

# Skellon Foods Ltd Account Application Form



18-22 The Concourse  
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Auckland  
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**ENTITY DETAILS:**

APPLICANT'S FULL LEGAL NAME (i.e. not trading name): ..... ("the Customer")  
 (Please tick) Sole Trader  Individual  Partnership  Ltd Company  Other (please state): .....  
 Trading as: .....  
 Postal Address: .....  
 Physical Address: .....  
 Telephone: ( ) ..... Fax: ( ) ..... Cell Ph: .....  
 E-mail: .....  
 Years in this Business: ..... Previous businesses? .....  
 Contact Name & Position: .....

**OWNERSHIP** please insert Owner(s) / Directors Name(s) in full

1: ..... Address: .....  
 2: ..... Address: .....  
 IF LIMITED LIABILITY COMPANY - Address of Registered Office: .....  
 Date of Incorporation: ..... Incorporation No: .....

**FINANCIAL & PROFESSIONAL ADVISORS**

Name of Accountant: ..... Solicitor: .....  
 Bank: ..... Branch: ..... Acct No: .....

TRADE REFERENCES			
Company	Contact Name	Phone Number	Account open since

I/We have read and agree to be bound by the terms and conditions of trade as printed overleaf or attached. I/We warrant to Skellon Foods Limited that the above information is to the best of my/our knowledge, information and belief true and correct and that I/we am/are duly authorised to enter into this application and future contracts on behalf of the Customer. I/we also acknowledge that pursuant to the personal guarantee contained in the terms and conditions of trade that, where relevant, I/we am/are also signing this application form in my/our personal capacity.

**If the applicant is a company then this application form must be signed by a director of the company.**

Signed ..... Print Name ..... Title .....

Dated this ..... day of ..... 20.....

# GUARANTEE AND INDEMNITY

**IN CONSIDERATION** of .....("the seller") supplying and continuing to supply goods and/or services to  
..... ("the customer") **I/WE JOINTLY AND SEVERALLY:**

**1. GUARANTEE** the payment on demand to the seller of all moneys now owing to the seller by the Customer and all further sums of money from time to time owing to the seller by the Customer in respect of goods and services supplied or to be supplied by the seller to the Customer or any other liability of the Customer to the seller.

**2. HOLD HARMLESS AND INDEMNIFY** the seller on demand, as a separate obligation, against any liability (including but not limited to damages, costs, losses and legal fees) incurred by or assessed against the seller in connection with:

- the supply of goods or services to the Customer; or
- the recovery of moneys owing to the seller by the Customer including the enforcement of this guarantee; or
- moneys paid by the seller with the Customer's consent in settlement of a dispute that arises or results from a dispute between, the seller, the Customer, and a third party, or any combination thereof, over the supply of goods or services by the seller to the Customer.

**3. ACKNOWLEDGE** this Guarantee and Indemnity shall constitute an unconditional and continuing guarantee and indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole of moneys owing to the seller by the Customer and all obligations herein have been fully paid, satisfied and performed.

**4. FURTHER ACKNOWLEDGE** that no granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the seller's part (whether in respect of the Customer or any one or more of any other guarantor(s) or otherwise) and no failure by any named guarantor to properly execute this deed shall impair or limit the liability under this Guarantee and Indemnity of any guarantor. Without affecting the Customer's obligations to the seller, each guarantor shall be a principal debtor and liable to the seller accordingly.

**5. I/We** irrevocably authorise the seller to obtain from any person or company any information which the seller may require for credit reference purposes. I/We further irrevocably authorise the seller to provide to any third party, in response to credit reference and enquires about me/us or by way of information exchange with credit reference agencies, details of this guarantee and any subsequent dealings that I/We may have with the seller as a result of this guarantee being actioned by the seller.

**6. I/We** further acknowledge that the above information is to be used by the seller for all purposes in connection with the seller considering this guarantee and the subsequent enforcement of the same.

## GUARANTOR 1

SIGNED: .....

Full Name: .....

Present Address: .....

SIGNATURE OF WITNESS: .....

Name of Witness: .....Occupation: .....

Present Address: .....

**EXECUTED** as a deed this                      day of                      20

## GUARANTOR 2

SIGNED: .....

Full Name: .....

Present Address: .....

SIGNATURE OF WITNESS: .....

Name of Witness: .....Occupation: .....

Present Address: .....

