



E.E. Muir & Sons

AUSTRALIAN OWNED • SINCE 1927

E.E. Muir & Sons Pty Ltd
ABN 83 004 524 387
18 Raymond Road, Laverton Nth, Victoria, 3026
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www.EEM.com.au

Also trading as Serve - Ag



CONFIDENTIAL

Credit Application - Part 1
Privacy Consent - Part 2
Terms of Trade - Part 3
Guarantee - Part 4

How to Complete these Forms

- **Please read all documents carefully**

Part 1: Credit Application

Part 2: Privacy Act Consent Form

Part 3: Terms and Conditions of Trade

Part 4: Personal Guarantee

IMPORTANT: *If you do not understand any part you should seek legal advice*

- **Credit Application**

- Complete all of parts 1,2, 6, 7 and part 8
- If you are applying for yourself, complete part 3
- If you are applying for your company, complete part 4
- If you are applying as a trustee (corporate or individual), complete parts 4 and 5
- Read part 10 carefully
- Sign in the appropriate sections of part 10
 - If you are a sole trader operating under your name or a business name, **you must sign.**
 - If you are applying as a partnership, **all partners of the partnership must sign**
 - If you are applying for your company, at least:-
 - a) **2 directors; or**
 - b) **a director and company secretary; or**
 - c) **for a proprietary company that has a sole director- that director; or**
 - d) **an agent acting with the express or implied authority to execute Contracts must sign.**
 - If you are applying as individual trustees, **all individual trustees must sign**
 - If you are applying for a company trustee at least:-
 - a) **2 directors; or**
 - b) **a director and company secretary; or**
 - c) **for a proprietary company that has a sole director- that director; or**
 - d) **an agent acting with the express or implied authority to execute Contracts must sign.**

IMPORTANT: *By signing, you are agreeing to be bound by the Terms and Conditions of Trade*

- **Privacy Act Consent Forms**

- If you are a sole trader under your name or a business name, **you must sign**
- If you are a partnership, **all partners of the partnership must sign**
 - If you are applying for your company, at least:-
 - a) **2 directors; or**
 - b) **a director and company secretary; or**
 - c) **for a proprietary company that has a sole director- that director; or**
 - d) **an agent acting with the express or implied authority to execute Contracts must sign.**
 - If you are applying as individual trustees, **all individual trustees must sign**
 - If you are applying for a company trustee at least:-
 - a) **2 directors; or**
 - b) **a director and company secretary; or**
 - c) **for a proprietary company that has a sole director- that director; or**
 - d) **an agent acting with the express or implied authority to execute Contracts must sign.**

- **Personal Guarantee**

- If you are a sole trader or partnership, **you need not sign**
- If you are applying for your company, **all directors or authorised agents must sign**
- If you are applying as a trustee, **all trustees must sign**
- For more than 2 Guarantors, **additional Guarantors must sign a copy of this form**
- Each signature **must be witnessed by an independent witness (not spouses/partners or family members)**

IMPORTANT:

All parties who sign the guarantee may become personally responsible instead of, or as well as, the Applicant to pay all amounts which the Applicant owes to E.E Muir & Sons Pty Ltd ("EEM/SERVE-AG") as well as EEM/SERVE-AG's costs and expenses in enforcing the guarantee and interest.

If the Applicant does not pay you must pay. Before signing, each guarantor should:

- *obtain independent legal advice*
- *consider obtaining independent financial advice*
- *make his or her own enquiries about the credit worthiness, financial position and honesty of the Applicant*

NB: *Muir Group Directors reserve the right to request for GSD to be signed under special circumstances as per the Group Credit Policy*

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- **When finished**

- Please check the following pages have been signed,;-
 - Pages 5 or 6
 - Pages 7 or 8
 - Page 12 (Company or trustee's only)
 - The last page of the General Security Deed (if Applicant is a company or Company Trustee)

- When all parts have been signed, please return all parts and the general security deed to:-

**E.E Muir & Sons Pty Ltd
18 Raymond Road
Laverton Nth. VIC 3026**

- For any queries relating to this application please contact **(03) 9931 2200** or email us at accounts@eemuir.com.au.

