



Castlegate James

The name behind Australasia's Premier Stockfeed Brands

COMMERCIAL CREDIT APPLICATION & TERMS OF TRADE

PART 1: CREDIT APPLICATION DETAILS (PLEASE COMPLETE ALL SECTIONS)

**Please attach a separate sheet if there is insufficient space on this form to include all information required*

BUYER DETAILS				
Are You: Partnership <input type="checkbox"/> Sole Trader <input type="checkbox"/> Company <input type="checkbox"/> Government <input type="checkbox"/> Other <input type="checkbox"/>				
Buyer Name:			Trading Name:	
ABN:		ACN:		ARBN:
If acting for a Trust:	Acting as Trustee for the			Trust
Trust ABN:				
Registered Office Address:				
Trading Address:				
Phone No: ()		Mobile No: ()		Fax No: ()
Email:				
Contact Details for Invoices/Statements	Name:			
	Address:			
	Phone No: ()		Email:	
BUSINESS STRUCTURE & OPERATIONS				
Date Business Commenced Operations: / /20		Number of Employees:		Licence (if any) No:
Nature of Business: (please tick as appropriate)				
Agriculture <input type="checkbox"/>	Wholesale <input type="checkbox"/>	Manufacturing <input type="checkbox"/>	Service Provider <input type="checkbox"/>	Subcontractor <input type="checkbox"/> Mining <input type="checkbox"/> Other <input type="checkbox"/> specify:
Geographical Presence of Business: (please tick as appropriate) <input type="checkbox"/> SA				
National <input type="checkbox"/>	QLD <input type="checkbox"/>	NSW <input type="checkbox"/>	VIC <input type="checkbox"/>	TAS <input type="checkbox"/> WA <input type="checkbox"/> NT <input type="checkbox"/> ACT <input type="checkbox"/>
Details of all Directors/Partners/Owners (as applicable)				
Full Name	Address	Phone No.	D.O.B.	Licence No.
List of Associated Companies (holding company; subsidiaries)				
Name	Address	ACN/ABN/ARBN		

Castlegate James Australasia P/L ABN 73 098 051 846 POBox 1261, Robinson, Vic. 3019

Office 1, Central West Business Park, 9 Ashley Street, Braybrook, Victoria 3019 T: 03 8311 2200 F: 03 8311 2255

Ballarat Retail Outlet: 4 Wiltshire Lane, Delacombe Victoria 3356 T: 03 5336 0722 F: 03 5336 0733

Sydney Office: Suite 13/10 Gladstone Road, Castle Hill NSW 2154 T: 02 8853 3300 F: 02 9899 4022

E: admin@castlegatejames.com.au W: castlegatejames.com.au Smithton, Tasmania: T: 03 6452 3373 F: 03 6452 3383

Credit Limit Required			
Amount	\$		
FINANCIAL & CREDIT INFORMATION *Please attach latest audited financial report			
Financial Status as at / /20 (insert date)			
Trade Creditors: \$	Inventory: \$:	Debtors: \$	
Total Assets: \$		Total Liabilities: \$	
Has the Buyer/associated entity previously traded with the Seller? If YES, under what name?			
Has the Buyer, Directors or Owners entered a Part X, bankruptcy, administration, deed of company arrangement, liquidation or receivership in the past? If YES please provide details:			
Have any of the Directors, Partners or Owners provided personal guarantees to other the Sellers? Yes <input type="checkbox"/> No <input type="checkbox"/>			
BANKING DETAILS			
Bank Institution:	Address:		
BSB:	Account Number:		
Bank Institution:	Address:		
BSB:	Account Number:		
TRADE REFERENCES			
Full Name	Address	Phone No.	Email
GUARANTORS			
Full Name	Address	Phone No.	Email

PART 2: TERMS OF CREDIT (PLEASE READ CAREFULLY BEFORE EXECUTING)

The Buyer applies to establish a credit account with Castlegate James Australasia Pty Ltd ABN 73 098 051 846 on the following terms:

1. Definitions

- 1.1. In this Credit Application, the term Terms of Trade means the Castlegate James Australasia Pty Ltd ABN 73 098 051 846 standard Terms of Trade of trade for the supply of Goods & Services as amended from time to time, a copy of which is attached to this Credit Application and which will apply as the binding terms upon which any credit account is opened in the Buyer's name and any credit is provided to the Buyer.
- 1.2. Terms appearing in this Credit Application have any meaning prescribed to them in the Terms of Trade.

2. Credit Reporting and the Privacy Act

Without limiting any other provision in these Terms of Credit, the Buyer expressly acknowledges and agrees with clause 16 of the Terms of Trade regarding, inter alia, the collection, use and storage of personal information about the Buyer, which clause is incorporated into this Credit Application.

3. Terms of Trade

3.1. The Terms of Trade are incorporated into this Credit Application and into each and every agreement for the supply of Goods & Services made between the Seller and the Buyer.