**EXECUTED** as a deed this                      day of                      20

### Note:

1. If the Customer is a sole trader or partnership the guarantor(s) should be some other suitable person(s).
2. If the Customer is a company the guarantor(s) should be a director and/or shareholder.
3. If the Customer is a club or incorporated society the guarantors should be the president and secretary or other committee member.

# Skellon Foods Ltd Terms & Conditions of Trade

## 1. DEFINITIONS

- 1.1 "Skellonz" shall mean Skellon Foods Limited, or any agents or employees thereof.
- 1.2 "Customer" shall mean the Customer, any person acting on behalf of and with the authority of the Customer, or any person purchasing products and services from Skellonz.
- 1.3 "Goods" shall mean:
  - 1.3.1 all Goods of the general description specified on the front of this agreement and supplied by Skellonz to the Customer; and
  - 1.3.2 all Goods supplied by Skellonz to the Customer; and
  - 1.3.3 all inventory of the Customer that is supplied by Skellonz; and
  - 1.3.4 all Goods supplied by Skellonz and further identified in any invoice issued by Skellonz to the Customer, which invoices are deemed to be incorporated into and form part of this agreement; and
  - 1.3.5 all Goods that are marked as having been supplied by Skellonz or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Skellonz; and
  - 1.3.6 all of the Customer's present and after-acquired Goods that Skellonz has performed work on or to or in which goods or materials supplied or financed by Skellonz have been attached or incorporated.
  - 1.3.7 The above descriptions may overlap but each is independent of and does not limit the others.
- 1.4 "Goods" shall also mean all goods, products, services and advice provided by Skellonz to the Customer and shall include without limitation the supply of goods stuffs and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of Goods by Skellonz to the Customer.
- 1.5 "Price" shall mean the cost of the Goods as agreed between Skellonz and the Customer and includes all disbursements eg charges Skellonz pay to others on the Customer's behalf subject to clause 4 of this contract.

## 2. ACCEPTANCE

- 2.1 Any instructions received by Skellonz from the Customer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

## 3. COLLECTION AND USE OF INFORMATION

- 3.1 The Customer authorises Skellonz to collect, retain and use any information about the Customer, for the purpose of assessing the Customer's credit worthiness, enforcing any rights under this contract, or marketing any Goods provided by Skellonz to any other party.
- 3.2 The Customer authorises Skellonz to disclose any information obtained to any person for the purposes set out in clause 3.1.
- 3.3 Where the Customer is a natural person the authorities under clauses 3.1 and 3.2 are authorities or consents for the purposes of the Privacy Act 1993.

## 4. PRICE

- 4.1 Where no price is stated in writing or agreed to orally the Goods shall be deemed to be sold at the current amount as such Goods are sold by Skellonz at the time of the contract.
- 4.2 The price may be increased by the amount of any reasonable increase in the cost of supply of the Goods that is beyond the control of Skellonz between the date of the contract and delivery of the Goods.

## 5. PAYMENT

- 5.1 Unless otherwise agreed payment for Goods shall be made in full within 7 days of invoice date.
- 5.2 Interest may be charged on any amount owing after the due date at the rate of 2.5% per month or part month.
- 5.3 Any expenses, disbursements and legal costs incurred by Skellonz in the enforcement of any rights contained in this contract shall be paid by the Customer, including any reasonable solicitor's fees or debt collection agency fees.
- 5.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid in full.
- 5.5 A deposit may be required.

## 6. QUOTATION

- 6.1 Where a quotation is given by Skellonz for Goods:
  - 6.1.1 Unless otherwise agreed the quotation shall be valid for thirty (30) days from the date of issue; and
  - 6.1.2 The quotation shall be exclusive of goods and services tax unless specifically stated to the contrary;
  - 6.1.3 Skellonz reserve the right to alter the quotation because of circumstances beyond its control.
- 6.2 Where Goods are required in addition to the quotation the Customer agrees to pay for the additional cost of such Goods.

## 7. RISK

- 7.1 The Goods remain at Skellonz's risk until delivery to the Customer.
- 7.2 Delivery of Goods shall be deemed complete when Skellonz gives possession of the Goods directly to the Customer or possession of the Goods is given to a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 7.3 The time agreed for delivery shall not be an essential term of this contract unless the Customer gives written notice to Skellonz making time of the essence.