PART 1: CREDIT APPLICATION

1. THE APPLICANT

Applicant Name: _____
ACN: _____ ABN: _____
Trading Name (if different from applicant): _____ Date business commenced: _____
Principal business address: _____
Delivery Address (if different from Principal business address): _____
Contact Name: _____ Position: _____
Tel No: _____ Fax No: _____ Email: _____

2. OPERATING STRUCTURE

Tick appropriate and complete either 3, 4, or 5.
 Pty. Ltd. Sole Trader Corporation as Trustee Public Co. Partnership Individual(s) as Trustee Other: _____
If an individual / sole trader, please complete part 3

3. INDIVIDUAL / SOLE TRADER DETAILS

Full Name: _____ Date of Birth: _____
Drivers Licence Number: _____ Copy of Driver's Licence Attached
If a company, trust or partnership, please complete part 4

4. DIRECTOR, PARTNER AND INDIVIDUAL TRUSTEE DETAILS

Provide details of all directors (for company or corporate trustee), partners or individual trustees
Name: _____ Address: _____
Name: _____ Address: _____
Name: _____ Address: _____
Name: _____ Address: _____
If more please attach details
If a trustee, please also complete part 5

5. TRUST DETAILS

Name of Trust: _____ ABN: _____
Type of trust: Family/Discretionary Unit Other (Details _____)
Tick appropriate
If a unit trust, please provide details of all unitholders
Name: _____ Address: _____
Name: _____ Address: _____
Name: _____ Address: _____
Name: _____ Address: _____
If more please attach details

6. APPLICANT'S CREDIT & INFORMATION REQUIREMENTS

Estimated Monthly purchases \$ _____ Total Credit requested: \$ _____
What is your core business (Eg: Vegetables, Fruit, Vines, Flowers, Contracting etc.) _____
Which EEM/SERVE-AG Branch are you likely to purchase from? _____
Who is your EEM/SERVE-AG current representative _____
E-Mail Address for Invoices and Statements _____

7. TERMS OF CREDIT

Credit will not be provided until EEM/SERVE-AG accepts this application and has provided confirmation to the Applicant.

If EEM/SERVE-AG accepts this application, the provision of goods and services and credit facilities to the Applicant are subject to the Terms and Conditions of Trade attached.

8. EXECUTION

By signing this application for credit, the Applicant:

- Acknowledges having read and understood the attached Terms and Conditions and agrees that the provision of goods and services to it by EEM/SERVE-AG is subject to the Terms and Conditions
- Acknowledges that it has been advised to seek legal and financial advice prior to signing this Application
- Acknowledges that the information contained in this application is true and that the person signing this application is authorised by the Applicant to do so.

If a sole trader, that individual must sign

If a partnership or individual(s) as trustee: all partners and individuals must sign

Name: _____ Signature: _____ Date: _____

(if additional partners or individuals, please attach details)

If a company or corporate trustee: Where there is only one director then that person must sign; where there are two or more directors then 2 Directors or a Director and a Secretary must sign.

EXECUTED by

ABN _____ in accordance with section 127(1) of the **Corporations Act 2001 (Cth)**

on the _____ day of _____ 20 _____

*Director/ Sole Director/ Sole Secretary (Strike out if not applicable)

Full name (Please print)

*Director/Secretary (Strike out if not applicable)

Full name (Please print)

OR

SIGNED for and on behalf of _____ in accordance with section 126 of the **Corporations Act 2001 (Cth)**

on the _____ day of _____ 20 _____

by its duly authorised officer in the presence of:

Authorised Officer's Signature

Signature of Witness

Full name of Authorised Officer

Full name of Witness

Position Held

PART 2: BUYER AUTHORITY AND ACKNOWLEDGEMENT

Credit information that may be provided to a credit reporting agency

EEM/SERVE-AG may give information about me/us to a credit reporting agency before, during or after the provision of credit to me/us for the following purposes:

- * to obtain a consumer credit report about me/us, and/or
- * to allow the credit reporting agency to create or maintain a credit information file containing information about me/us.

