



MIDDLEBY AUSTRALIA

12/210 Queensport Road North, Murarrie, Queensland, Australia, 4172
Tel: (617) 3397 0277 Fax (617) 3397 0030
ABN: 87 009 730 670
W: www.middlebyaustralia.com
E: enquiries@middlebyaustralia.com

APPLICATION FOR A 30 DAY CREDIT ACCOUNT

WITH MIDDLEBY AUSTRALIA PTY LTD AND ITS SUBSIDIARIES AND ASSOCIATED COMPANIES

PLEASE COMPLETE THIS APPLICATION ACCURATELY AND IN ITS ENTIRETY TO ENSURE THAT IT CAN BE PROCESSED AS EXPEDITIOUSLY AS POSSIBLE. IF YOU REQUIRE ASSISTANCE COMPLETING THIS APPLICATION CONTACT THE CREDIT MANAGER FOR A CONFIDENTIAL APPOINTMENT. THANK YOU FOR YOUR INTEREST IN OUR COMPANY.

REGISTERED (INDIVIDUAL, COMPANY, BUSINESS, PARTNERSHIP OR OTHER) NAME:

_____ (“the Customer”).

ACN _____ ABN _____

Trading name (if different from above) _____

REGISTERED OFFICE ADDRESS _____ P/code _____

BUSINESS ADDRESS (if different from above) _____ P/code _____

POSTAL ADDRESS (if different from above) _____ P/code _____

DATE BUSINESS COMMENCED _____

CONTACT DETAILS

Business phone _____ Business email address: _____

Purchasing contact: _____ Accounts payable contact: _____

IF A TRUST, IS THE TRUST – DISCRETIONARY TRUST/UNIT TRUST (delete as appropriate)

DATE TRUST CREATED / /

NAME OF TRUSTEE _____ DATE TRUSTEE APPOINTED / /

FULL NAMES OF BENEFICIARIES/UNIT HOLDERS _____

COMPETITIVE LINES CARRIED _____

CREDIT LIMIT DESIRED \$ _____

Do you presently have an account with any Middleby Company?

If yes, name of Middleby Company _____

Have you, your directors, the proposed guarantors or any related business company or individual done business with us before?

If yes, under what name _____

INFORMATION TO BE COMPLETED BY ALL APPLICANTS

PARTICULARS OF DIRECTORS, SOLE TRADERS, PROPRIETORS AND PARTNERS

FULL NAMES AND ADDRESSES	Private phone	Mobile phone	Email address	Date of birth	Drivers Licence No.
1.					
2.					
3.					

Note: A copy of a Drivers Licence for all persons mentioned above must be provided with this Application.

REAL ESTATE - state address of any properties owned by the Customer and/or Guarantor(s) and market value				
FULL NAMES AND RESIDENTIAL ADDRESS	Source of Finance	Mortgage value	Property value	Rental Income
1.				
2.				
3.				

TRADE REFERENCES: please list your trade references from foodservice equipment companies currently selling to you. All inquiries will be held in strictest confidence.

Name of Supplier	Email address	Phone Number	Account Number
1.			
2.			
3.			

NAME OF YOUR BANK: _____ **BRANCH:** _____

FINANCIAL INFORMATION

NOTE: IN LIEU OF COMPLETING THE BELOW YOU MAY PROVIDE COPIES OF YOUR ACCOUNTS FOR THE LAST FINANCIAL YEAR

	ASSETS		LIABILITIES
CASH AT BANK		BANK OVERDRAFTS	
PROPERTY VALUE		MORTGAGES	
PLANT, EQUIP, TOOLS, FURNITURE		OTHER BORROWINGS	
TRADE DEBTORS		TRADE CREDITORS	
VEHICLES		TAXATION LIABILITIES	
OTHER ASSETS		OTHER LIABILITIES	

I/WE declare that the information contained in this Application is complete and accurate in all respects and I/WE declare that I/WE are authorised to complete this Credit Application on behalf of the Customer:

SIGNED BY:

Customer/s Name/s

Name of Authorised Representative:

Position:.....

Signature/s:

Date:

Internal Use only

NOTES:

.....

.....

Middleby Credit Manager Authorisation.....

Date:...../...../.....



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DECLARATION

TO: MIDDLEBY AUSTRALIA PTY LTD
ACN: 009 730 670
12/210 QUEENSPORT ROAD NORTH
MURARRIE QLD 4172

In consideration of Middleby Australia Pty Ltd (the Supplier) providing or continuing to provide goods and/or materials to the Customer and as an essential condition of the terms of supply:

1. I/WE (the Customer) acknowledges and authorises the Supplier to:
 - (a) make such enquiries and receive such information from the bankers and business referees mentioned in this credit application and otherwise from anyone as the Supplier may reasonably consider necessary;
 - (b) obtain from a credit reporting agency or any other provider a credit report containing commercial and personal information about the Customer; and
 - (c) give any credit reporting agency any information about the Customer, including personal information at any time.
2. The Customer acknowledges that any information referred to in clause 1 above can include information about the credit worthiness, credit standing, credit history or credit capacity of the Customer and/or me/us that credit providers are allowed to receive from each other under the Privacy Act.
3. The Guarantor/s acknowledges and agrees that the Supplier may seek, from a credit reporting agency, a credit report containing personal information about me/us to assess whether to accept me/us as a Guarantor for credit applied for, or provided to, the Customer.

Acknowledgement by Customer/s

Customer/s Name/s:.....	
Name of Authorised Representative:	Position:.....
Signature/s:.....	Date:...../...../.....
Customer/s Name/s:.....	
Name of Authorised Representative:	Position:.....
Signature/s:.....	Date:...../...../.....

