and then against the other obligations of the Guarantors under this Deed.
- 6.10. Time is of the essence in relation to the payment of any money and in relation to each and every obligation imposed upon the Guarantors.
- 6.11. Waiver of any breach or provision of, or any default under, this Deed must be in writing and signed by the party granting the waiver.
- 6.12. A variation of any term of this Deed must be in writing and signed by the parties.
- 6.13. This Deed contains the entire agreement and understanding between the parties in connection with the transactions contemplated by this Deed and there are no inducements, representations, warranties, covenants or undertakings which have been relied on to any extent by any of the parties except as expressly contained in this Deed. This Deed supersedes all previous agreements with respect to its subject matter.
- 6.14. Each Guarantor warrants in favour of Peninsula Dairies that he and she has the opportunity to seek independent legal advice on this Deed prior to entering into this Deed.

**EXECUTED AS A DEED**

DATED this

day of

20

**SIGNED, SEALED AND DELIVERED**

**SIGNED, SEALED AND DELIVERED**

By.....  
(Print name of Guarantor)

By.....  
(Print name of Guarantor)

.....  
(Signature of Guarantor)

.....  
(Signature of Guarantor)

In the presence of:

In the presence of:

.....  
(Signature of Witness)

.....  
(Signature of Witness)

.....  
(Print name of Witness)

.....  
(Print name of Witness)

**SIGNED, SEALED AND DELIVERED**

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(Signature of Guarantor)

In the presence of:

In the presence of:

.....  
(Signature of Witness)

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(Signature of Witness)

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(Print name of Witness)

.....  
(Print name of Witness)