This information is limited to:

- * identity particulars - name, sex, address and the previous two addresses, date of birth, name of employer, and driver's licence number;
- * my/our application for credit or commercial credit - the fact that I/we have applied for credit and the amount;
- * the fact that EEM/SERVE-AG is a current credit provider to me/us;
- * loan repayments which are overdue by more than 60 days, and for which debt collection has started;
- * advice that my/our loan repayments are no longer overdue in respect of any default that has been listed;
- * information that, in the opinion of EEM/SERVE-AG I/we have committed a serious credit infringement, that is, acted fraudulently or shown an intention not to comply with my/our credit obligations;
- * dishonoured cheques - cheques drawn by me/us for \$100 or more which have been dishonoured more than once.

Assessment of Commercial Credit Application

I/we agree that EEM/SERVE-AG may obtain a consumer credit report containing information about me/us from a credit reporting agency for the purpose of assessing my/our application for commercial credit.

Disclosure to guarantor

I/we agree that EEM/SERVE-AG may give to a person who is currently a guarantor, or whom I/we have indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of the guarantor deciding whether to act as guarantor, or EEM/SERVE-AG keeping an existing guarantor informed about its guarantee.

I/we understand that the information disclosed can include a credit report and any other information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act including a credit report.

Overdue payments

I/we agree that EEM/SERVE-AG may obtain a consumer credit report about me/us from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by me/us.

Exchange of credit worthiness information

I/we agree that EEM/SERVE-AG may exchange information about me/us to my/our credit providers including those named in a consumer credit report issued by a credit reporting agency:

- * to assess an application by me/us for credit
- * to notify other credit providers of a default by me/us
- * to exchange information with other credit providers as to the status of my/our credit facility with EEM/SERVE-AG where I/we are in default with other credit providers
- * to assess my/our debt worthiness.

I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

Privacy Amendment (Private Sector) Act 2000

I/we understand that under the requirements of the *Privacy Amendment (Private Sector) Act 2000*, EEM/SERVE-AG will ensure that all credit and personal information obtained about me/us will be appropriately collected, used, disclosed and transferred and will be stored safely and protected against loss, unauthorised access, use, modification or disclosure and any other misuse. I/we also understand that such information will be made available for viewing or amendment by me/us upon request to EEM/SERVE-AG. Such request by EEM/SERVE-AG does not need to be in any particular form.

Signing

If a sole trader, that individual must sign

if a partnership or individual(s) as trustee: all partners and individuals must sign

Name: _____	Signature: _____	Date: _____
Name: _____	Signature: _____	Date: _____
Name: _____	Signature: _____	Date: _____
Name: _____	Signature: _____	Date: _____
(If additional partners or individuals, please attach details)		

If a company or corporate trustee: Where there is only one director then that person must sign; where there are two or more directors then 2 Directors or a Director and a Secretary must sign.

EXECUTED by

ABN _____ in accordance with section 127(1) of the **Corporations Act 2001 (Cth)**

on the _____ day of _____ 20 _____

*Director/ Sole Director/ Sole Secretary (Strike out if not applicable)

Full name (Please print)

*Director/Secretary (Strike out if not applicable)

Full name (Please print)

OR

SIGNED for and on behalf of _____ in accordance with section 126 of the **Corporations Act 2001 (Cth)**

on the _____ day of _____ 20 _____

by its duly authorised officer in the presence of:

Authorised Officer's Signature

Signature of Witness

Full name of Authorised Officer

Full name of Witness

Position Held

PART 3: TERMS AND CONDITIONS OF TRADE

1. Definitions

In these Terms:

"**ACL**" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended;

"**Consumer**" is as defined in the ACL and in determining if the Buyer is a Consumer, the determination is made if Buyer is a consumer under the Contract;

"**Contract**" means any contract for the provision of goods or services by EEM/SERVE-AG to the Buyer;

"**Buyer**" means the person, jointly and severally if more than one, acquiring Goods or Services from EEM/SERVE-AG under the Terms of this Contract;

"**Goods**" means any Goods supplied by EEM/SERVE-AG to the Buyer;

"**GST**" means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;

"**EEM**" means E.E Muir & Sons Pty. Ltd A.B.N. 83 004 524 387 and its successors and assigns;

"**PPSA**" means the *Personal Property Securities Act 2009* (Cth) as amended;

"**Services**" means any Services supplied by EEM/SERVE-AG to the Buyer;

"**Site**" means any site at which services are to be performed;

"**Specifications**" means all drawings, illustrations, descriptive matter and particular's contained in EEM/SERVE-AG's catalogues, price lists and marketing documents; and

"**Terms**" means these Terms and Conditions of Trade.