Acknowledgement by Guarantor/s

In consideration of the Supplier providing credit to the Customer/s, I/we acknowledge and agree that the terms, conditions and authorities in the Declaration and Charge above apply to me/us in my/our personal capacity.

Guarantor/s signature	
Guarantor's name (please print)	Date:...../...../.....
Witness signature	
Witness name (please print).....	Date...../...../.....
Guarantor/s signature	
Guarantor's name (please print)	Date:...../...../.....
Witness signature	
Witness name (please print).....	Date...../...../.....

MIDDLEBY AUSTRALIA PTY LTD – TERMS AND CONDITIONS OF SALE

By submitting a credit application and/or ordering goods and services (“**goods**”) from the Supplier, the Customer agrees that the following terms and conditions of sale shall apply to the supply. These terms and conditions create a security interest in favour of the Supplier for the purposes of the Personal Property Securities Act 2009.

1. DEFINITIONS

In these terms and conditions and the following sections of this document entitled “Declaration” and “Personal Guarantee and Indemnity” and any other associated or collateral documents (unless a contrary intention is stated):

- (a) “**Agreement**” means all parts of this credit application including the Terms and Conditions of Sale and the sections of this document entitled Declaration and Personal Guarantee and Indemnity.
- (b) “**Consumer**” means a consumer as that term is defined in the Competition and Consumer Act 2010.
- (c) “**Customer**” means a person, trust, partnership, firm, company or other entity whose order for the purchase of goods is accepted by the Supplier.
- (d) “**Group Company**” means any company within the Middleby Group of companies and includes all Associated entities of Middleby and any Related Bodies Corporate (as those terms are defined in the Corporations Act 2001).
- (e) “**Law**” means any Commonwealth or Australian state legislation or regulations and the general law and includes the Commonwealth Competition and Consumer Act 2010 and regulations as amended from time to time and the Personal Property Securities Act 2009 and regulations as amended from time to time.
- (f) “**Middleby Group**” means any company Related or Associated with the Supplier (as those terms are defined in the Corporations Act 2001).
- (g) “**Related Bodies Corporate**” means a body corporate that is related to the Supplier by virtue of section 50 of the Corporations Act 2001.
- (h) “**Supplier**” means Middleby Australia Pty Ltd ACN 009 730 670 or any of its Related Bodies Corporate or their respective assigns trading under various firm names or styles;
- (i) “**PPSA**” means the Personal Property Securities Act 2009;
- (j) “**Purchase Monies Securities Interest**” or “**PMSI**” has the meaning given in section 14 of the PPSA as amended from time to time.

2. INTERPRETATION

- (a) The headings used do not form part of these terms and conditions and are for convenience only.
- (b) Where the context admits or requires words importing, the singular number shall include the plural number, those denoting a given gender shall include all other genders and those denoting natural persons shall include corporations.
- (c) “Including” is not a term of limitation.

3. GENERAL

- (a) These terms and conditions of sale apply to the sale of goods by the Supplier. These terms and conditions of sale replace any previous terms and conditions of sale.
- (b) Unless otherwise agreed in writing by the Supplier, any terms and conditions of the Customer's order deviating from or inconsistent with these terms and conditions, are expressly rejected by the Supplier. Any variations or additions to these terms and conditions not expressly agreed to in writing by the Supplier are expressly rejected by the Supplier.
- (c) The Supplier may vary these terms and conditions by providing written notice to the Customer (notice may also be given via the Suppliers Website). If the Customer is a Consumer, then the Customer may consider the variation and, if the variation is not considered acceptable to the Customer, the Customer may elect not to proceed with the purchase of the goods ordered before the date of the variation but which are intended to be subject to the variation. If the Customer is not a Consumer, the Customer agrees that goods delivered and/or ordered after the date of the notice of the variation will be subject to the variation and acceptance of the goods or the placing of the order shall be deemed to be an acceptance of such varied terms and conditions.
- (d) Should there be any variation or proposed change to any of the information supplied by the Customer to the Supplier in any credit application, or if the Supplier sells or transfers any assets, including any real or personal property or proposes to sell or transfer any assets whether listed in the credit application or not, or there has been a change of control of the Customer or in the structure or nature of the Customer's business (such as a conversion to or from a Company or Trust) the Customer must notify the Supplier in writing at least 7 days prior to any such change to the information or sale or disposal of property.
- (e) The Supplier reserves the right to accept or refuse any order for goods placed by the Customer and may make its acceptance of an order conditional upon it receiving a satisfactory credit assessment of the Customer.
- (f) These terms and conditions and all obligations hereunder shall be binding on the Customer's personal representatives, successors and permitted assigns and shall be for the benefit of the Supplier's successors and assigns.
- (g) The Supplier does not waive any of its rights under this Agreement if it accepts a payment from the Customer, or refuses, neglects or fails to exercise any of its rights under this Agreement, or fails or neglects to insist on the Customer's full compliance with this Agreement. In addition, if the Supplier fails to exercise any power or right conferred on it by this Agreement, it will not be prevented from exercising that power or right in the future.

4. QUOTATIONS AND PAYMENT

- (a) A quotation shall not constitute an offer to sell goods to the Customer. No contract for the supply of goods shall exist between the Supplier and the Customer until a Customer's order for goods has been accepted by the Supplier (such acceptance of Customer's orders may be made and communicated by the Supplier in writing or by overt act of acceptance).
- (b) Prices quoted are subject to the Customer taking delivery of the whole amount stated in the quotation.
- (c) A quotation provided by the Supplier to the Customer shall be open for acceptance by the Customer for a period of 30 days from the date of quotation unless the quotation is previously withdrawn or extended by notice to the Customer from the Supplier.
- (d) The prices specified for goods may, at the Supplier's option, be subject to alteration to reflect the Supplier's prices and charges in effect at the time of delivery.