3.2. The Buyer:

3.2.1. expressly acknowledges having been provided with a copy of the Terms of Trade current as at the date of making this Credit Application;

3.2.2. expressly acknowledges and agrees that the Terms of Trade are incorporated into each and every agreement for the supply of Goods & Services made between the Seller and the Buyer; and

3.2.3. expressly acknowledges and agrees that the Terms of Trade will apply as the binding terms and terms upon which a credit account is opened in the Buyer's name and credit is provided to the Buyer.

3.3. If the Seller agrees to provide credit to the Buyer, unless otherwise agreed in writing, the Buyer will pay the Purchase Price for Goods & Services to which credit is provided as specified in the Terms of Trade.

4. Representations, Acknowledgements & Authorisations

4.1. The Buyer acknowledges and represents to the Seller that:

4.1.1. they are not aware of any information, notice or court proceedings that may lead to the Buyer's bankruptcy or to the appointment of an administrator, controller or managing controller, receiver or receiver manager or liquidator to the Buyer;

4.1.2. they do not intend to enter into any scheme or arrangement with creditors, either formally through a court or otherwise;

4.1.3. none of the directors, partners or owners of the Buyer have been a director of a company which was placed in liquidation or has been declared bankrupt or has entered into an arrangement under the Bankruptcy Act 1966 (as amended) other than as declared in part 1 of this Credit Application.

4.2. The Buyer acknowledges and agrees that this Credit Application will not be valid unless all details required in Part 1 are provided and the Buyer executes this Credit Application at the conclusion of Part 2;

4.3. The Buyer acknowledges and agrees that the Seller may, at its sole discretion:

4.3.1. request additional information from the Buyer to assist in the assessment of this Credit Application;

4.3.2. approve or refuse this Credit Application;

4.3.3. impose a condition on the provision of a credit account that the directors, partners or owners of the Buyer and/or another third party enter into, on a joint and several bases, a deed of guarantee in the form attached.

4.3.4. impose a condition on the provision of a credit account that the Buyer obtain for the benefit of the Seller a bank guarantee guaranteeing:

4.3.5. the payment to the Seller of all moneys due to the Seller by the Buyer;

4.3.6. the performance by the Buyer of any and all of its obligations to the Seller;

4.3.7. impose a credit limit on the Buyer's credit account; and

4.3.8. revoke or vary the terms of the Buyer's credit account at any time with notice to the Buyer.

4.4. The Buyer acknowledges and represents to the Seller that:

4.4.1. they are authorised to make this Credit Application.

4.4.2. where the Buyer makes this Credit Application as trustee of a trust, the Buyer will be personally liable to the Seller for the obligations of the trust;

4.4.3. the information they have provided in this Credit Application is correct and is for the use of the Seller in determining whether or not to open a credit account in the Buyer's name and, if so, the amount of credit to be extended to the Buyer and the terms of such credit;

4.4.4. the Seller has relied on the information provided by the Buyer in this Credit Application;

- 4.4.5. they will notify the Seller in writing of any changes to the trading address, legal entity, structure or management or control of the Buyer to the Seller within 7 days of the occurrence of such change; and
- 4.4.6. they will ensure that their credit account trades within their approved credit limit and any amount in excess of the approved credit limit will be repayable immediately by the Buyer.

(If the Buyer is a company)

EXECUTED byPty Ltd
If the company has a seal by affixing the common seal in the presence of the authorised persons:

or
If the company does not have a seal by being signed by the authorised persons, the company not having a common seal:



.....
 Director

.....
 Director/Secretary *
 *Delete if sole director

.....
 Date

(If the Buyer is applicant is not a company signatures of all owners required)

SIGNED SEALED AND DELIVERED by the said
 in the presence of:
(insert name of Authorised Officer)

.....
 Signature of Authorised Officer

.....
 Signature of Witness

.....
 Address of Authorised Officer

.....
 Print Name & Address of Witness

.....
 Date

.....
 Date

SIGNED SEALED AND DELIVERED by the said
 in the presence of:
(insert name of Authorised Officer)

.....
 Signature of Authorised Officer

.....
 Signature of Witness

.....
 Address of Authorised Officer

.....
 Print Name & Address of Witness

.....
 Date

.....
 Date

SIGNED SEALED AND DELIVERED by the said
 in the presence of:
(insert name of Authorised Officer)

.....
 Signature of Authorised Officer

.....
 Signature of Witness

.....
 Address of Authorised Officer

.....
 Print Name & Address of Witness

.....
 Date

.....

.....

