

# **LARNER'S OYSTER SUPPLY**

**PROCESSORS**

**OF**

## **FRESH LIVE OYSTERS**

**Unit 1/85 Forsyth Street Oconnor**

**Ph: (08) 9314 5411 Fax: (08) 9314 5455**

**Email: larner1@bigpond.net.au**

### **CREDIT APPLICATION**

Company Name (The Applicant).....A.C.N.....

Trading Name or Business Name (if applicable).....

Business Phone No.....Fax No.....

Address.....

Are you a:          Sole Trader          Partnership          Company Trust Company

Are Premises: Owned Leased Rented -For How Long\_\_\_\_\_How Long Have You Operated This Business\_\_\_\_\_

Names Of Owners (in case of Sole Trader and Partnership) or Name of Directors (in case of a Company)

Full Name.....Date Of Birth.....Home Phone No.....

Home Address.....

Full Name.....Date Of Birth.....Home Phone No.....

Home Address.....

Full Name.....Date Of Birth.....Home Phone No.....

Home Address.....

Full Name.....Date Of Birth.....Home Phone No.....

Address.....

#### **Credit References:**

1.      Name.....Phone No.....

Address.....Fax No.....

2.      Name.....Phone No.....

Address.....Fax No.....

3.      Name.....Phone No.....

Address.....Fax No.....

4.      Name.....Phone No.....

Address.....Fax No.....

Credit Limit Required \$.....

Bank.....Branch.....Account Number.....

1.      The Applicant Hereby applies to Terrabilly Nominees Pty Ltd (Referred to as Larner's Oyster Supply) for a credit account.

2.      Should this application be accepted by Larner's Oyster Supply the applicant agrees that the credit account shall be subject to the terms of this application and the usual terms and conditions of trade, a copy of which is contained herein and which then applicant has read and understands

3. Larner's Oyster Supply hereby advise that, pursuant to s.18E (8) of the Privacy Act 1988, information disclosed in this credit application may be disclosed to a credit-reporting agency. Under section 18E (8) (c) of the Privacy Act 1988 Larner's Oyster Supply is allowed to give a credit reporting agency personal information about your credit applications. Information which may be given to an agency is covered by Section 18E (1) of the Act and includes: identity particulars (as permitted by the Privacy Commissioner's determination issued under Section 18E (3): the fact that you have applied for credit and the amount, the fact that Larner's Oyster Supply is a credit provider to you, payments that become overdue by more than sixty (60) days and for which collection action has commenced; advice that payments are no longer overdue; cheques drawn by you which have been dishonoured more than once; in specific circumstances, that in the opinion of Larners' Oyster Supply, you have committed a serious credit infringement; that credit provided to you by Larner's Oyster Supply has been paid or otherwise discharged. Pursuant to ss. 18K (1) and 18n (1) of the privacy Act 1988 and paragraph 2.12 of the Credit Reporting Code of Conduct issued under x. 18A of that Act, you hereby agree to Larners's Oyster Supply obtaining information from a credit reporting agency or a credit provider for the purpose of assessing this application for commercial credit (including information as to credit worthiness); and agree to that agency or provider providing that information to Larner's Oyster Supply for that purpose. You further agree to the obtaining from, and provision by, such an agency or provider further credit reports which may assist Larner's Oyster Supply in recovering any sums outstanding under the terms of the commercial credit agreement to which this application may lead.

DATED THIS..... DAY OF..... 2006.

SIGNATURE OF AUTHORIZED OFFICER OF APPLICANT.....

PRINT NAME OF AUTHORIZED OFFICER.....

### **TERMS AND CONDITIONS OF TRADE**

#### **1. Interpretation**

- 1.1 Unless otherwise inconsistent with the word 'person' shall include a corporation:
- 1.2 'goods' shall include services.
- 1.3 Words importing the singular number shall be deemed to include the plural and vice versa. Words importing the male gender shall be deemed to include the female and neuter gender and vice versa.
- 1.4 'Larner's Oyster Supply' shall mean Terrabilly Nominees Pty Ltd, its successors and assigns.
- 1.5 'customer' shall mean the person named as 'the Applicant' on the credit application annexed hereto.
- 1.6 'GST' means any goods and services tax.