- (e) Any variations in the invoice or contract price as a consequence of currency fluctuations, taxes, customs duty or other imposts shall be to the Customer's account.
- (f) If the Customer is a Consumer, then the Customer may consider the variation referred to in clause 4(e) and, if not acceptable, may elect not to proceed with the purchase of the goods ordered before the date of the variation but which are intended to be subject to the variation.
- (g) Payments received by the Supplier shall be applied first in payment of interest and then to any costs of and incidental to debt recovery and then to any amounts that are payable by the Customer under this Agreement and then in reduction of principal.
- (h) Payments received without remittance advice may be applied first to the oldest balance owing by the Customer or in the alternative at the Supplier's absolute discretion.
- (i) Unless otherwise agreed to by the Supplier, the only accepted means of paying accounts will be by cash, bank cheque, COD or electronic funds transfer, all without any deduction. Where payments are not made in accordance with this clause, or the Customer makes payment by way of credit card, the Customer will also pay the Supplier an administration fee of 2% (calculated on the amount so paid) on any payment, being the agreed liquidated cost of processing that abnormal payment. That fee is payable at the same time as the account to which it relates is due.
- (j) The Supplier shall be entitled to set off against any money owing to the Customer amounts owed to the Supplier by the Customer on any account whatsoever. However the Customer shall not set off any amounts allegedly owing by the Supplier to it against any amount due by it to the Supplier.

5. CANCELLATION AND RETURN OF GOODS

- (a) No orders for goods can be cancelled without the Supplier's specific written consent.
- (b) Any goods supplied in accordance with the Customer's order but which are subsequently returned to the Supplier, will only be credited by the Supplier if the Supplier has given prior written consent to the return of the goods and the goods are returned to the Supplier in the same condition that they were in when supplied to the Customer.
- (c) If the Customer wishes to return the goods to the Supplier, the Customer must request permission from the Supplier, and that request must be delivered to the Supplier within seven (7) days from the date of delivery of the goods.
- (d) Any goods (except for goods ordered by way of Special Order) that are returned to the Supplier in accordance with clause 5(b) will incur a restocking fee of 20% of the total sale value. The restocking fee is payable to the Supplier at the same time that the goods are returned by the Customer to the Supplier.
- (e) Any goods ordered by way of Special Order that are returned to the Supplier in accordance with clause 5(b) will incur a restocking fee of 85% of the total sale value. The restocking fee is payable to the Supplier at the same time that the goods are returned by the Customer to the Supplier.

6. CREDIT TERMS

- (a) The Customer is liable for all purchases made under its account number and/or account name. It is not the responsibility of the Supplier to confirm authority for the purposes of supplying or delivering goods to the Customer, its agent(s) or those who the Supplier deems to be the Customer's agents. It is the sole responsibility of the Customer to ensure there is no unauthorised use of their account number or name.
- (b) The Supplier shall issue a tax invoice for the goods and the Customer shall pay for the goods within 30 days of the issue date of the tax invoice ("**due date**") or in accordance with any written credit agreement between the parties; whichever is later.
- (c) Goods will generally be invoiced on dispatch.
- (d) The Supplier shall at its election issue all invoices and statements to the Customer by email to the Customer's last known email address or by ordinary post to the Customer's last known address.
- (e) Unless otherwise agreed in writing by the Supplier, a Customer who has not been granted an approved credit limit must pay a deposit equal to 100% of the net order value upon acceptance of the order by the Supplier and the Supplier can withhold delivery until payment of the deposit is received.
- (f) Credit extended to the Customer for all goods sold will be made in accordance with the terms of credit as agreed by the Supplier at the time the Customer's account was established or as subsequently altered by the Supplier. In all other respects these terms and conditions will apply.
- (g) The Customer will pay any legal costs (on an indemnity basis), stamp duties, any bank charges, merchant fees or like charges levied on the Supplier by any banker or other credit provider whose banking or credit card facilities are utilised by the Customer for paying the Supplier any amounts on any account and any other expenses payable of and incidental to the performance or enforcement of or any litigation on these terms and conditions or any credit application or any security documents signed by the Customer or any guarantor together with any other collection costs and dishonoured cheque fees.
- (h) The Supplier may withdraw the Customer's credit facilities or at its discretion vary the Customer's credit limit at any time without notice and for any reason whatsoever. The Supplier may notify the Customer of any alteration in the credit limit by notice to that effect in the following monthly account statement sent to the Customer. Any credit approval limit noted in this form, any monthly statement or otherwise is for the Supplier's convenience only and does not reflect what may actually be the credit limit of the account at any one time.
- (i) If in the opinion of the Supplier, the credit worthiness or credit standing of the Customer alters from that indicated by the Customer in its credit application, the Supplier has the express right to immediately stop supply to the Customer without being obliged to give the Customer any reason whatsoever and the Supplier has the express right to demand payment in full for any outstanding account within fourteen (14) days.
- (j) Should the Supplier choose to exercise the right conferred on it in clause 6(i), the Supplier may refuse to deliver further goods to the Customer unless such goods are paid for in full by the Customer before delivery.
- (k) If the Customer does not pay the Supplier by the due date, the Customer shall pay compounding interest on monies due, charged on a daily basis at 10% pa from the due date for payment until the actual date of payment. If the Customer has an account with the Supplier, the Supplier may debit the Customer's account monthly or at such other times as it chooses for such interest.
- (l) The acceptance by the Supplier of any payment under the specified due date thereof shall not constitute a waiver of the Customer's obligations to make any further payments to the Supplier.
- (m) If the Customer has any queries regarding items shown on invoices, the Customer must, within fourteen (14) days of the issue date of the relevant invoice, lodge with the Supplier, in writing, details of the Customer's queries, failing which the Customer will be deemed to have accepted the Supplier's invoice without dispute.