2. Basis of Contract

2.1 The Terms apply exclusively to every Contract and cannot be replaced by any other terms, including the Buyer's terms and conditions (if any).

2.2 A Contract is accepted by EEM/SERVE-AG when EEM/SERVE-AG accepts, in writing or electronic means, an offer from the Buyer or provides the Buyer with the Goods or Services, in part or in whole.

2.3 EEM/SERVE-AG has absolute discretion to refuse to accept any offer.

2.4 EEM/SERVE-AG may vary or amend these Terms by written notice to the Buyer at any time. Any variations or amendments will apply to orders placed after the notice date.

2.5 The Buyer must provide EEM/SERVE-AG with its specific requirements, if any, in relation to the Goods or Services.

3. Pricing

3.1 Prices quoted for the supply of Goods and Services exclude GST and any other taxes or duties.

3.2 If the Buyer requests any variation to the Contract, EEM/SERVE-AG may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by EEM/SERVE-AG in relation to Goods or Services, EEM/SERVE-AG may vary their price to take account of any such change, by notifying the Buyer.

4. Payment

4.1 Unless otherwise agreed in writing:

(a) Subject to 4.1(b), full payment for the Goods or Services must be made within 30 days of the date of EEM/SERVE-AG's invoice.

(b) EEM/SERVE-AG reserves the right to require payment in full on delivery of the Goods or completion of the Services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at EEM/SERVE-AG's sole discretion immediately upon giving the Buyer written notice.

4.4 The time for payment is of the essence.

4.5 All forms of card payments will incur a card processing fee of 1.5%.

5. Payment Default

5.1 If the Buyer defaults in payment by the due date of any amount payable to EEM/SERVE-AG, then all money which would become payable by the Buyer to EEM/SERVE-AG at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Buyer, and EEM/SERVE-AG may, without prejudice to any of its other accrued or contingent rights:

(a) charge the Buyer a service charge on any sum due at the rate of 1.8 per cent per calendar month for the period from the due date until the date payment is made in full;

(b) charge the Buyer for, and the Buyer must indemnify EEM/SERVE-AG from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Contract or to recover any Goods;

(c) cease or suspend supply of any further Goods or Services to the Buyer;

(d) by written notice to the Buyer, terminate any uncompleted contract with the Buyer.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at EEM/SERVE-AG's option:

(a) Where the Buyer is a natural person and becomes bankrupt or enters into any scheme or arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or

(b) Where the Buyer is a corporation and it enters into any scheme or arrangement or any assignment or composition with or for the benefit

of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager, or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Buyer.

6. Passing of Property

6.1 Until EEM/SERVE-AG receives full payment in cleared funds for all Goods and Services supplied by it to the Buyer, as well as all other amounts owing to EEM/SERVE-AG by the Buyer:

(a) title and property in all Goods remain vested in EEM/SERVE-AG and does not pass to the Buyer;

(b) the Buyer must hold the Goods as fiduciary bailee and agent for EEM/SERVE-AG;

(c) the Buyer must keep the Goods separate from its own goods and maintain EEM/SERVE-AG's labelling and packaging;

(d) the Buyer must hold the proceeds of sale of the Goods on trust for EEM/SERVE-AG in a separate account with a bank to whom the Buyer has not given security however failure to do so will not affect the Buyer's obligation to deal with the proceeds as trustee;

(e) in addition to its rights under the PPSA, EEM/SERVE-AG may without notice, enter any premises where it suspects the Goods are and remove them, notwithstanding that they may have been attached to other goods not the property of EEM/SERVE-AG, and for this purpose the Buyer irrevocably licences EEM/SERVE-AG to enter such premises and also indemnifies EEM/SERVE-AG from and against all costs, claims, demands or actions by any party arising from such action.