#### **2. Offer and Acceptance**

- 2.1 Any quotation made by Larner's Oyster Supply is not an offer to sell or provide goods. Larner's Oyster Supply shall not be bound by any order given in pursuance of any quotation until it is accepted in writing. All orders are subject to acceptance by Larner's Oyster Supply within thirty (30) days of receipt by Larner's Oyster Supply of the order. These terms and conditions shall be deemed to be incorporated into any agreement between Larner's Oyster Supply and the customer. Any terms and conditions contained in any order, offer, acceptance or other document of the customer and all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied therein are expressly excluded to the fullest extent permitted by law.
- 2.2 Insofar as goods or services supplied by Larner's Oyster Supply are not of a kind ordinarily acquired for personal, domestic or household consumption, the liability for breach of a condition or warranty, implied into this contract by the Sale of Goods Act or the trade Practises Act (other than a condition implied by Section 69) is limited.
  - (a) in the case of goods to any one of the following as determined by Larner's Oyster Supply:
    - (i) the refund of the price paid by the customer for the goods or the issue of a credit note for such amount; or
    - (ii) the replacement of the goods or the supply of equivalent goods; or
    - (iii) the repair of goods; or
    - (iv) the payment of the cost of replacing the goods or at acquiring equivalent goods; or
    - (v) the payment of the cost of having the goods repaired;
  - (b) in the case of services to any one of the following as determined by Larner's Oyster Supply;
    - (i) the supply of the services again; or
    - (ii) the payment of the cost of having the services supplied again.

#### **3. Delivery**

- 3.1 Any date quoted for delivery ('the quoted date') is an estimate only and unless a guarantee shall be given by Larner's Oyster Supply in writing providing for liquidated damages for failure to deliver by the quoted date Larner's Oyster Supply shall not be liable to the customer for any loss or damage howsoever arising even if arising out of the negligence of Larner's Oyster Supply for failure to deliver on or before the quoted date. The customer shall accept and pay for goods 'and any GST' if and when tendered notwithstanding any failure by Larner's Oyster Supply to deliver by the quoted date. Written advice to the customer that goods are ready for delivery whether in whole or in part shall constitute tendering and the terms of payment shall apply.
- 3.2 Larner's Oyster Supply shall not be liable to any customer or any other party for direct or indirect or consequential injury, loss or damage whatsoever by reason or any delay in delivery whether the same is due to the negligence of Larner's Oyster Supply or any other party, strike or any other industrial action be it of Larner's Oyster Supply or other party or any other cause whatsoever.



- 3.3 Larnar's Oyster Supply reserves the right to deliver by instalments. If delivery is made by instalments the customer shall not be entitled to:
- (a) to terminate or cancel the contract; or
  - (b) to any claim, loss or damage howsoever arising failure by Larnar's Oyster Supply to deliver any instalments on or before the quoted date.
- 3.4 It is agreed that Larnar's Oyster Supply shall not be responsible for the delay in delivery caused by, or in any way incidental to an act of God, war, fire, breakages if machinery, strikes or arising out of any other unexpected exceptional cause, or any cause beyond reasonable control of Larnar's Oyster Supply.
- 3.5 Any quotation containing a provision to supply goods 'ex stock' is subject to fulfillment of prior orders at the date of receipt of the customer's order.

#### 4. **Payment**

- 4.1 Unless otherwise agreed in writing, payment terms are net cash 30 days from invoice date as invoices to the customer.
- 4.2 This term as to the payment shall be of essence of the contract.
- 4.3 "The customer shall pay the price of any goods supplied by Larnar's Oyster Supply and any GST in addition to the price."

#### 5. **Title**

- 5.1 Notwithstanding the delivery of the goods or part thereof, the goods remain the sole and absolute property of Larnar's Oyster Supply as full legal and equitable owner until such time as the customer shall have paid Larnar's Oyster Supply the full price together with the full price of any goods then the subject of any other contract with Larnar's Oyster Supply.
- 5.2 The customer acknowledges that he receives possession of and holds goods delivered by Larnar's Oyster Supply sole as bailee for Larnar's Supply until such a time as the full prices 'including any GST' thereof is paid to Larnar's Oyster Supply together with the full price 'including and GST of any goods then the subject of any other contract with Larnar's Oyster Supply.
- 5.3 Until such time as the customer becomes the owner of the goods, he will;
- (a) store them on the premises separately;
  - (b) ensure that the goods are kept in good and serviceable condition;
  - (c) secure the goods from risk, damage and theft; and
  - (d) keep the goods fully insured against such risk that are usual or common to insure against in a business of a similar nature to that of the customer.
- 5.4 (a) Until the goods are paid for in full 'including any GST', Larnar's Oyster Supply authorises the customer to sell the goods as its agent. However, the customer shall not represent to any third parties that it is acting in any way for Larnar's Oyster Supply. Larnar's Oyster Supply will not be bound by any contracts with third parties to which the customer is a party.
- (b) The proceeds of any sale of the goods shall be paid into a separate account and held in trust for Larnar's Oyster Supply. The customer shall account to Larnar's Oyster Supply from this fund for the full price of the goods 'including any GST'.
- (c) The customer is entitled to a period of credit, but if prior to the expiration of the period of credit the goods are sold and the proceeds of sale are received by the customer then the customer shall account to Larnar's Oyster Supply for the full prices of the full prices of the goods 'including any GST'.
- (d) Should the customer die, stop payment or call a meeting of its creditors or become insolvent or subject to the bankruptcy laws, or being a company, appoints an administrator or calls a meeting for the purpose of or to go into liquidation or has a winding-up application presented against it or has a receiver appointed, Larnar's Oyster Supply may as its option notwithstanding its waiver of such default or failure and without before or on delivery or tender of goods notwithstanding the terms of payment previously specified, or may repossess and take over the goods and dispose of the same in its own interest without prejudice to any claim it may have for damages for any loss resulting from such resale.
- 5.5 If the customer does not pay for any goods on the due date then Larnar's Oyster Supply is hereby irrevocable authorized by the customer to enter the customer's premises (or any premises under the control of the customer or as agent of the customer in which the goods are store) and use reasonable force to take possession of the goods without liability for the tort of trespass, negligence, assault and battery or payment of any compensation to the customer whatsoever.
- 5.6 On retaking possession of the goods Larnar's Oyster Supply may elect to refund to the customer any part payment that may have been made and to credit the customer's account with the value of the goods less any charge for recovery of the goods, or to resell the goods.

#### 6. **Risk**

Unless otherwise agreed in writing, risk in the goods shall pass to the customer at the time when the goods have been placed on the vehicle which is to effect delivery from Larnar's Oyster Supply store or warehouse. The goods shall remain at the customers risk at all times unless and until Larnar's Oyster Supply retakes possession of the goods pursuant to these terms and conditions.

#### 7. **Claims and Returns**

- 7.1 Subject to clause 2.2 herein, Larnar's Oyster Supply shall not be liable for any loss or damage whatsoever and however arising whether direct or indirect or consequential or in respect of any claim whenever and however made for any loss or damage, deterioration, deficiency or other fault or harm in the goods provided by or on behalf of or in any arrangement with Larnar's Oyster Supply or occasioned to the customer or any third party or to his or their property or interest and whether or not due to the negligence of Larnar's Oyster Supply, its servants or agents.

- 7.2 As soon as any of the facts or matters which form any part of any claim or complaint whatsoever become known to the customer, the customer shall within forty eight (48) hours of receipt of the goods, notify Larner's Oyster Supply in writing of the same.
- 7.3 Larner's Oyster Supply shall not be liable in any circumstances for any;
- (a) defects or damages caused in whole or in part by misuse, abuse, neglect, improper application, repair or alteration (other than by Larner's Oyster Supply) or by accident;
  - (b) any transport installation removal, labour or other costs;
  - (c) details in goods not manufactured by it but Larner's Oyster Supply will endeavour to pass on to the customer the benefit of any claim made by Larner's Oyster Supply and accepted by the manufacturer of such goods under a warranty given by the manufacturer of such goods provided that nothing contained in this subparagraph shall limit rights of the customer to proceed against Larner's Oyster Supply pursuant to the trade Practices Act; and
  - (d) technical advice or assistance given or rendered by it to the customer or not in connection with the manufacturer construction or supply of goods for or to the customer.

8. **Force Majeure**

If by reason of any fact, circumstance, matter or thing beyond the reasonable control of Larner's Oyster Supply, Larner's Oyster Supply is unable to perform in whole or in part any obligation under this contract, Larner's Oyster Supply shall be relieved or that obligation under this contract to the extent and for the period that it is so unable to perform and shall not be liable to the customer in respect of such inability.

9. **Default**

Upon the occurrence of default by the customer in compliance with the terms herein:

- 9.1 Larner's Oyster Supply may at its discretion withhold further supplies of goods or cancel the contract, or vary the terms of this contract without prejudice to its rights hereunder PROVIDED HOWEVER that Larner's Oyster Supply may at any time and from time to time upon such terms as it may determine waive any of its rights under this clause, but without prejudice to its rights thereafter of any of the events herein before referred to or upon the continuation after any such waiver of any state of affairs the subject of such waiver.
- 9.2 The customer hereby authorises Larner's Oyster Supply or its agents to review its books and records, including all bank statements and other bank records, to determine whether the customer is able to pay its debts as and when they fall due and the customer further irrevocable grants to Larner's Oyster Supply a license to enter upon the customers premises for such purpose.
- 9.3 The customer shall pay to Larner's Oyster Supply interest at the rate of 1.5% per month on daily balances in respect of any amounts as may from time to time be overdue until paid and such money together with all interest shall be recoverable forthwith from the customer as a liquidated debt.
- 9.4 Without prejudice to any other right or remedy the customer shall indemnify Larner's Oyster Supply against any costs, fees, charges and disbursements '(inclusive of any GST)' charged by any mercantile or collection agent or solicitor engaged for the purpose of the collection or recovery of monies due and payable by the customer to Larner's Oyster Supply on an indemnity basis and all such costs shall be recoverable as a liquidated debt and, at the option of Larner's Oyster Supply, may be recovered in the Minor Debts Court.
- 9.5 The customer shall pay to Larner's Oyster Supply and administration fee of \$50.00 on the occurrence of every event of default as a liquidated debt being a genuine pre-estimate of the loss of Larner's Oyster Supply in respect of such act of default, however such fee shall not preclude Larner's Oyster Supply from claiming any higher amount from the customer for any loss occasioned by such act of default.

10. **Change of Ownership**

The customer agrees to notify Larner's Oyster Supply in writing of any change of ownership of the customer or its business, or of directorships in the case if a corporate customer, or of any other changes whatsoever affecting this agreement within seven (7) days from the date of such change and indemnifies Larner's Oyster Supply against any loss or damage incurred by it as a result of the customer's failure to notify Larner's Oyster Supply of any change.

11. **Lien Charge**

- 11.1 The Customer hereby Acknowledges and agrees that Larner's Oyster Supply has a lien over all goods in it's possession belonging to the customer to secure payment of any or all amounts outstanding from time to time.
- 11.2 The customer hereby charges all property, both equitable and legal, of the customer in respect of any monies that may hereinafter be owing to Larner's Oyster Supply under this contract by the customer or otherwise and hereby authorize Larner's Oyster Supply or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by customer at any time, to register this charge over assets of the customer with the Australian Securities Commission.

12. **Jurisdiction**

This contract for the supply of the goods is deemed to have been entered into in the state of Western Australia. Any legal action arising out of or in respect of the contract and/or the interpretation thereof shall be brought only in the Courts of Perth in the state of Western Australia and the customer irrevocably submits itself to the jurisdiction of the Courts of Perth in the state of Western Australia.



### DEED OF GUARANTEE AND INDEMNITY

TO: Terrabilly Nominees Pty Ltd trading as Larner's Oyster Supply (Referred to as 'Larner's Oyster Supply')  
Whereas in consideration of Larner's Oyster Supply agreeing to supply to the person who is named as 'the Applicant' on the credit application annexed hereunto (herein after called 'the customer') with goods and/or services from time to time, I/we the undersigned ('referred to as the guarantor') HEREBY JOINTLY AND SEVERALLY agree with Larner's Oyster Supply as follows;