7. PERSONAL PROPERTY SECURITIES ACT (PPSA)

- (a) The Customer agrees that these terms and conditions create a PMSI in the goods (and their proceeds) supplied presently and in the future by the Supplier to the Customer.
- (b) The Customer agrees to do all things necessary and execute all documents reasonably required to register the PMSI granted by the Customer under these terms and conditions and to ensure that the Supplier acquires a perfected security interest in the goods under the PPSA.

- (c) The Customer will, upon demand, pay all of the Supplier's expenses and legal costs (on a solicitor/agent/client basis) in relation to or in connection with the registration of the Supplier's security interest and all other costs associated with protection and enforcement of the Supplier's security interest created by these terms and conditions or by undertaking an audit under the provisions of the PPSA, or the repossession of the goods the subject of these terms and conditions or the exercise, enforcement or preservation of any right or interest under these terms and conditions or any contract that the Supplier has with the Customer.
- (d) This PMSI does not lose its priority as a result of the renewal, refinance, consolidation or restructure of the subject matter of these terms and conditions and any purchase money obligations.
- (e) Until ownership of the goods passes to the Customer, the Customer waives its rights under the following provisions of the PPSA, to the extent that it is permitted by law to:
 - (i) receive a notice of intention of removal of an accession (s.95);
 - (ii) receive a notice that the Supplier has determined to enforce its security interest in accordance with land law (s118);
 - (iii) receive a notice of enforcement action against liquid assets (s120);
 - (iv) receive a notice of disposal of goods by the Supplier purchasing the goods (s129);
 - (v) receive a notice to dispose of the goods (s130);
 - (vi) receive a statement of account following disposal of the goods (s132(2));
 - (vii) receive a statement of account if no disposal of the goods, six monthly (s132(4));
 - (viii) receive notice of any proposal by the Supplier to retain the goods (s135(2));
 - (ix) object to any proposal by the Supplier to either purchase or retain and dispose of the goods (s137(3));
 - (x) redeem the goods (s142);
 - (xi) reinstate the security agreement (s143); and
 - (xii) receive a notice of any verification statement (s157(1) and 157(3)).
- (f) To the extent permitted by the PPSA, these terms and conditions exclude any provisions of the PPSA which may be excluded in the Supplier's discretion and which would otherwise confer rights on the Customer.
- (g) The Customer further agrees that where the Supplier has rights in addition to those under Part 4 of the PPSA, those rights shall continue to apply.
- (h) The Customer's right to possession of goods still owned by the Supplier under these terms and conditions shall cease if:
 - (i) the Customer being an individual, commits an act of bankruptcy;
 - (ii) the Customer being a company, circumstances arise where a receiver, manager, administrator or controller becomes entitled to take possession of any of its assets, any proceedings are instituted for winding up, or the Customer enters into a Deed of Company Arrangement;
 - (iii) the Customer ceases or threatens to cease conducting business in the normal manner or applies for deregistration or receives a deregistration notice;
 - (iv) any cheque the Customer provides to the Supplier or any Group Company is dishonoured for payment;
 - (v) the Customer fails to comply with any demand for payment issued by the Supplier or any Group Company, or
 - (vi) the Customer breaches any of the terms and conditions contained herein and/or are in default of any other agreement between the Supplier or any other Group Company and the Customer.
- (i) The Customer expressly and irrevocably agrees that the Supplier is entitled to enter any premises where the goods supplied by the Supplier are located to repossess, remove and sell such goods. The Customer (its successors and assigns, including any external manager or administrator) shall not object to the Supplier, or its agents, entering any premises for the purpose of this clause and agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the goods pursuant to these terms and conditions including any claims brought by third parties.
- (j) The Customer agrees that repossession and retention of the goods pursuant to the PPSA will only satisfy so much of the monies which may become payable to the Supplier by the Customer as is equivalent to the Supplier's estimation of the market value of the goods as it is at the date of repossession, and the repossession and retention will immediately extinguish any rights for interest the Supplier has on the value of the goods recovered.
- (k) Until ownership of the goods passes, the Customer must not give the Supplier a written demand or allow any other person to give the Supplier a written demand requiring the Supplier to register a financing change statement under the PPSA or enter into or allow any other person to enter into the personal property securities register a financing change statement under the PPSA.
- (l) The Customer agrees not to change the Customer name or undertake any changes to any documents that the Supplier has registered, requires to be registered or are capable of being registered without the prior written consent of the Supplier.

For avoidance of doubt, these terms regarding the PPSA apply even where the customer is a Consumer.