7. Personal Property Securities Act

7.1 The PPSA applies to these Terms. These Terms are a security agreement.

7.2 For the purposes of the PPSA:

(a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;

(b) EEM/SERVE-AG has a Purchase Money Security Interest (PMSI) in all present and future Goods supplied by EEM/SERVE-AG to the Buyer and the proceeds of the Goods; and

(c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time; and

(d) EEM/SERVE-AG has, where applicable, an agricultural PMSI in relation to the Goods supplied by EEM/SERVE-AG to the Buyer.

7.3 The security interest arising under these Terms attaches to the Goods when the Goods are collected or dispatched from EEM/SERVE-AG's premises.

7.4 Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

7.5 To the extent permitted by the PPSA, the Buyer agrees that:

(a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Buyer or which place obligations on EEM/SERVE-AG will apply only to the extent that they are mandatory or EEM/SERVE-AG agree to their application in writing; and

(b) where EEM/SERVE-AG has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

7.6 The Buyer must immediately upon the request of EEM/SERVE-AG:

(a) do all things and execute all documents necessary to give effect to the security interest created under this Contract.

(b) procure from any person considered by EEM/SERVE-AG to be relevant to its security position such agreements and waivers (including as equivalent to those above) as EEM/SERVE-AG may at any time require.

7.7 EEM/SERVE-AG may allocate amounts received from the Buyer in any manner EEM/SERVE-AG determine, including in any manner required to preserve any PMSI it has in goods supplied by EEM/SERVE-AG.

8. Risk and Insurance

8.1 The risk in the Goods and all insurance responsibility for theft, damage or otherwise will pass to the Buyer immediately on the Goods being delivered to the Buyer or collected from EEM/SERVE-AG's premises.

8.2 The Goods are sold to the Buyer on the basis that the Buyer has obtained all necessary licences or permits under all relevant laws and regulations in relation to the Goods.

8.3 The Buyer assumes all risk and liability for loss, damage or injury to persons or to property of the Buyer, or third parties arising out of the use, installation, storage or possession of any of the Goods sold by EEM/SERVE-AG, unless recoverable from EEM/SERVE-AG on the failure of any statutory guarantee under the ACL.

9. Performance of Contract

9.1 Any period or date for delivery of Goods or provision of Services stated by EEM/SERVE-AG is an estimate only and not a contractual commitment.

