majors GROUP
A world of ice-cream

SECTION 2 – ACCOUNT TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. **Conditions** means these Credit Terms & Conditions.

1.2. **Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort, statute or otherwise.

1.3. **Customer** means the party making this application.

1.4. **Goods** means any goods supplied by the Supplier being gelato, ice cream, frozen yoghurt and granita equipment and related products and ingredients.

1.5. **Insolvency Event** means, for the Customer, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.

1.6. **Loss** means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.

1.7. **Related Bodies Corporate** has the same meaning as in the Corporations Act 2001.

1.8. **Supplier** means Majors Group Australasia Pty Ltd ABN 71 144 874 260.

1.9. **Supplier T&C's** means any terms and conditions of quotation and supply, notified by the Supplier to the Customer (whether on an invoice, quote, the Supplier's website, or otherwise), or supply agreement in the Supplier's standard form entered into in writing between the Supplier and Customer.

2. STRUCTURE

2.1. These Conditions are intended to regulate key trading terms including extension of credit in connection with the supply of Goods by the Supplier to the Customer.

2.2. The terms set out in Part A of these Conditions are incorporated by reference as part of the Supplier T&C's. Those terms are legally binding between the Supplier and the Customer and should be read together with the Supplier T&C's. To the extent of any inconsistency, the Supplier T&C's (excluding the incorporated Part) prevail over these Conditions.

2.3. The terms set out in Part B form an agreement directly between the Customer and the Supplier. Those terms are legally binding between them.

PART A

3. CUSTOMER OBLIGATIONS

3.1. These Conditions apply if the Supplier accepts any order for Goods from the Customer, whether for cash or on credit. The Customer has no entitlement to credit unless in the Supplier's sole discretion the Supplier extends credit. If in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods to the Customer and to refuse to supply any Goods to the Customer on credit terms. If the Supplier does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.

3.2. If the Customer fails to comply with any of the terms of these Conditions, suffers an Insolvency Event or makes any misrepresentation to the Supplier, the balance of the Customer's account to the Supplier will become due and payable immediately.

3.3. The Customer agrees that it must:

a. pay, without any deduction or setoff, the price charged by the Supplier for Goods supplied to the Customer on delivery or performance, or, if credit terms are offered, within 30 days following the provision of the Goods.

b. pay any duty assessed on this document or fee to register or maintain any security interest held by the Supplier in respect of Goods supplied.

c. advise the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the price for all Goods supplied.

4. OVERDUE ACCOUNTS AND SECURITY

4.1. Any amount not paid by the due date will incur interest at a rate of 2% per annum above the overdraft rate charged by the Suppliers bank, calculated and compounded on a daily basis from the due date until the payment is made in full.

4.2. The Customer agrees to pay all costs and expenses (including legal costs, commissions paid by the Supplier to any commercial or mercantile agent and dishonour fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing a charge.

4.3. As security for any amounts due to the Supplier from time to time, the Customer charges all of its legal and equitable interest (both present and future) of whatsoever nature held in the Goods to the Supplier.

5. RETENTION OF TITLE

5.1. The Supplier retains legal and equitable title in any Goods supplied to the Customer until payment in full for the relevant Goods has been received by the Supplier. Until payment in full has been received, the following terms and conditions apply.

5.2. The Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Supplier, store them in a way they are clearly identified as the property of the Supplier and keep full and complete records, of the physical location of the Goods and, the ownership of the Goods by the Supplier.

5.3. The Supplier is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.

5.4. This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

6. SECURITY INTEREST

6.1. The retention of title arrangement described in clause 5 constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after acquired Goods supplied to the Customer by the Supplier.

6.2. The Customer must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the Supplier's purchase money security interest is a perfected security interest.

6.3. The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its purchase money security interest in this regard.

6.4. The Customer hereby waives any rights the Customer may otherwise have to:

a. receive any notices that the Customer would otherwise be entitled to receive under sections 95, 118, 121, 130, 132 or 135;

b. apply to a Court for an order concerning the removal of an accession under section 97;

c. object to a proposal to purchase or retain any collateral under sections 130 and 135;

d. receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in Goods supplied to the Customer from time to time.

6.5. For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009.

6.6. The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given under, or in the context of the PPSA. References to sections are sections of the PPSA.

7. RISK

7.1. Risk in relation to any Goods passes to the Customer on delivery of the Goods. Delivery of Goods will be at the Supplier's premises on collection of the Goods by the Customer, its employees, agent or contractors. If the Supplier has expressly agreed to ship the Goods, risk in the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery by the Supplier or its agent.

8. EXCLUSION OF IMPLIED TERMS

8.1. The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into Supplier T&C's or in connection with the supply of any Goods by the Supplier under law, statute, custom or convention are excluded.

9. LIMITATION OF LIABILITY

9.1. To the maximum extent permitted by law and subject to clauses 8 and 10, the Supplier's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions, the Supplier T&C's, or arising out of or in connection with the supply of specific Goods (including pursuant to or for breach of these Conditions, Supplier T&C's or repudiation thereof, under statute, equity or for tort, including negligent acts or omissions) is limited to:

a. the Supplier shall have no liability to the Customer for any Consequential Loss;

b. the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods that gave rise to the Loss.

9.2. Each party must take reasonable steps to mitigate any Loss it suffers or incurs.

10. LIMITATION OF LIABILITY UNDER ACL GUARANTEES

10.1. To the extent that Goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section

64A of the Australian Consumer Law, the Customer agrees that the Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under sections 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Supplier, one or more of the following:

a. replacement of the Goods or alternatively the supply of equivalent goods;

b. repair of the Goods;

c. payment of the cost of replacing the Goods or of acquiring equivalent goods; or

d. equivalent goods; or

e. payment of cost to have the goods repaired.

11. GST

11.1. If the Supplier has any liability to pay Goods and Services Tax (**GST**) on the supply of any Goods to the Customer, the Customer must pay to the Supplier an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Goods or Services (unless the consideration for that supply is expressed specifically to be GST inclusive).

PART B

12. GUARANTEE

12.1. The Customer has requested the Supplier facilitate the extension of credit terms. The Customer acknowledges that the Customer will receive a valuable commercial benefit as a result of the Supplier facilitating the extension of credit terms.

12.2. The Customer guarantees to the Supplier that the Customer will pay all amounts payable to the Supplier from time to time for the supply of Goods to the Customer when they are due including interest and taxes. The Customer's guarantee continues until all these amounts have been paid in full.

12.3. The Customer must pay the Supplier for its reasonable costs in administering this guarantee.

12.4. The Customer remains liable to the Supplier under this guarantee and the Customer's obligations under this guarantee will not be affected by any refusal by the Supplier to provide further credit to the Customer or a variation in the Supplier T&C's.

12.5. The Supplier may at any time release or discharge the Customer from this guarantee and give time for payment, accept any composition from or make any other arrangements with the Customer without releasing or discharging any other guarantors or otherwise prejudicing or affecting the Suppliers rights and remedies against the Customer.

12.6. As long as this guarantee remains in existence the Customer may not, without the Suppliers consent, reduce the Customer's liability under this guarantee by claiming the Customer or any other person has a right of set-off or counterclaim against the Supplier.

12.7. Where the Customer is a partnership no change in the constitution of the partnership shall affect, impair or discharge the liability of the Customer under this guarantee whether past, present or future notwithstanding the provisions of any legislation or any other similar enactment in amendment, modification or substitution regulating partnerships.

12.8. A statement in writing signed by an authorised officer of the Supplier, setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.

12.9. If the Customer enters into this guarantee as a trustee of any trust, then the following provisions shall apply:

a. the Customer shall be personally liable for the performance of all obligations and undertakings under this guarantee;

b. the Customer warrants that the Customer has full, complete and valid authority pursuant to the trust to enter into this guarantee;

c. notwithstanding that there is no reference to a specific trust the Suppliers rights of recourse shall extend to both the Customer's assets personally and the assets of the trust;

d. the Customer undertakes to the Supplier that the Customer's rights of indemnity against the trust assets have not been excluded by the provisions of the trust or any breach of trust or otherwise and the Customer will not release or otherwise prejudice such rights of indemnity.

12.10. The Customer's obligation to pay to the Supplier the amounts referred to under this document is a primary obligation and the Supplier is not obliged to proceed against or enforce any security or right against the Customer or demand payment from the Customer before those amounts are due for payment.

13. PRIVACY DISCLOSURE AND CONSENT

13.1. The Customer authorises the Supplier to:

a. obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed and from any other credit provider or credit reporting agency for the purpose of assessing this application for credit, or in connection with any guarantee given;

b. use, disclose or exchange with other credit providers information about the Customer's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts; and

c. disclose the contents of any credit report on the Customer to their solicitors/mercantile agents.

13.2. If the Customer does not provide the information requested in this document, the Supplier may be unable to process the application.

13.3. The Supplier complies with the privacy principles imposed by law in relation to the collection and disclosure of information regarding individuals. For further information, refer to the Suppliers Privacy Policy, www.majorsgroup.com.au/privacypolicy.

14. GOVERNING LAW

14.1. These Conditions are governed by and interpreted according to the laws of Western Australia. The parties submit to the non-exclusive jurisdiction of these courts.