Date

PART 3: OUTCOME OF APPLICATION (OFFICE USE ONLY)

Full Name of Authorised Staff Member Processing the Application:	
Outcome of Application:	Approved / Not Approved (circle as appropriate) Date:
If Approved, Credit Terms:	Credit Limit: \$ _____ Payment Terms: _____ days from the date of invoice from the Seller Other Comments /Terms of Credit: _____ _____ _____
Buyer been advised of Outcome:	Yes / No (circle as appropriate)
Signature of Authorised Staff Member Processing the Application:	



The name behind Australasia's Premier Stockfeed Brands

TERMS OF TRADE

1. Definitions

ACL means The Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);

Agreement means the agreement between the Seller and the Buyer for the ongoing supply of the Goods as constituted by these Terms of Trade and any Terms of Credit;

Buyer means the person or entity (or any person acting on behalf of and with the authority of the person or entity) as described on any quotation, work authorisation or other form as provided by the Seller to the Buyer;

Consumer has the meaning prescribed to it in the ACL;

Credit Account Buyer means a Buyer who has a current credit account with the Seller following the submission of a successful Credit Application;

Financing Statement, Financing Change Statement, Personal Property Securities Register, and Security Interest each have the meaning prescribed to them in the PPSA;

Guarantor means that person (or persons) who agrees to be liable for the debts of the Buyer on a principal debtor basis;

Goods will mean all goods supplied by the Seller to the Buyer and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Buyer;

GST has the meaning prescribed to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended);

Order means an order by the Buyer for the supply of the Goods & Services as placed by the Buyer in accordance with any order process imposed by the Seller and advised to the Buyer from time to time;

Price means the price payable for the Goods & Services as agreed between the Seller and the Buyer in accordance with clause 4 of these Terms of Trade;

Security Agreement means the security agreement under the PPSA created between the Buyer and the Seller by these Terms of Trade

Seller means Castlegate James Australasia Pty Ltd ABN 73 098 051 846, its successors and assigns or any person acting on behalf of and with the authority of Castlegate James Australasia Pty Ltd ABN 73 098 051 846;

Services means all services supplied by the Seller to the Buyer and includes any advice or recommendations;

Terms of Credit means the terms of credit contained in, or imposed pursuant to, the Credit Application or these Terms of Trade;

Warranty Document means any document provided with the Goods or Services in which the Seller gives a warranty in relation to those Goods or Services.

2. Governing Law & Australian Consumer Law

- 2.1. These Terms of Trade are governed by and construed in accordance with the laws of Victoria, Australia and the Buyer and the Seller each submit to the exclusive jurisdiction of the courts of Victoria in respect of the interpretation of, or any dispute arising under, these Terms of Trade.
- 2.2. The supply of Goods & Services under these Terms of Trade to an individual who acquires the Goods & Services as a Consumer will be subject to the ACL.
- 2.3. Nothing in these Terms of Trade is intended to exclude, restrict or modify rights which the Buyer may have under the ACL or any other law which cannot be excluded, restricted or modified.
- 2.4. If any provision of these Terms of Trade is invalid under the ACL or any other law, that provision is enforceable to the extent that it is not invalid, and if it is not possible to give that provision any effect at all, then it is to be severed from these Terms of Trade and the remainder of these Terms of Trade will continue to have full force and effect.

3. Supply of Goods & Services Subject to Terms of Trade

- 3.1. Goods & Services are supplied by the Seller to the Buyer only on these Terms of Trade, to the exclusion of all other terms and conditions, including any terms and conditions that

may be provided by the Buyer, and notwithstanding that any terms and conditions may purport to override these Terms of Trade.

- 3.2. By placing an Order, the Customer is deemed to have accepted these Terms of Trade, which will be binding in respect of that Order and all future Orders submitted by the Buyer.
- 3.3. Where more than one Buyer has entered into this agreement, the Buyers will be jointly and severally liable for all payments of the Price.
- 3.4. The Buyer will give the Seller not less than fourteen (14) days prior written notice of any proposed change of ownership of the Buyer or any change in the Buyer's name and/or any other change in the Buyer's details (including but not limited to, changes in the Buyer's address, facsimile number, or business practice). The Buyer will be liable for any loss incurred by the Seller as a result of the Buyer's failure to comply with this clause.

4. Price

- 4.1. At the Seller's sole discretion the Price will be either:
 - 4.1.1. as indicated on invoices provided by the Seller to the Buyer in respect of Goods & Services supplied; or
 - 4.1.2. the Seller's quoted Price (subject to clause 4.2) which will be binding upon the Seller provided that the Buyer will accept the Seller's quotation in writing within thirty (30) days.
- 4.2. The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
- 4.3. GST and other taxes and duties that may be applicable will be added to the Price except when they are expressly included in the Price.

5. Payment

- 5.1. The Seller may require a deposit to be paid prior to delivery of the Goods & Services.
- 5.2. Subject to clause 5.1, a Buyer who is not a Credit Account Buyer must pay the Purchase Price, in the case of Goods, upon delivery and, in the case of Services, upon completion of the Services.
- 5.3. Subject to clause 5.1, a Credit Account Buyer must pay the Purchase Price within thirty (30) days following the end of the month in which a statement is posted to the Buyer's address or address for notices unless otherwise agreed upon by the parties in writing.
- 5.4. Payment may be made by cash, bank cheque, credit card, direct credit or by any other method as agreed to between the Buyer and the Seller.

6. Delivery of Goods & Completion of Services

- 6.1. Any time quoted for delivery of the Goods or completion of the Services is an estimate only and not binding on the parties.
- 6.2. Delivery of the Goods will take place at the earliest of the following:
 - 6.2.1. when the Buyer takes possession of the Goods at the Seller's address; or
 - 6.2.2. where the Goods are delivered by the Seller or the Seller's nominated carrier, when the Buyer takes possession of the Goods at the Buyer's nominated address; or
 - 6.2.3. where the Buyer arranges delivery, when the Buyer's nominated carrier takes possession of the Goods.
- 6.3. The costs of delivery are included in the Price unless otherwise stated by the Seller in writing at the time the Price is given.
- 6.4. The Buyer will make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Buyer is unable to take delivery of the Goods as arranged the Seller will be entitled to charge a reasonable fee for redelivery.
- 6.5. Delivery of the Goods to a third party nominated by the Buyer is deemed to be delivery to the Buyer for the purposes of this agreement.
- 6.6. The Seller will not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods or complete the Services (or any of them) promptly or at all, where due to circumstances beyond the control of the Seller.
- 6.7. Where the Buyer expressly requests the Seller to leave Goods outside the Seller's premises for collection or to deliver the Goods to an unattended location then such Goods will be left at the Buyer's sole risk and it will be the Buyer's responsibility to ensure the Goods are insured adequately or at all.

7. Risk

- 7.1. Risk of loss or damage to the Goods passes to the Buyer on delivery.
- 7.2. If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Buyer, the Seller is entitled to receive all insurance proceeds payable for the Goods and the production of these Terms of Trade by the Seller is sufficient evidence of the Seller's right to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.

8. Title

- 8.1. The Seller and the Buyer agree that ownership of the Goods will not pass until:
 - 8.1.1. the Buyer has paid the Seller all amounts owing for the particular Goods; and
 - 8.1.2. the Buyer has met all other obligations due by the Buyer to the Seller in respect of all contracts between the Seller and the Buyer.
- 8.2. Receipt by the Seller of any form of payment other than cash will not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods will continue.
- 8.3. Prior to ownership in the Goods passing to the Buyer:
 - 8.3.1. the Buyer holds the Goods as bailee and fiduciary agent of the Seller;
 - 8.3.2. where practicable, the Buyer must keep the Goods separate and identifiable;
 - 8.3.3. the Buyer must keep the Goods in good and merchantable condition and fully insure the Goods against loss or damage howsoever caused;
 - 8.3.4. the Buyer must not create any encumbrance over the Goods which is inconsistent with the Seller's title in, and ownership of, the Goods.
 - 8.3.5. the Buyer must not sell the Goods except with the prior written consent of the Seller or in the ordinary course of the Buyer's business;
 - 8.3.6. if the Goods are converted into other products, the Seller will be the owner of the end products;
- 8.4. Where the Goods are sold by the Buyer prior to ownership passing to the Buyer:
 - 8.4.1. any proceeds of re-sale, insofar as they relate to the Goods shall be held on trust for the Seller in a separate account;
 - 8.4.2. the Seller can issue proceedings to recover the Price of the Goods sold; and
- 8.5. At any stage prior to ownership in the Goods passing to the Buyer the Seller may give notice in writing to the Buyer to return the Goods or any of them to the Seller and upon such notice being given the rights of the Buyer to obtain ownership or any other interest in the Goods will cease.
- 8.6. If the Buyer fails to return the Goods to the Seller pursuant to clause 8.5 then the Seller or the Seller's agent may:
 - 8.6.1. (as the invitee of the Buyer) enter upon and into land and premises owned, occupied or used by the Buyer, or any premises where the Goods are situated and take possession of the Goods; or
 - 8.6.2. stop the Goods in transit whether or not delivery has been made.

9. Personal Property Securities Act 2009 (PPSA)

- 9.1. Upon assenting to these Terms of Trade in writing the Buyer acknowledges and agrees that these Terms of Trade:
 - 9.1.1. constitute a Security Agreement for the purposes of the PPSA; and
 - 9.1.2. create a Security Interest in:
 - 9.1.2.1. all Goods supplied by the Seller to the Buyer; and
 - 9.1.2.2. all Goods that will be supplied in the future by the Seller to the Buyer.
- 9.2. The Buyer undertakes to:
 - 9.2.1. promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Seller may reasonably require to:
 - 9.2.1.1. register a Financing Statement or Financing Change Statement in relation to a security interest on the Personal Property Securities Register;
 - 9.2.1.2. register any other document required to be registered by the PPSA; or
 - 9.2.1.3. correct a defect in a statement referred to in clause 9.2.1.1 or 9.2.1.2;
 - 9.2.2. indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a Financing Statement or Financing Change Statement on the Personal Property Securities Register or releasing any Goods charged thereby;

- 9.2.3. not register a Financing Change Statement in respect of a security interest without the prior written consent of the Seller;
 - 9.2.4. not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the prior written consent of the Seller; and
 - 9.2.5. immediately advise the Seller of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.3. To the maximum extent permitted by law, the Buyer and Seller contract out of sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.
 - 9.4. Unless otherwise agreed to in writing by the Seller, the Buyer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
 - 9.5. The Buyer and the Seller agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
 - 9.6. Nothing in this clause 9 is limited by any other provision of these Terms of Trade or any other agreement between the parties.

10. Security and Charge

Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:

- 10.1. where the Buyer is the owner of land, realty or any other asset capable of being charged, the Buyer agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under these Terms of Trade;
- 10.2. the Buyer acknowledges and agrees that the Seller (or the Seller's nominee) will be entitled to lodge where appropriate a caveat, which caveat will be withdrawn once all payments and other monetary obligations payable hereunder have been met;
- 10.3. should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Buyer will indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis; and
- 10.4. the Buyer agrees to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Buyer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 10.

11. Inspection of Goods

- 11.1. The Buyer will inspect the Goods & Services on delivery and will immediately notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Buyer will afford the Seller an opportunity to inspect the Goods & Services within a reasonable time following delivery if the Buyer believes the Goods or Services are defective in any way.
- 11.2. If the Buyer fails to comply with 11.1, the Goods & Services will be presumed to be free from any defect or damage the Goods will not be accepted for return unless the Seller is compelled to accept the Goods by law.
- 11.3. Nothing in this clause 11 is intended to circumvent the operation of the ACL.

12. Defects & Warranties

- 12.1. The Seller warrants that the Goods & Services comply with the warranties included in any Warranty Document and any guarantees that apply compulsorily under the ACL.
- 12.2. To the extent permitted by law, all other guarantees, warranties, undertakings and representations whether expressed or implied and whether arising by statute or otherwise, which are not given in these Terms of Trade or any Warranty Document are expressly excluded.
- 12.3. If the Buyer is a Consumer, where any Goods or Services supplied by the Seller are not goods of a kind ordinarily acquired for personal, domestic or household use or consumption, the Buyer agrees that the Seller's liability for a failure to comply with a consumer guarantee under the ACL in relation to those Goods or Services (other than a guarantee under sections 51, 52 and 53 of the ACL) is limited, at the option of the Seller, to one or more of the following:
 - 12.3.1. in the case of Goods:
 - 12.3.1.1. the replacement of the Goods or the supply of equivalent goods;

- 12.3.1.2. the repair of the Goods;
- 12.3.1.3. the payment of the cost of replacing the Goods or of acquiring equivalent goods; or
- 12.3.1.4. the payment of the cost of having the Goods repaired; and
- 12.3.2. in the case of Services:
 - 12.3.2.1. supplying the Services again; or
 - 12.3.2.2. the payment of the cost of having the Services supplied again.
- 12.4. If the Buyer is not a Consumer, to the extent permitted by law, the Seller will not be liable in any circumstances for any:
 - 12.4.1. loss or damage to any property or person whatsoever resulting from the provision of the Goods & Services;
 - 12.4.2. loss arising from delay in delivery of the Goods or completion of the Services; or
 - 12.4.3. consequential loss.

13. Default and Consequences of Default

- 13.1. In the event that the Buyer's payment is dishonoured for any reason the Buyer will be liable for any dishonour fees incurred by the Seller.
- 13.2. The Seller may charge interest on overdue amounts at the rate provided for by section 2 of the Penalty Interests Rate Act 1983 (Vic), plus 2%, compounded daily from the date of due payment until the date of payment in full of the overdue amount, plus interest.
- 13.3. If the Buyer is in default of payment, the Buyer will indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt, including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
- 13.4. Without prejudice to any other remedies the Seller may have, if at any time the Buyer is in breach of any obligation (including those relating to payment) the Seller may suspend or terminate the supply of Goods & Services to the Buyer and any of its other obligations under the Terms of Trade. The Seller will not be liable to the Buyer for any loss or damage the Buyer suffers because the Seller has exercised its rights under this clause.
- 13.5. If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) will be levied as a reasonable administration fee, which sum will become immediately due and payable.
- 13.6. Without prejudice to the Seller's other remedies at law the Seller will be entitled to cancel all or any part of any Order which remains unfulfilled and all amounts owing to the Seller will, whether or not due for payment, become immediately payable in the event that:
 - 13.6.1. any money payable to the Seller becomes overdue or in the Seller's opinion the Buyer will be unable to meet its payments as they fall due; or
 - 13.6.2. the Buyer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - 13.6.3. a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Buyer or any asset of the Buyer.
- 13.7. Unless prohibited at law, in the event of any breach of this Agreement by the Seller the remedies of the Buyer will be limited to damages which under no circumstances will exceed the Price of the Goods & Services.