- 9.2 EEM/SERVE-AG will use its reasonable endeavours to meet any estimated dates for delivery of the Goods but will not be liable for any loss or damage suffered by the Buyer or any third party for failure to meet any estimated date.
- 9.3 If EEM/SERVE-AG cannot complete the Services by any estimated date, it will do so within a reasonable time.
- 10. Delivery**
- 10.1 Subject to clause 10.5, EEM/SERVE-AG will arrange for the delivery of Goods to the Buyer.
- 10.2 Unless otherwise agreed, the Buyer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the Goods to the Buyer to the point of delivery.
- 10.3 EEM/SERVE-AG may make part delivery of the Goods or Services and may invoice the Buyer for the Goods or Services so delivered or completed.
- 10.4 The Buyer indemnifies EEM/SERVE-AG against any loss or damage suffered by EEM/SERVE-AG, its sub-contractors or employees as a result of delivery, except where the Buyer is a Consumer and EEM/SERVE-AG has not used due care and skill.
- 10.5 If agreed, the Buyer will collect the Goods.
- 11. Site Requirements**
- 11.1 The Buyer must provide suitable and practical means of access to the Site and ensure that the Site is suitably prepared for the provision of the Services.
- 11.2 The Buyer indemnifies EEM/SERVE-AG against any loss or damage suffered by EEM/SERVE-AG, its sub-contractors or employees as a result of providing the Services, except where the Buyer is a Consumer and EEM/SERVE-AG has not used due care and skill.
- 11.3 Where EEM/SERVE-AG provides the Services at the Site, the Buyer warrants that it is the owner of the Site or is authorised to request the Services to be conducted at the Site, and that it has all of the required permissions, permits, approvals and authorisations for this to occur.
- 11.4 At no time does EEM/SERVE-AG take or accept any ownership of or responsibility for the Site. All risk and liability in and relating to the Site remains with the Buyer at all times.
- 12. Liability**
- 12.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the Goods or Services, the Contract does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the Goods or Services or any contractual remedy for their failure.
- 12.2 If the Buyer is a Consumer nothing in these Terms restricts, limits or modifies the Buyer's rights or remedies against EEM/SERVE-AG for failure of a statutory guarantee under the ACL.
- 12.3 If the Buyer on-supplies the Goods or Services to a Consumer:
- (a) if the Goods or Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of EEM/SERVE-AG's liability to the Buyer;
- (b) if the Goods or Services are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of EEM/SERVE-AG's liability to the Buyer, howsoever arising under or in connection with the sale, installation, use of, possession of, storage of, or any other dealings with the Goods or Services by the Buyer or any third party.
- 12.4 If clause 12.2 or 12.3 do not apply, then other than as stated in the Terms or any written warranty statement, EEM/SERVE-AG is not liable to the Buyer in any way howsoever arising under or in connection with the sale, installation, use of, possession of, storage of or any other dealings with the Goods or Services by the Buyer or any third party.
- 12.5 EEM/SERVE-AG is not liable for any indirect or consequential losses or expenses suffered by the Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 12.6 The Buyer acknowledges that:
- (a) it has not relied on any advice, recommendation, information or assistance provided by EEM/SERVE-AG in relation to any Goods or Services or their use in relation to any Goods or Services or their use or application;
- (b) it has not made known, either expressly or by implication, to EEM/SERVE-AG any purpose for which it requires any Goods or Services and it has the sole responsibility of satisfying itself that the Goods or Services are suitable for its use.
- 12.7 EEM/SERVE-AG will not be liable for any loss, damage or injury, including without limitation, the cost of any tainted, damaged or defective Goods or Services, incurred by the Buyer or any third party as a result of the Buyer's use of the Goods or Services purchased from EEM/SERVE-AG unless recoverable from EEM/SERVE-AG on the failure of any statutory guarantee under the ACL.
- 12.8 Notwithstanding clauses 12.6 and 12.7 in the event that a claim is made against EEM/SERVE-AG in relation to any representation, warranty, promise or statement or the provision of a Service, the total amount that can be claimed by the Buyer in relation to the same is the sum of the fees payable under and in connection with the representation, warranty, promise or statement.
- 12.9 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted or modified.
- 13. Cancellation**
- 13.1 If EEM/SERVE-AG is unable to deliver or provide the Goods or Services, then it may cancel the Buyer's order (even if it has been accepted) by written notice to the Buyer.
- 13.2 No purported cancellation or suspension of an order or any part of it by the Buyer is binding on EEM/SERVE-AG once the order has been accepted.
- 14. Shortages and Exchanges**
- 14.1 Subject to clause 14.2 and 14.4, EEM/SERVE-AG will not be liable for any shortages, damage or non-compliance with the Specifications in the Contract unless the Buyer notifies EEM/SERVE-AG with full details and description within 30 days of delivery. Otherwise, the Buyer is deemed to have accepted the goods.
- 14.2 When any shortages, claim for damaged Goods or non-compliance with the Contract Specifications is accepted by EEM/SERVE-AG, EEM/SERVE-AG may, at its option, repair the Goods, replace the Goods, or refund the price of the Goods.
- 14.3 Subject to clause 14.4, EEM/SERVE-AG will not under any circumstances accept Goods for return where:
- (a) the Goods have been specifically produced, imported or acquired to fulfil the contract; or
- (b) the Goods are discontinued or no longer in stock by EEM/SERVE-AG; or
- (c) the Goods have been altered in any way; or
- (d) have been used; or
- (e) the Goods are not in their original condition due to damage caused by improper use; or
- (f) the Goods have an expiration date that has been, or is near to being, exceeded; or
- Where the Buyer is a Consumer:
- (g) the Buyer has discovered the Goods can be purchased at a cheaper price elsewhere, and is seeking to return the Goods on that basis; or
- (h) the Buyer alleges the Goods are defective, where EEM/SERVE-AG has drawn the defect to the attention of the Buyer before purchase; or
- (i) the Buyer examined the Goods before buying and ought to have seen the obvious defect; or
- (j) the Buyer seeks to return the Goods on the basis that they do not like the Goods or have no use for them.
- 14.4 If the Buyer is a Consumer, nothing in this clause limits any remedy available for a failure of the statutory guarantees in sections 56 and 57 of the ACL.
- 15. Specifications**
- 15.1 All Specifications are indicative only and may not be current or accurate. The Buyer acknowledges that it has not relied on the Specifications in making its purchasing decision.
- 16. Force Majeure**
- 16.1 EEM/SERVE-AG is not liable in any way howsoever arising under the Contract to the extent that it is prevented from acting by events beyond its reasonable control, including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or war. If an event of force majeure occurs, EEM/SERVE-AG may suspend or terminate the Contract by written notice to the Buyer.
- 17. Entire Agreement**
- 17.1 This contract constitutes the entire agreement between the parties concerning its subject matter, and supersedes any previous understanding or agreement, express or implied. The Buyer confirms that it has not relied on any representation not recorded in this Contract inducing it to enter the Contract.
- 18. Account Information**
- 18.1 The Buyer is required to advise EEM/SERVE-AG of any changes to their account details within seven days of the change.
- 18.2 If the Buyer has elected to receive any documentation (statements, invoices/credits) via e-mail the Buyer agrees to notify EEM/SERVE-AG immediately of any e-mail address updates to ensure there is no delay on delivery of the documentation and subsequent payment.
- 19. Charge**
- 19.1 The Buyer hereby charges all its property whatsoever whether currently owned by the Buyer or acquired in the future with its indebtedness to EEM/SERVE-AG.
- 20. Credit Limit**
- 20.1 The Buyer acknowledges that the amount of credit requested in Part 6 is an indication only and that it will be liable to EEM/SERVE-AG for all monies owing to EEM/SERVE-AG for the supply of Goods or Services notwithstanding that the amount owing exceeds the Monthly Credit requested.
- 21. Miscellaneous**
- 21.1 The law of Victoria from time to time governs the Contract. The parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from these courts.
- 21.2 EEM/SERVE-AG's failure to enforce any of these Terms shall not be construed as a waiver of any of EEM/SERVE-AG's rights.