8. DEFAULT

- (a) All monies payable by the Customer to the Supplier shall at the Supplier's election become immediately due and payable notwithstanding that the due date for payment shall not have expired, and the Supplier may without prejudice to any of the rights it may have, do any or all of the things listed in clause 8(b) hereof, if:
 - (i) the Supplier has reasonable grounds to believe that the Customer may not be able to make due and punctual payment to the Supplier; or
 - (ii) there is any default or failure by the Customer in making due and punctual payment to the Supplier of any invoice or any moneys owing by the Customer; or
 - (iii) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer; or
 - (iv) the Customer goes into bankruptcy or is wound up; or
 - (v) an administrator, liquidator or provisional liquidator is appointed to the Customer or over any of its assets; or
 - (vi) the Customer becomes, admits in writing that it is, or declared by a court to be unable to pay its debts as and when they fall due; or
 - (vii) there is a breach by the Customer of any of these terms and conditions,

- (b) The Supplier may without prejudice to any other rights it may have, do any or all of the following upon the occurrence of any of the circumstances listed in clause 8(a):
 - (i) suspend any credit facilities which may have been extended to the Customer;
 - (ii) withdraw any credit facilities which may have been extended to the Customer;
 - (iii) suspend any further delivery of goods to the Customer;
 - (iv) in respect of goods already delivered, enter onto the Customer's premises to recover and resell the goods;
 - (v) recover from the Customer the cost of materials or goods acquired for the purpose of future deliveries; or
 - (vi) exercise such rights as are afforded to the Supplier under the PPSA.
- (c) All costs (including without limitation, legal or other debt collection costs) actually incurred by the Supplier of and incidental to the performing or enforcing of or any litigation on the terms of this agreement, including any action taken by the Supplier to recover monies due from the Customer, will be payable by the Customer to the Supplier on a full indemnity basis.

9. DELIVERY

- (a) Delivery dates or times quoted are estimates only and the Supplier shall not be liable to the Customer for any failure to deliver or for delay in delivery of goods occasioned by any cause whatsoever whether or not beyond the control of the Supplier. Time is not of the essence for the delivery of goods.
- (b) The Customer shall not be relieved of any obligation to accept or pay for goods by reason of any delay in delivery.
- (c) Goods will be delivered or deemed to be delivered, when they are delivered to the delivery place nominated by the Customer. If no such address is nominated, then delivery will be deemed to occur at the time when the goods are ready for collection at the Supplier's premises.
- (d) If the Customer has any queries, or disputes that goods were delivered, the Customer must, within seven (7) days of the issue date on the relevant invoice, lodge with the Supplier, in writing, details of the Customer's queries or dispute, failing which the goods will be deemed to have been delivered to the Customer without dispute. Invoices will be deemed to have been sent to the Customer in accordance with clause 21.
- (e) The Customer shall pay to the Supplier packing, crating and delivery charges in accordance with the Supplier's current rates as at the date of dispatch. If there is no current rate, then a reasonable delivery charge shall be paid by the Customer.
- (f) The Supplier reserves the right to make a reasonable charge for storage if delivery instructions are not provided by the Customer within seven (7) days of a request by the Supplier for such information.
- (g) The Customer authorises the Supplier to deliver goods to the place nominated by the Customer and to leave the goods at such place whether or not any person is present to accept delivery. The Supplier shall not be liable on any basis whatsoever for loss suffered by the Customer after delivery to the nominated delivery place.
- (h) The Supplier is not obliged to obtain a signed receipt or other acknowledgment from any person at the nominated place for delivery but if a signed receipt or other acknowledgment is obtained from someone believed by the Supplier to be authorised by the Customer to sign or otherwise take delivery, then such signed receipt or other acknowledgement shall be conclusive evidence of the Customer's acceptance of the goods delivered.
- (i) The Supplier reserves the right to deliver goods by instalments and each instalment shall be deemed to be sold under a separate contract. Failure to deliver any instalment, or deliver any instalment on time shall not entitle the Customer to repudiate the contract in whole or in part.

10. PROPERTY AND RISK

- (a) The goods shall be at the sole risk of the Customer as soon as they are dispatched from the Supplier's premises.
- (b) The Supplier will remain the legal and equitable owner of the goods until the fully contractually agreed payment has been received by the Supplier in respect of all goods supplied and all other amounts owed by the Customer to the Supplier have been paid for in full and until then:
 - (i) the Customer will hold the goods as fiduciary and bailee for the Supplier;
 - (ii) the Customer must retain the goods in good and merchantable condition;
 - (iii) the Customer will store the goods separately and in a manner enabling them to be identified as goods of the Supplier and cross-referenced to particular invoices and the Customer acknowledges that if it should process or mix the goods with other products or items such that the goods are no longer separately identifiable then the Customer and the Supplier will be owners in common of the new product;
 - (iv) the Customer may sell the goods in the ordinary course of its business as bailee for the Supplier and will hold the proceeds of sale in a separate account on trust for the Supplier and account to the Supplier for those proceeds; and
 - (v) the Supplier may require the Customer to return the goods to it on demand and may enter upon the premises of the Customer to inspect or repossess the goods.
- (c) The Customer expressly and irrevocably agrees that the Supplier is entitled to enter any premises where they are located to take possession, repossess, remove and sell such goods. The Customer, its successors and assigns (including any external manager or administrator) shall not object to the Supplier, or its agents, entering any premises for the purpose of this clause and agrees to indemnify and keep the Supplier indemnified in respect of any claims, actions and costs that may arise against the Supplier in relation to the removal, repossession and sale of the goods pursuant to these terms and conditions including any claims brought by third parties
- (d) The Customer shall insure the goods against theft or any damage until such goods have been paid for or until they are sold by the Customer whichever occurs first and the Supplier will be entitled to call for details of the insurance policy.
- (e) If the Customer does not insure the goods or fails to supply details of its insurance policy, the Customer will reimburse the Supplier for the cost of any insurance which the Supplier may reasonably arrange in respect of the goods supplied to the Customer.