## 8. TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- 8.1 Title in any Goods supplied by Skellonz passes to the Customer only when the Customer has made payment in full for all Goods provided by Skellonz and of all other sums due to Skellonz by the Customer on any account whatsoever. Until all sums due to Skellonz by the Customer have been paid in full, Skellonz has a security interest in all Goods.
- 8.2 If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with Skellonz until the Customer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to Skellonz as security for the full satisfaction by the Customer of the full amount owing between Skellonz and Customer.
- 8.3 The Customer gives irrevocable authority to Skellonz to enter any premises occupied by the Customer or on which Goods are situated at any reasonable time after

- default by the Customer or before default if Skellonz believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated. Skellonz shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of this action, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded. Skellonz may either resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs) or may retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as Skellonz reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 8.4 Where Goods are retained by Skellonz pursuant to clause 8.3 the Customer waives the right to receive notice under s.120 of the Personal Property Securities Act 1999 ("PPSA") and to object under s.121 of the PPSA.
- 8.5 The following shall constitute defaults by the Customer:
  - 8.5.1 Non payment of any sum by the due date.
  - 8.5.2 The Customer intimates that it will not pay any sum by the due date.
  - 8.5.3 Any Goods are seized by any other creditor of the Customer or any other creditor intimates that it intends to seize Goods.
  - 8.5.4 Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Skellonz remains unpaid.
  - 8.5.5 The Customer is bankrupted or put into liquidation or a receiver is appointed to any of the Customer's assets or a landlord distains against any of the Customer's assets.
  - 8.5.6 A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
  - 8.5.7 Any material adverse change in the financial position of the Customer.

## 9. PAYMENT ALLOCATION

- 9.1 Skellonz may in its discretion allocate any payment received from the Customer towards any invoice that Skellonz determines and may do so at the time of receipt or at any time afterwards and on default by the Customer may reallocate any payments previously received and allocated. In the absence of any payment allocation by Skellonz, payment shall be deemed to be allocated in such manner as preserves the maximum value of Skellonz's purchase money security interest in the Goods.

## 10. DISPUTES AND RETURN OF GOODS

- 10.1 No claim relating to the Goods will be considered unless made within seven (7) days of delivery.
- 10.2 No Goods will be accepted for return without prior approval of Skellonz. Consideration to the return of Goods will only apply to faulty Goods.

## 11. LIABILITY

- 11.1 The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes may imply warranties or conditions or impose obligations upon Skellonz which cannot by law (or which can only to a limited extent by law) be excluded or modified. In respect of any such implied warranties, conditions or terms imposed on Skellonz, Skellonz's liability shall, where it is allowed, be excluded or if not able to be excluded only apply to the minimum extent required by the relevant statute.
- 11.2 Except as otherwise provided by clause 11.1 Skellonz shall not be liable for:
  - 11.2.1 Any loss or damage of any kind whatsoever, arising from the supply of Goods by Skellonz to the Customer including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods provided by Skellonz to the Customer; and
  - 11.2.2 The Customer shall indemnify Skellonz against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of Skellonz or otherwise, brought by any person in connection with any matter, act, omission, or error by Skellonz its agents or employees in connection with the Goods.

## 12. WARRANTY

- 12.1 Manufacturer's warranty applies where applicable.

## 13. CONSUMER GUARANTEES ACT

- 13.1 The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods from Skellonz for the purposes of a business in terms of section 2 and 43 of that Act.

## 14. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 14.1 If the Customer is a company or trust, the director(s) or trustee(s) signing this contract, in consideration for Skellonz agreeing to supply Goods and grant credit to the Customer at their request, also sign this contract in their personal capacity and jointly and severally personally undertake as principal debtors to Skellonz the payment of any and all monies now or hereafter owed by the Customer to Skellonz and indemnify Skellonz against non-payment by the Customer. Any personal liability of a signatory hereto shall not exclude the Customer in any way whatsoever from the liabilities and obligations contained in this contract. The signatories and Customer shall be jointly and severally liable under the terms and conditions of this contract and for payment of all sums due hereunder.

## 15. MISCELLANEOUS

- 15.1 Skellonz shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 15.2 Failure by Skellonz to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations Skellonz has under this contract.
- 15.3 If any provision of this contract shall be invalid, void or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 15.4 Skellonz will not be responsible for variation in the quantity of the Goods supplied within a range of 5% over or under.

**SIGN HERE** .....

*Please Sign And Complete All Three Pages*