- 21.3 If a clause is unenforceable it must be read down to be enforceable or, if it cannot be so read down, it must be severed from the Terms, without affecting the enforceability of the remaining Terms.
- 21.4 A notice must be in writing and handed personally or sent by facsimile, email or pre-paid post to the last known address of the addressee. Notices sent by facsimile or email are deemed to be received on confirmation of successful transmission. Notices sent by pre-paid post are deemed to be received upon posting.
- 22. Prepayment Reward**
- 22.1 By agreement with EEM/SERVE-AG, the Buyer may pre-pay amounts for Goods and Services (**Prepayment Amount**). If such an arrangement is approved by EEM/SERVE-AG, this clause 5 applies.
- 22.2 EEM/SERVE-AG will issue a tax invoice to the Buyer upon receipt of the Prepayment Amount.
- 22.3 The Prepayment Amount:
(a) is not refundable to the Buyer in whole or in part; and
(b) may only be used for purchases of Goods and Services from EEM/SERVE-AG.
- 22.4 If, at the end of any calendar month, the Buyer's account is in credit (as determined by EEM/SERVE-AG), EEM/SERVE-AG will credit the Buyer's account with an amount calculated by reference to NAB's 12 month term deposit rate plus 1.2%, calculated monthly (**Prepayment Credit**). In calculating the Prepayment Credit, any unused or carried forward Prepayment Credits will be ignored.
- 22.5 The Prepayment Credit:
(a) is not interest;
(b) cannot be withdrawn or paid out;
(c) may only be used for purchases of Goods and Services from EEM/SERVE-AG; and
(d) will cease if the prepayment is not used within 12 months of the date it was first credited to the Buyer's account.
- 22.6 The Buyer agrees that EEM/SERVE-AG may set off any amount owing to it by the Buyer against the Prepayment Amount if the Buyer:
(a) is in default of the Credit Application, these Terms or any other agreement between EEM/SERVE-AG and the Buyer; or
(b) is insolvent as defined in section 95A the Corporations Act 2001(Cth).
- 22.7 EEM/SERVE-AG has not made any representation to the Buyer as to the suitability or appropriateness of prepayment arrangements contemplated by this clause.