11. SPECIAL ORDERS AND SPECIFICATIONS IN GENERAL

- (a) An order for goods is a Special Order for goods where the goods are not regularly stocked by the Supplier. This includes, but is not limited to, goods made in accordance with a custom design at the request of the Customer.
- (b) The Customer warrants to the Supplier that all drawings and specifications and other design information provided to the Supplier for the manufacture of Special or Custom orders or tooling are accurate and correct in all respects, comply with any relevant standards or legal or regulatory requirements and do not infringe upon the intellectual property rights of any third party including any copyright, patents, designs or trademarks of a third party.
- (c) Any Special or Custom Order will require a minimum 50% non-refundable deposit on order.

- (d) The deposit specified in clause 11(c) for special or custom orders may, at the Supplier's option, be subject to alteration to reflect the special or custom order or the Supplier's prices and charges in effect at the time.

12. RETURN OF GOODS - CONSUMERS

If the Customer is a Consumer then:

- (a) The goods come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and to compensation for any other reasonably foreseeable loss or damage. The Customer is entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) The guarantees under the Australian Consumer Law are given by the Supplier.
- (c) If the Customer believes the goods do not comply with the statutory guarantees, they must contact the Supplier (whose details are listed in the Credit Application and whose address is listed at clause 20) and the parties may make arrangements for the return of the goods. Any returned goods must be accompanied by proof of purchase. If the Supplier agrees that the goods do not comply with the statutory guarantee, the Supplier will refund the costs of returning the goods to the Supplier and, in all other respects, act in accordance with its obligations under the Australian Consumer Law (as the case may be).
- (d) No other guarantees or warranties apply to the goods unless a further and additional warranty is provided, in writing, to the Customer by the Supplier.

13. RETURN OF GOODS - NON CONSUMERS

If the Customer is not a Consumer:

- (a) In accordance with Clause 5, unless agreed in writing by the Supplier, the Supplier will not accept the return of goods. Goods accepted for return by the Supplier may attract a charge to recover restocking and repackaging charges. The amount of this charge is set out in Clause 5 and is payable to the Supplier at the same time that the goods are returned by the Customer to the Supplier.
- (b) The proof of purchase from the Customer must accompany all goods returned to the Supplier.
- (c) All claims for the Supplier's failure to comply with the Customer's order whether due to shortfall, defect, incorrect delivery or otherwise must be made by giving written notice to the Supplier within fourteen (14) days from the date of delivery. If the Customer fails to provide such notice then the Customer shall be deemed to have accepted the goods.
- (d) These conditions shall not exclude, or limit the application of any provision of any statute including any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void. To the extent permitted by law all conditions, warranties and undertakings are expressly excluded.
- (e) The Supplier's liability for breach of a non-excludable condition or warranty is limited at the Supplier's option, to any one of the following:
- (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of providing replacement goods or of acquiring equivalent goods; or
 - (iv) the payment of the cost of having the goods repaired.
- (f) The Supplier shall not be liable for any indirect loss or damages whatsoever, including consequential loss, loss of profits, loss of opportunity or loss of use.

14. PRIVACY

- (a) The Supplier's Privacy Policy, available upon request to the Supplier, forms part of these terms and conditions.
- (b) Our web site may be hosted, or some data may be stored overseas for reasons of uniformity and convenience for the Middleby Group. All personal information derived from Australia will still be treated in accordance with this Privacy Policy while being stored overseas.
- (c) In accordance with the Privacy Policy, the Customer agrees that the Supplier may use or disclose information to the Middleby Group and to third parties for the purpose of providing the goods, providing information about goods; sending information on the Middleby Group and our services; performing our administrative and marketing operations; complying with legislative and regulatory requirements or as otherwise permitted or authorised by law; considering any other application you may make to the Supplier or any member of the Middleby Group; managing our rights and obligations in relation to external payment systems, e.g. credit card schemes and debit payment schemes; conducting market research or customer satisfaction research; developing, establishing and administering arrangements (including rewards programs) with other organisations in relation to the promotion, administration and use of the Middleby Group's goods; and developing and identifying products and services that may interest you.

15. FITNESS FOR PURPOSE

To the maximum extent permitted by law, the Customer agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of any goods for a particular purpose. Any advice, recommendation, information or assistance provided to the Customer by the Supplier is provided without any liability by the Supplier whatsoever.

16. GST

- (a) Any expression used in this clause and which is defined in the "A New Tax System (Goods and Services Tax) Act 1999" has the same meaning in this clause 16.
- (b) With the exception of any amount payable under this clause, unless otherwise expressly stated all amounts stated to be payable by the Customer under these terms and conditions are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with these terms and conditions, the recipient of the taxable supply must pay to the supplier an additional amount equal to the GST payable on or for the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made in accordance with this document, subject to the provision of a tax invoice by the supplier to the recipient.

17. CHARGE

The Customer hereby charges all property, both equitable and legal, present or future of mine/ours/its and the Company/ Trustee Company/ Trust/ Sole Trader/ Partnership (as applicable), in respect of any monies that may hereinafter be owing to the Supplier under this Credit Application and Agreement by the Customer or otherwise and hereby authorise the Supplier or its solicitors to execute any consent form as its attorney for the purpose of registering a mortgage or caveat over any real property owned by the Customer and any of the Company/ Trustee Company/ Trust/ Sole Trader/ Partnership (as applicable) at any time, or register this charge over assets of the Customer's and the Company/ Trustee Company/ Trust/ Sole Trader/

Partnership (as applicable) with the Australian Securities and Investments Commission. The costs and Stamp Duty payable on the Mortgage or Caveat are payable by the Customer.