14. Cancellation

- 14.1. The Seller may cancel an Order at any time before delivery of the Goods or commencement of the Services by giving written notice to the Buyer. On giving such notice the Seller will repay to the Buyer any sums paid in respect of the Price.
- 14.2. Liability of the Supplier for any loss or damage incurred by the Buyer arising from such cancellation is expressly excluded except to the extent such exclusion is prohibited at law.
- 14.3. In the event that the Buyer cancels an Order Buyer will be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) arising from the cancellation.

15. Disputes

In the event that a commodity contract has been executed between the Buyer and the Seller then this Contract is subject to the Trade Rules of GTA currently in effect, except to the extent the same are in conflict with the Terms and Conditions expressed herein, with such Rules forming an integral part of the Contract and of which both parties hereto will be deemed to be cognisant. Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, will be resolved by arbitration in accordance with the GTA Dispute Resolution Rules in force at the time of the contract.

16. Credit Reporting

- 16.1. The Buyer /s (herein referred to as the Buyer) agree for the Seller to obtain from a credit reporting agency a credit report containing personal credit information about the Buyer in relation to credit provided by the Seller.
- 16.2. The Buyer agrees that the Seller may exchange information about the Buyer with those credit providers either named as trade referees by the Buyer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - 16.2.1. to assess an application by the Buyer; and/or
 - 16.2.2. to notify other credit providers of a default by the Buyer; and/or
 - 16.2.3. to exchange information with other credit providers as to the status of this credit account, where the Buyer is in default with other credit providers; and/or
 - 16.2.4. to assess the creditworthiness of the Buyer.
- 16.3. The Buyer understands that the information exchanged can include anything about the Buyer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 16.4. The Buyer consents to the Seller being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 16.5. The Buyer agrees that personal credit information provided may be used and retained by the Seller for the following purposes (and for other purposes as will be agreed between the Buyer and Seller or required by law from time to time):
 - 16.5.1. the provision of Goods & Services; and/or
 - 16.5.2. the marketing of Goods & Services by the Seller, its agents or distributors; and/or
 - 16.5.3. analysing, verifying and/or checking the Buyer's credit, payment and/or status in relation to the provision of Goods & Services; and/or
 - 16.5.4. processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Buyer; and/or
 - 16.5.5. enabling the daily operation of Buyer's account and/or the collection of amounts outstanding in the Buyer's account in relation to the Goods & Services.
- 16.6. The Seller may give information about the Buyer to a credit reporting agency for the following purposes:
 - 16.6.1. to obtain a consumer credit report about the Buyer;
 - 16.6.2. allow the credit reporting agency to create or maintain a credit information file containing information about the Buyer.
- 16.7. The information given to the credit reporting agency may include:
 - 16.7.1. personal particulars (the Buyer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
 - 16.7.2. details concerning the Buyer's application for credit or commercial credit and the amount requested;
 - 16.7.3. advice that the Seller is a current credit provider to the Buyer;
 - 16.7.4. advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

- 16.7.5. that the Buyer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- 16.7.6. information that, in the opinion of the Seller, the Buyer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Buyer's credit obligations);
- 16.7.7. advice that cheques drawn by the Buyer for one hundred dollars (\$100) or more, have been dishonoured more than once;
- 16.7.8. that credit provided to the Buyer by the Seller has been paid or otherwise discharged.

17. Miscellaneous Provisions

17.1. Force Majeure

Neither party will be liable for any failure or delay in the performance of their obligations under this Agreement, except an inability to pay any money when due, where such failure or delay is caused by an event or circumstance which is beyond their reasonable control, could not be overcome by the exercise of reasonable care and could not have been reasonably foreseen.

17.2. Notice

All notices referred to in this Agreement must be made in writing, which may include email correspondence.

17.3. Confidentiality

All information exchanged between the parties will be treated as confidential except to the extent that it becomes public knowledge, and will not be disclosed to a third party without the prior written consent of the party who originally supplied the information or unless required by law.

17.4. No Set-Off

The Buyer will not be entitled to set-off against, or deduct from the Price, any sums owed or claimed to be owed to the Buyer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

17.5. Licensing/Subcontracting

The Seller may license or sub-contract all or any part of its rights and obligations without the Buyer's consent.

17.6. Amendments

The Buyer agrees that the Seller may review these Terms of Trade at any time. If, following any such review, there is to be any change to these Terms of Trade, then that change will take effect from the date on which the Seller notifies the Buyer of such change. Except where the Seller supplies further Goods or Services to the Buyer and the Buyer accepts such Goods or Services, the Buyer will be under no obligation to accept such changes.