PART 4: DEED OF GUARANTEE AND INDEMNITY

TO EEM/SERVE-AG

In consideration of EEM/SERVE-AG, at the request of the person/s executing this Guarantee as the Guarantor ("Guarantor"), agreeing to:

- supply or continue to supply goods or services to the Buyer making application to EEM/SERVE-AG for credit as set out in Part 1 of the application to which this guarantee is attached ("the Buyer") or
- provide credit to the Buyer; or
- grant an indulgence outside EEM/SERVE-AG's agreed credit terms.

The Guarantor hereby:

1. Agrees to guarantee to EEM/SERVE-AG the due and punctual payment of all money presently owing or any money that may be owing in the future by the Buyer, in respect of the cost of goods or services supplied by EEM/SERVE-AG to the Buyer and any other sums payable by the Buyer to EEM/SERVE-AG pursuant to EEM/SERVE-AG's Terms and Conditions of Trade (the "guaranteed money").
2. Agrees as a separate severable and additional covenant and obligation to indemnify and keep indemnified EEM/SERVE-AG from and against all losses, costs, charges and expenses whatsoever that EEM/SERVE-AG may suffer or incur in relation to the supply of goods or services to the Buyer and further agrees that each of the provisions from here contained that applies or is capable of application to this Deed when it is construed as an indemnity will apply to the indemnity hereby given by the Guarantor.
3. Covenants, acknowledges and agrees as follows:
 - (a) The Guarantee hereby given is a continuing guarantee, the indemnity hereby given is a continuing indemnity and neither this Deed nor the said guarantee nor the said indemnity will be discharged in any way or be considered or deemed to be discharged in any way by any payment to EEM/SERVE-AG other than the payment to and acceptance by EEM/SERVE-AG of the whole of the guaranteed money. The guarantee is not discharged by the payment in full of the guaranteed money to the extent that any part of the guaranteed money is required to be disgorged in the insolvency of the Buyer.
 - (b) Notwithstanding that as between the Guarantor and the Buyer the position of the Guarantor is that of surety only nevertheless as between the Guarantor and EEM/SERVE-AG, the Guarantor is liable hereby as a principal and as a primary debtor for the payment of the guaranteed money.
 - (c) This Deed is valid and enforceable against each Guarantor
4. The Guarantor hereby acknowledges having given its consent to EEM/SERVE-AG to obtain from a credit reporting agency a consumer credit report containing information about it for the purpose of EEM/SERVE-AG assessing whether to accept the Guarantor as a guarantor for credit that may be applied for by the Buyer.
5. The term "EEM/SERVE-AG" includes their successors and assigns and the terms "Buyer" and "Guarantor" include their respective executors, administrators and successors.
6. In this Deed the singular includes the plural and if there is more than one Guarantor to this Guarantee their obligations are joint and several.
7. The Guarantor hereby charges all their property whatsoever whether currently owned or acquired in the future with payment of all monies owing to EEM/SERVE-AG under this guarantee.

and the liability hereby of each Guarantor continues and may be enforced by EEM/SERVE-AG notwithstanding:

- (i) that no steps or proceedings have been taken against the Buyer;
 - (ii) any indulgence or extension of time granted by EEM/SERVE-AG to the Buyer;
 - (iii) the death or bankruptcy or winding up of the Buyer;
 - (iv) that payment of the guaranteed money by the Buyer cannot be legally enforced against the Buyer;
 - (v) that any other Guarantor has not signed this deed.
- (d) The Guarantor will not compete with EEM/SERVE-AG for any dividend or distribution in the event of the Buyer being declared bankrupt, going into liquidation or being wound up or entering any deed or scheme of arrangement or assignment or composition in respect of its affairs or its assets and liabilities.

Executed as a Deed	
Dated: ___/___/___	
Signed Sealed and Delivered)	Signed Sealed and Delivered)
By)	By)
in the presence of)	In the presence of)
.....
Witness	Witness

THIS IS AN IMPORTANT DOCUMENT. PLEASE READ IT CAREFULLY AND ENSURE YOU UNDERSTAND IT BEFORE SIGNING. IF YOU ARE IN ANY DOUBT, SEEK LEGAL ADVIC