1. To guarantee and to be answerable to Larner's Oyster Supply for the due payment by the customer of all monies now or from time to time hereafter owing to or unpaid to Larner's Oyster Supply on any account or any matter whatsoever by the customer either directly or indirectly and either alone or jointly with any other person, firm and/or corporation, and including but without limiting the generality of the foregoing, any interest accruing on any monies owing or unpaid and any legal costs and disbursements incurred by Larner's Oyster Supply in enforcing payment by the customer of any such monies.
2. This Guarantee shall constitute a continuing guarantee to Larner's Oyster Supply for all monies which are now or may from time to time be owing or remain unpaid and shall not be affected by:
  - 2.1 any variation or novation of the agreement between Larner's Oyster Supply and the customer extending credit to the customer or any other changes to the terms of such agreement, including any extension to the credit limit applied for by the customer and approved by Larner's Oyster Supply from time to time (and whether or not such agreed credit limit is exceeded at any time without approval by Larner's Oyster Supply);
  - 2.2 the winding-up of the customer or the entry by the customer into a Deed of Company Arrangement whereby any debt due and owing by the customer to Larner's Oyster Supply is extinguished or otherwise not recoverable;
  - 2.3 any time or other indulgence granted by Larner's Oyster Supply to the customer or by any arrangement entered into whereby Larner's Oyster Supply rights are in any way modified or abrogated and no notice of the granting of any time or indulgence or of the entering into any arrangement need be given to the guarantor;
  - 2.4 termination of the agreement between Larner's Oyster Supply and the customer for the provision of credit on account of the customer failing to inform Larner's Oyster Supply of any change in ownership of the customers business, share holding or control in which event the guarantor agrees to guarantee all monies due and owing by any third party to Larner's Oyster Supply as a result of the continuance of supply of goods and services to the customer or the third party under the customers account until notification of such change has been given to Larner's Oyster Supply and a new written agreement for the provision of credit has been entered into with the third party (including a guarantee and indemnity in the same terms set out herein);
  - 2.5 the payment by the customer of monies to Larner's Oyster Supply which are rendered void pursuant to the laws relating to bankruptcy, liquidation or administration of companies and no release, settlement or discharge which may have been given or made on the faith of such payment shall affect Larner's Oyster Supply right to recover such monies from the guarantor;
  - 2.6 any legal limitation, disability or incapacity of the customer or any other circumstances whatsoever and any monies may be recoverable from the guarantor as principal debtor.
3. The guarantor hereby indemnifies Larner's Oyster Supply in respect of all amounts payable by the customer to Larner's Oyster Supply on account of goods and/or services supplied by Larner's Oyster Supply to the customer, and all costs and interest which the customer may be required to pay Larner's Oyster Supply, and the indemnity hereby given is a separate covenant and shall not be affected by the appointment by the customer of an administrator under the provisions of the Corporations law or any Deed of Company Arrangement entered into by the customer.
4. The guarantor shall be liable to Larner's Oyster Supply for all legal costs (on a solicitor and own client basis) and the costs of any mercantile agents in respect of proceeding for recovery under this guarantee.
5. It is expressly declared that notwithstanding the fact that this Deed of Guarantee and Indemnity may be intended or expressed to be executed and given by more than one person, the same shall in fact be a valid and effectual guarantee binding against such person or persons as shall execute the same forthwith upon their execution thereunto and shall continue to be binding as against such person or persons notwithstanding the fact that any proposed or contemplated party shall not in fact subsequently execute the same.
6. The guarantor hereby charges all property, both equitable and legal, of the guarantor respect of any monies that may hereinafter be owing to Larner's Oyster Supply under this guarantee by the guarantor or otherwise and hereby authorise Larner's Oyster Supply or its solicitors to execute any consent form as its attorney for the purpose of registering a caveat over any real property owned by the guarantor at any time.
7. This guarantee and the construction and interpretation of it shall be governed by the laws of the state of Western Australia in force for the time being and from time to time, and the parties to this Deed of Guarantee and Indemnity irrevocably submit unconditionally to the jurisdiction of the Court of Perth in the state of Western Australia in respect of all claims, proceeding and matters arising out of or in respect to this Deed of Guarantee and Indemnity.
8. In this guarantee, unless the context otherwise requires, the singular includes the plural and vice versa, any gender included each of the other genders, and words importing persons include firms, unincorporated bodies and corporations.

SIGNED, SEALED AND DELIVERED THIS

DAY OF

2002

Signature of Guarantor.....

Signature of Witness.....

Print Full Name.....

Print Full Name.....

Address.....

Address.....

Signature of Guarantor.....

Signature of Witness.....

Print Full Name.....

Print Full Name.....

Address.....

Address.....