17.7. Waiver

A single or partial exercise or waiver of a right relating to these Terms of Trade will not prevent any other exercise of that right or another right.

DEED OF GUARANTEE, INDEMNITY AND CHARGE (Guarantee)

1. The Buyer has submitted the Credit Application which is subject to the Agreement to the Seller.
2. In consideration of the Seller agreeing to provide goods and services to the Buyer, whether in accordance with the Agreement or otherwise, the Guarantor personally guarantees:
 - 2.1. the payment to the Seller of all moneys due to the Seller by the Buyer whether in accordance with the Agreement or otherwise; and
 - 2.2. the performance by the Buyer of any and all of its obligations under the Agreement.
3. Without limiting clause 2 of this Guarantee, the Guarantor:
 - 3.1. **guarantees the due performance and observance** of all the terms, conditions, covenants and agreements contained or implied in the Agreement to be performed and observed whether or not demand for such performance or observance has been made by the Seller;
 - 3.2. **indemnifies the Seller** against and in respect of any loss or damage suffered by the Seller by reason or as a result of the default of the Buyer under the Agreement or by reason of any disclaimer of the Agreement by any liquidator of the Buyer upon any winding-up of the Buyer or by reason of the Buyer having exceeded its powers or being incompetent to enter into the Agreement and also in respect of all costs charges and expenses whatsoever which the Seller may incur by reason of the aforesaid or any default on the part of the Buyer under or in relation to the Agreement;
 - 3.3. **charges in the Seller's favour** all of the Guarantor's right, title, estate and interest, in any real or Personal Property which the Guarantor now has or in which the Guarantor later acquires, with payment of all monies owed by the Buyer and agrees to execute any document requested by the Seller to further secure the Buyer's liabilities; and
 - 3.4. **agrees** that any payment due to the Seller by the Buyer which is subsequently avoided or reduced by any law relating to insolvency will be deemed not to have been paid to the extent it has been avoided or reduced.
4. The Seller will have the fullest liberty without affecting this Guarantee to postpone for any time and from time to time the exercise of all or any of the powers, rights, authorities and discretions conferred by, or arising by virtue of, the Agreement and to exercise the same at any time and in any manner and either to enforce or forebear to enforce:
 - 4.1. any term of the Agreement; or
 - 4.2. any other remedies or securities available to the Seller,

AND the Guarantor will not be released by any exercise by the Seller of its liberty with reference to any of the aforesaid matters or by any time being given to the Guarantor or any other thing whatsoever which under the law would, but for this provision, have the effect of so releasing the Guarantor.
5. This Guarantee is effective from the date of signing and operates as a continuing security in relation to all credit dealings between the Seller and the Buyer, its agents and nominees.

6. This Guarantee extends to any and all monies which are now or may from time to time become due and owing and is not limited in any other way.
7. This Guarantee will not end on the Guarantor's death and will bind the Guarantor's legal personal representative.
8. This Guarantee will not be affected or prejudiced by any variation or modification of the terms of the Agreement, nor by any breach of those terms by the Buyer or the Seller.
9. This Guarantee will not affect or be affected by any further security now or hereafter held or taken by the Seller or by any loss by the Seller of such security or by the Seller failing or neglecting to recover, by the realisation of any real or Personal Property or other security, all or any moneys due to the Seller.
10. This Guarantee will be a principal obligation and will not be treated as ancillary or collateral to any other obligation whatsoever.
11. If more than one Guarantor executes this Guarantee:
 - 11.1. each Guarantor provides the Guarantee jointly and severally; and
 - 11.2. the obligations of the Guarantor will not be limited or lessened by the Seller releasing any other Guarantor or entering into a composition with any other Guarantor.
12. Any demand or notice to be made upon the Guarantor under this Guarantee will be deemed to be duly made if the same be in writing and the same may be left, or sent through the post in a prepaid registered letter addressed to the Guarantor, at the address herein of the Guarantor or any other address last known to the Seller. Any demand so sent by post will be deemed to have been duly served at the expiration of 48 hours from the time of its posting and notwithstanding that it may subsequently be returned through the post unclaimed.
13. The Guarantor agrees that for the purposes of the Privacy Act 1988 (Cth) and generally the Seller may give a credit reporting agency personal information about the Guarantor or otherwise concerning this Guarantee including:
 - 13.1. the Guarantor's name, address, date of birth and driver's licence number;
 - 13.2. other personal information concerning any person named in this Guarantee;
 - 13.3. the fact that this Guarantee has been made and the amount of the Guarantee;
 - 13.4. details of payments overdue more than 60 days and for which collection has commenced;
 - 13.5. details of payments no longer overdue;
 - 13.6. details of cheques drawn by the Guarantor which have been dishonoured more than once;
 - 13.7. in the circumstances specified under the Privacy Act 1988 (Cth), advice that in the opinion of the Seller the Guarantor has committed a serious credit infringement;
 - 13.8. advice that the Guarantee provided by the Guarantor or other obligation of the Guarantor to the Seller has been discharged.
14. The Guarantor authorises the Seller to give, or seek from, any credit providers that may be named in a credit report or a credit reporting agency report, information that credit providers are permitted to give or receive from each other under the Privacy Act 1988 (Cth).
15. This Guarantee constitutes a Security Agreement under the PPSA and the charge referred to in clause 3.3 constitutes a Security Interest, insofar as it relates to the Guarantor's Personal Property, which may be registered by the Seller on the Register.

16. To the maximum extent permitted by law, the Guarantor and Seller contract out of sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA.
17. Unless otherwise agreed to in writing by the Seller, the Guarantor waives its right to receive a verification statement in accordance with section 157 of the PPSA.
18. The Guarantor and the Seller agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA. Nothing in this clause prevents the Seller from disclosing to an Interested Person such information that the Guarantor expressly consents to the Supplier doing so.
19. The Guarantor will promptly do anything required by the Seller to ensure that the Seller's Security Interest is a perfected Security Interest and has priority over all other Security Interests in the Goods
20. The Guarantor undertakes to:
 - 20.1. sign any further documents and provide further information, such information to be complete, accurate and up-to-date in all respects, the Seller reasonably requires to register a Financing Statement or Financing Change statement on the Register;
 - 20.2. indemnify and upon demand reimburse the Seller all expenses incurred in registering a Financing Statement or Financing Change Statement; and
 - 20.3. give the Seller not less than 14 days prior written notice of any proposed change in the Guarantor's details, including but not limited to, changes in its physical address, postal address, facsimile number, phone number and email address.
21. This Guarantee will endure for the benefit of the Seller and its successors and transferees.
22. The liability of the Guarantor will not be abrogated or affected by reason of the fact that the transaction giving rise to the abovementioned debts is void, voidable or unenforceable for any reason whatsoever.
23. Any part of any clause in this Guarantee will be severable without affecting any other part of this Guarantee.
24. This Guarantee is governed by and construed in accordance with the laws of Victoria, Australia and the Guarantor submits to the exclusive jurisdiction of the courts of Victoria in respect of the interpretation of, or any dispute arising under, this Guarantee.
25. For the purpose of interpreting this Guarantee the following will apply:
 - 25.1. **Agreement** means the agreement between the Seller and the Buyer for the ongoing supply of goods and services as constituted by the terms of trade specified in item 3 of the schedule, the commercial credit application made by the Buyer as specified in item 4 of the schedule and any other conditions of credit imposed by the Seller.
 - 25.2. **Collateral, Financing Statement, Financing Change Statement, Interested Person, Personal Property, Security Agreement and Security Interest** have the meanings prescribed to them in the PPSA.
 - 25.3. **Credit Application** means the document names in item 4 of the Schedule;
 - 25.4. **Buyer** means the Buyer named in item 1 of the schedule who successfully applied for a credit account with the Seller;
 - 25.5. **Guarantor** means the person or persons executing this Guarantee and named in item 2 of the schedule;
 - 25.6. **PPSA** means the Personal Property Securities Act 2009 (Cth);

25.7. **Register** means the Personal Property Securities Register established under the PPSA;

25.8. **Seller** means Castlegate James Australasia Pty Ltd ABN 73 098 051 846 and/or its trustee and affiliated entities and companies.

SIGNED SEALED AND DELIVERED by the said

..... in the presence of:
(insert name of Guarantor)

Guarantor *(signature)*

.....
Witness *(signature)*

Address of Guarantor

.....
Print Name & Address of Witness

Date

.....
Date

SIGNED SEALED AND DELIVERED by the said

..... in the presence of:
(insert name of Guarantor)

Guarantor *(signature)*

.....
Witness *(signature)*

Address of Guarantor

.....
Print Name & Address of Witness

Date

.....
Date

SIGNED SEALED AND DELIVERED by the said

..... in the presence of:
(insert name of Guarantor)

Guarantor *(signature)*

.....
Witness *(signature)*

Address of Guarantor

.....
Print Name & Address of Witness

Date

.....
Date

SCHEDULE

Item 1: Buyer	Name: Address: Phone: Fax: Email:
Item 2: Guarantor(s)	Name: Address: Phone: Fax: Email:
	Name: Address: Phone: Fax: Email:
	Name: Address: Phone: Fax: Email:
Item 3: Terms of Trade	Castlegate James Australasia Pty Ltd ABN 73 098 051 846 as annexed to this Guarantee, as amended from time to time
Item 4: Credit Application	Commercial Credit Application between Castlegate James Australasia Pty Ltd ABN 73 098 051 846 and [insert name of the Buyer] dated [insert date].