18. TRUST AND TRUSTEES

Where the Customer is a trustee then:

- (a) The Customer agrees to provide to the Supplier a stamped copy of the trust deed (with all amendments) immediately upon demand by the Supplier.
- (b) The Customer warrants to the Supplier that it has full power and authority to enter into this Agreement on behalf of the trust and that it will be bound by these terms and conditions both personally and as trustee, irrespective of whether or not it discloses to the Supplier that it is a trustee at the time of entering into this Agreement with the Supplier.

19. LAWS TO GOVERN PROVISIONS OF AGREEMENT

- (a) Unless varied by notice in writing by the Supplier these terms and conditions shall be governed by and construed in accordance with the laws of the state or territory of the place of delivery of the goods. The parties submit to the exclusive jurisdiction of the courts in the capital city in that State or Territory (and, if there is more than one such court in the capital city, at such court as the Supplier in its absolute discretion selects).
- (b) The parties agree that proceedings may be commenced in any such Court of such State or Territory and consent to that Court having jurisdiction by virtue of clause 19(a) notwithstanding that that Court would not have such jurisdiction without this consent.

20. REPRESENTATIONS AND WARRANTIES BY THE CUSTOMER

The Customer hereby represents and warrants to the Supplier as follows:

- (a) The Customer is duly authorised to enter into this Agreement and is empowered to do so.
- (b) The execution and delivery of this Agreement by the Customer (or its authorised representative) and the consummation by the Customer of the transactions contemplated in this Agreement have been duly authorised by the Customer.
- (c) The Agreement constitutes a valid and binding agreement with the Customer enforceable in accordance with its respective terms.

21. NOTICE TO THE SUPPLIER

Notices to be given by the Customer to the Supplier may be delivered personally or sent to the Supplier at the Supplier's address **at Middleby Australia Pty Ltd, PO Box 1577, Coorparoo DC, Qld 4151** or **Email: accountsaustralia@middleby.com** or to the last address notified by the Supplier to the Customer and, unless the contrary is proved, notice shall be taken as delivered when received by the Supplier at that address.

22. NOTICE TO THE CUSTOMER

- (a) Notices (including invoices) to be given to the Customer by the Supplier may be delivered personally or sent by email to the Customer's last known email address or sent by ordinary prepaid post to the Customer's last known address. If notices are posted, unless the contrary is proved, notices shall be taken as delivered on the second business day following posting.
- (b) Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post.

23. SEVERANCE

In the event that the whole or any part or parts of any provisions in this Agreement should be held to be void or unenforceable in whole or in part such provision or part thereof shall to that extent be severed from these terms and conditions but the validity and enforceability of the remainder of these terms and conditions shall not be affected.

24. SUB-CONTRACTING

The Supplier is authorised to sub-contract the manufacture and/or supply of the goods or any part thereof to a third party.

25. CERTIFICATE

A statement in writing signed by any of the Supplier's duly authorised officers stating monies payable by the Customer to the Supplier is prima facie evidence of the amounts so payable.

SIGNED ON BEHALF OF THE CUSTOMER

I/We hereby acknowledge, affirm and agree that I/We have read all the terms of the Credit Application and Terms and Conditions of Sale and I/We fully understand and comprehend same and certify the information supplied herein as the basis for you to grant credit is true and correct.

I/we warrant that I/we are authorised by the Customer to enter into this agreement on behalf of the Customer.

Signed by/on behalf of Customer:

Signature:.....Date:/...../.....

Print Name and Position:.....

Witness signatureDate:/...../.....

Print Name:.....

Signature:.....Date:/...../.....

Print Name and Position:.....

Witness signatureDate:/...../.....

Print Name:.....

PERSONAL GUARANTEE AND INDEMNITY

IN CONSIDERATION of Middleby Australia Pty Ltd ACN 009 730 670 (“**the Supplier**”) supplying goods or services or both to the Customer I/we(the Guarantor/s) hereby guarantee to the Supplier due and punctual payment by the Customer of all moneys which are now payable or may in the future become payable by the Customer to the Supplier for goods and services or both supplied from time to time by the Supplier to the Customer (“**the secured moneys**”) and I/we JOINT AND SEVERALLY agree with the Supplier as follows:

1. That the Guarantor will guarantee and be answerable to the Supplier (or other Group Company) for:
 - 1.1 The due and punctual payment by the Customer of all monies now and which from time to time hereafter become due and payable to the Supplier (or other Group Company) 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 collection costs and legal costs and disbursements incurred by the Supplier (or other Group Company) in enforcing payment by the Customer of any such monies; and
 - 1.2 The due and punctual performance of all of the Customer's other obligations to the Supplier, whether pecuniary or non pecuniary, present or future, actual or contingent.
2. In this Guarantee, Group Company means: any company Related or Associated with the Supplier (including all Associated entities and any Related Bodies Corporate of the Supplier) (as those terms are defined in the Corporations Act 2001), including but not limited to the following Alkar, Armor Inox, Anets, Auto-Bake, Baker, Beech Ovens Pty Ltd, Blodgett, Bloomfield, Britannia, Carter-Hoffmann, CookTek, Cozzini, Inc., CTX, Danfotech, Inc., Doyon, Drake, frifri SA, Giga Grandi Cucine, Holman, Hounö, IMC, Jade Range, Lang, Lincat, MagiKitch'n, Maurer-Atmos GmbH, Middleby Corporation, Middleby Australia Pty Ltd, Middleby Marshall, Middleby Worldwide, MP Equipment, Nieco, Nu-Vu, Perfect Fry, Pitco, RapidPak, Southbend, Star, Toastmaster, TurboChef, and Wells.
3. In the event that the Customer fails to make due and punctual payment in accordance with clause 1, the Guarantor is liable to pay to the Supplier (or other Group Company) the amount due and payable by the Customer to the Supplier (or other Group Company) immediately upon demand.
4. The Guarantor indemnifies the Supplier (or other Group Company) in respect of all amounts payable by the Customer to the Supplier (or other Group Company) on account of goods and/or services supplied by the Supplier (or other Group Company) to the Customer, and all costs and interest which the Customer may be required to pay the Supplier (or other Group Company), 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 Act or a Deed of Company Arrangement entered into by the Customer.
5. The Supplier may in its absolute discretion enforce this Personal Guarantee and Indemnity without first having recourse to, and is otherwise under no obligation to, proceed against the Customer or any other Guarantor to recover amounts owing to it, exhaust any remedies it may have against the Customer or any other Guarantor, or exercise its rights with respect to security interests held which secure the Customer's obligations.
6. This guarantee shall be a continuing guarantee to the Supplier for all debts whatsoever and whensoever contracted with the Customer in respect of all goods or services or both supplied to the Customer and shall not be affected by an act or omission which, but for this clause, might otherwise affect it in law or in equity, including:
 - 6.1 Any variation or novation of the agreement between the Supplier (or other Group Company) and the Customer extending credit to the Customer or any other changes to the terms of such agreement, including an extension to the credit limit applied for by the Customer and approved by the Supplier (or other Group Company) from time to time (and whether or not such agreed credit limit is exceeded at any time without approval by the Supplier (or other Group Company)), or a decrease in the credit limit provided to the Customer;
 - 6.2 The winding up or bankruptcy 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 the Supplier (or other Group Company) is extinguished or otherwise not recoverable;
 - 6.3 Any time, credit, waiver or other indulgence granted by the Supplier (or other Group Company) to the Customer or by any arrangement entered into whereby the Supplier's (or other Group Company's) rights are in any way modified or abrogated and no notice of the granting of any time, credit, waiver or other indulgence or of the entering into any arrangement need be given to the Guarantor;
 - 6.4 Termination of the agreement between the Supplier (or other Group Company) and the Customer for the provision of credit on account of the Customer failing to inform the Supplier (or other Group Company) of any change in ownership of the Customer's business, share holding or control, in which event the Guarantor agrees to guarantee all monies due and owing by any third party to the Supplier (or other Group Company) as a result of the continuance of supply of goods and services to the Customer or third party under the Customer's account until notification of such change has been given to the Supplier (or other Group Company) 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 as set out herein);
 - 6.5 The payment by the Customer of monies to the Supplier (or other Group Company) 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 as such payment shall affect the Supplier's (or other Group Company's) right to recover such monies from the Guarantor;
 - 6.6 Where more than one person is a Guarantor, any one or more of those persons ceasing to be a Guarantor;
 - 6.7 The exercising of a right, or failure to exercise a right, including rights enforceable upon judgment, which the Supplier has and may exercise against the Customer, another Guarantor, or any other person;
 - 6.8 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.
7. The Guarantor hereby charges all property, both equitable and legal, present or future which the Guarantor owns or has an interest in (registered or otherwise) in respect of any monies that may hereinafter be owing to the Supplier (or other Group Company) under this Personal Guarantee and Indemnity by the Guarantor or otherwise and hereby authorises the Supplier (or other Group Company) 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, or to register this charge over assets of the guarantor with the Australian Securities and Investments Commission.

8. The Guarantor shall be liable to the Supplier (or other Group Company) for all legal costs (on a solicitor and own client basis) in respect of proceedings for recovery under this Guarantee.
9. It is expressly declared that notwithstanding the fact that this Personal 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 the Guarantors notwithstanding the fact that any proposed or contemplated party shall not in fact subsequently execute this Deed.
10. Unless varied by notice in writing by the Supplier this Personal Guarantee and Indemnity and its interpretation shall be governed by and construed in accordance with the laws of the state or territory of the place of delivery of the goods. The Guarantor/s submit to the exclusive jurisdiction of the courts in the capital city in that State or Territory (and, if there is more than one such court in the capital city, at such court as the Supplier in its absolute discretion selects).
11. The parties agree that proceedings may be commenced in any such Court of such State or Territory and consent to that Court having jurisdiction by virtue of clause 10 notwithstanding that that Court would not have such jurisdiction without this consent.
12. In this Personal Guarantee and Indemnity, unless the context otherwise requires, the singular includes the plural and vice versa, those denoting a given gender shall include all other genders, and words denoting a natural person shall include firms, incorporated bodies and corporations.
13. The terms of this guarantee are binding (if more than one) jointly on us and severally on each of us. This is to certify that I have read, comprehend and accept the above terms and conditions and further without undue influence or unfair pressure append my/our signature hereto

I/we acknowledge and agree that before signing this Guarantee I/we have been given and read all of the terms of the Credit Application, Terms and Conditions of Sale and Agreement between the Supplier and the Customer and this Guarantee and that I/we fully understand that the terms and nature and effect of each of those documents and in particular that this Guarantee will be a continuing Guarantee (subject only to its terms) for all of the Customer's obligations under the Application and Credit Facilities and that I/we have been given the opportunity to obtain legal advice on those terms and either have taken that advice or declined to get it (as the case may be)

SIGNED by:

Signature of Guarantor: Date:/...../.....

Print Name:

Address:

In the presence of:

Witness signature: Date:/...../.....

Print Name:

SIGNED by:

Signature of Guarantor: Date:/...../.....

Print Name:

Address:

In the presence of:

Witness signature: Date:/...../.....

Print Name: