



FONTERRA BRANDS (NEW ZEALAND) LIMITED
APPLICATION AND AGREEMENT FOR CREDIT ACCOUNT PLEASE POST BACK ORIGINAL DOCUMENT

NOTE ! IF YOU ALREADY HAVE AN ACCOUNT WITH FBNZ PLEASE ADVISE OUR CREDIT DEPARTMENT PRIOR TO COMPLETING THIS FORM: Please quote your existing Account Number:

Please complete all required information including the personal guarantee as an incomplete or unsigned application will be unable to be processed

Please indicate if you are part of a Buying Group Yes <input type="checkbox"/> No <input type="checkbox"/>		Name of Group:
Are you taking over an existing business? Yes <input type="checkbox"/> No <input type="checkbox"/>	Takeover Date: / /	
Name of Existing Business:	Name of Person Selling the Business:	
Type of Account Required: Foods <input type="checkbox"/> Beverages <input type="checkbox"/> Kapiti Ice Cream <input type="checkbox"/>		

Business Description (see page 3 to establish your business entity description)	Year Business Commenced / /
Limited Company <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Incorporated Society <input type="checkbox"/> Trust <input type="checkbox"/> Other <input type="checkbox"/> Please describe	
Please Note ! Partnerships, Incorporated Societies, Trusts and other non Limited Companies must complete Sections A, B & C for this application to be valid	

This Agreement is between Fonterra Brands (New Zealand) Limited ("FBNZ") and the following customer:

A	Registered Company Name:	Company Number
Trading Name (if any):		Nature of Business:
Contact Person(s) Name for Accounts:		
Postal Address:		
Invoice/Statement Address (if different):		
Street Address:		
Delivery Address (if different to above):		
Email Address:		
Telephone: Home ()	Business: ()	Mobile: () Fax: ()
Purchasing Contact Name:	Order Number Required:	Yes <input type="checkbox"/> No <input type="checkbox"/>
How much credit do you require?: \$	Multiply your monthly purchases estimate by 2	This becomes your requested credit limit based on 30 days

Whereas:
 > The applicant/s requests to establish a credit trading account with the supplier and or its subsidiaries and in doing so has provided the required particulars for this request
 > Each signatory warrants that he/she has the full authority of the applicant to sign on their behalf
 > It is agreed between the parties that should a credit trading account be established for the applicant then it shall be on the terms and conditions contained herein

B	Name of Authorised Applicant / Customer / Trustee
Home Address:	Date of Birth: / /
Previous Address: (if less than 2 years)	Position:
Telephone: Home ()	Business: () Mobile: () Fax: ()

C	Additional Applicant / Customer / Trustee
Home Address:	Date of Birth: / /
Previous Address: (if less than 2 years)	Position:
Telephone: Home ()	Business: () Mobile: () Fax: ()

Trade References (please provide ALL details requested) these should be businesses you have traded for 1 year or more	
Company Name:	Ph: ()
Contact Name:	Monthly Expenditure \$
Company Name:	Ph: ()
Contact Name:	Monthly Expenditure \$
Company Name:	Ph: ()
Contact Name:	Monthly Expenditure \$

This Application for a Credit Account constitutes a legal document. You are therefore urged to seek legal advice before you sign and bind yourself to this. Credit Account Agreement. FBNZ will not be responsible if you choose to not seek legal advice before signing the Application. Where the Customer comprises more than one person, each of that person's liability is joint and several.

Authorised Signatures		
Signed by: _____	PrintName: _____	Date: _____
Signed by: _____	PrintName: _____	Date: _____
Signed by: _____	PrintName: _____	Date: _____
For _____ Business Name		

When this form is complete please return to the Credit Manager Fonterra Brands (New Zealand) Ltd, Private Bag 75806 Manurewa

CREDIT TERMS

1. CREDIT ENQUIRIES

- 1.1 You authorise us to obtain any information, at any time, from any source in support of your credit account application with us and we may use that information for the purpose of assessing your credit worthiness, divulge it to any third party for the purposes of debt collection and credit reporting, and use it for our marketing activities.
- 1.2 You may see and request correction of your personal information in terms of the Privacy Act at our premises.

2. CREDIT LIMIT

- 2.1 We may refuse to supply Products if you have exceeded or may exceed your credit limit fixed by us.
- 2.2 We may decrease your credit limit at any time without any notice.

3. CREDIT TERMS

- 3.1 Your credit account with us will be considered paid when payment has been irrevocably cleared through the banking system to our credit.
- 3.2 We may refuse to supply Products to you or parties related to you if you fail to comply with any of your obligations under your credit account with us.
- 3.3 Any credit allowed in excess of your credit limit will be made on the same terms and conditions as these except that payment on the excess credit must be made on demand.
- 3.4 If we agree to extend you time for payment no further credit will be allowed until the due amounts have been paid.
- 3.5 If, at our discretion, we extend your payment arrangements and we then allow you to purchase more Products pursuant to your credit account with us, we may change the terms and conditions as regards future supply of products by written notice to you.
- 3.6 If you fail to comply with any obligation under your credit account with us we may suspend it until it is operating correctly. Any suspension will not affect any other rights we may have at law or in equity.
- 3.7 If you fail to comply with your obligations under your credit account with us, we may give particulars of your default to any credit bureau or agency, including a credit-reporting agency.
- 3.8 We will not be liable for any action taken by any party who becomes aware of your default. We will arrange for removal of the particulars of default if the default is found to be without substance. We will advise the credit bureau or agency that your default has been remedied if appropriate.
- 3.9 You must pay all costs we incur in enforcing or attempting to enforce your obligations under your credit account with us, including debt collection and solicitors' costs.

4. VARIATIONS TO TERMS

- 4.1 We may vary your credit account with us by written notice to you and the variation will be deemed to have been accepted by you seven days after the date on the notification. No variations to your credit account with us initiated by you will be accepted to us unless approved in writing by us.

5. TERMINATION

- 5.1 Your credit account with us continues until ended by notice in writing from one party to the other and all of your obligations have been fully paid, satisfied or performed. Any termination of your credit account with us will be without prejudice to the rights of either party arising prior to termination. Nothing in this clause affects the operation of any of these terms that are expressed or implied to have effect after its termination.

6. INDEMNITY

- 6.1 You indemnify us against all damages, claims and losses (including costs), which we incur as a result of:
 - (a) your failing to comply with your obligations under your credit account with us; or
 - (b) any act or omission by you or your staff or other persons employed or authorised by you.
- 6.2 You will have no claims against us for any action taken or omitted by us in enforcing your credit account with us.

STANDARD TERMS OF SUPPLY

7. PACKAGING

- 7.1 You acknowledge that we own all rights and goodwill in the trade marks, brands and other intellectual property we use in relation to the Products and their packaging.

8. ORDERS

- 8.1 All orders for Products must:
 - (a) be in writing, signed by you or on your behalf; and
 - (b) state a unique order number (in a form reasonably acceptable to us) for each order.
- 8.2 We are under no obligation to accept all or any of your orders. Once we have accepted an order you may not cancel or alter that order without our written agreement.

9. PAYMENT

- 9.1 Invoices will be due and payable in terms of your arrangement with us.
- 9.2 If we have granted you credit you will make payment in cleared funds to our nominated account on the 20th of the month following the date of invoice, in full, without deduction, set-off or counterclaim.
- 9.3 To the extent that we have not granted you credit, you must pay the price and our other charges in cash on delivery. We are not obliged to deliver the Products until we have received payment.
- 9.4 If you default in payment on the due date, all money owing to us shall immediately become due and payable and we shall be entitled to charge interest on all outstanding amounts at the base lending rate charged by our bank plus a margin of 5 percent per annum from the date payment is due until the date we receive payment.
- 9.5 We may deduct money that you owe to us from money that we owe to you.

10. PRICE

- 10.1 The price for the Products will be the price we agree with you by or at the date of the order or if no such agreement is made then the current list price charged by us at the date of delivery of your order.
- 10.2 Unless otherwise agreed, you must pay all delivery, handling, packaging or insurance charges (if any) related to your order.
- 10.3 Prices quoted do not include GST or any other tax, levy or duty associated with the Products or their supply, which you must pay in addition to the price. If there are any changes in any tax or duty rates payable by us then we will charge any changes relative to your purchases to your credit account with us. Unless otherwise stated we will not pay any tax or duty on your behalf.

11. OWNERSHIP

- 11.1 We will remain the owner of the Products you purchase from us until all sums you owe us, on any account, are paid in full (even if you incorporate the Products with other items).

12. DELIVERY

- 12.1 Delivery occurs when the Products are:
 - (a) collected by you at our premises; or
 - (b) delivered to the agreed delivery point; as set out in the accepted order.
- 12.2 We will not be liable for any failure to deliver or delay in delivery.

13. RISK

- 13.1 Risk in the Products will pass to you on delivery even though we may remain the owner of those Products until payment is made.
- 13.2 You must give us written notice within 14 days of receiving our invoice if you believe that the invoice is not correct. Your notice must include full details of the error(s) claimed by you.
- 13.3 If the Products have been delivered, claims for shortages must be notified to us within 14 days after delivery and include delivery documents and other supporting evidence.
- 13.4 If you have not given us valid notice of the error(s) within the required time, you must treat our invoice or delivery as correct.
- 13.5 You must make payment of the undisputed amount due on any disputed invoice on the due date. Upon the dispute being resolved, you will immediately pay to us (within 3 working days) the amount due.

14. WARRANTY

- 14.1 You rely on your own judgment regarding all aspects of the Products and their merchantability and fitness for purpose.
- 14.2 Where you are buying Products for the purposes of a business the Consumer Guarantees Act 1993 does not apply. All guarantees, warranties and representations in relation to the Products or their supply are excluded except to the extent that we cannot lawfully exclude them.

15. PALLETS

- 15.1 Pallets and/or crates supplied with Products are not sold to you and do not become your property. You must keep all pallets and crates secure and in good condition in a manner consistent with food and health requirements relevant to the Products until they are collected by or on behalf of us.

16. PRODUCT DISPLAY

- 16.1 You must ensure that Products ordered are suitable for display.
- 16.2 You must ensure that the display and offering for sale of any products meet all statutory and other lawful requirements.

17. PROMOTIONAL PRODUCT

- 17.1 You must promote products in accordance with our requirements and to our satisfaction if we provide financial or other assistance for that purpose.
- 17.2 You must refund an amount equal to the value of the financial or other assistance we give you if you do not comply with those obligations.

Credit Account Terms and Conditions

18. EQUIPMENT SUPPLY

- 18.1. If we provide any equipment including refrigerated units ("Equipment") to you, you must keep it insured for all business risks to our satisfaction.
- 18.2. The Equipment must be placed in a secure environment, free from any atmospheric or environmental conditions that may cause damage to the Equipment, and used in a manner consistent with food and health requirements relevant to our product.
- 18.3. The Equipment remains our property and it must be labelled as such. You must not affix it to any other property or items, or have the equipment removed from the premises without our express consent.
- 18.4. You authorise us to enter any premises to uplift the Equipment.

19. DEFAULT EVENT

- 19.1. For the purpose of these terms a "default event" occurs if:
 - (a) a payment by you is overdue;
 - (b) we reasonably believe that you are unable to immediately pay any sums owing to us;
 - (c) you exceed the credit limit we have allowed you; or
 - (d) you breach or are likely to breach any of these terms or any of our credit terms.
- 19.2. If a default event occurs then, without limiting our other rights and remedies:
 - (a) we can suspend or cancel all or part of your orders;
 - (b) all amounts you owe us, whether due for payment or not, will be immediately due and payable;
 - (c) we may reclaim our Products in your possession or control and may enter the premises where we believe the Products are kept in order to do so;
 - (d) we may recover from you the cost of repossessing and disposing of the Products or attempting to do so; and
 - (e) we will not be liable to you for any losses you incur as the result of our exercising any of our rights under this clause.

20. EXTENT OF LIABILITY

- 20.1. Our liability to you is limited to the price paid by you for the particular Products supplied by us to which your claim relates.
- 20.2. We will not be liable to you for:
 - (a) delay in delivery;
 - (b) loss or damage caused by anything which is beyond our reasonable control; or
 - (c) any loss of profits, loss of business or indirect or consequential loss or damage however arising.
- 20.3. We may, at our option, either:
 - (a) replace damaged or defective Products; or
 - (b) refund the purchase price of damaged or defective Products.
- 20.4. We are not required to accept responsibility for any defective Products if you have not:
 - (a) notified us of the defect as soon as you become aware of that defect; and
 - (b) included in your notice full details of the Products, the alleged defect, and all documents associated with your order and delivery; and
 - (c) reasonably assisted us in our investigation of your claim.
- 20.5. These terms only apply to the extent that the law prohibits us from limiting our liability.

21. GENERAL

- 21.1. No delay or failure to exercise any of our rights or remedies will be a waiver of any or our rights or remedies.
- 21.2. If any part of these terms is held to be invalid, illegal or unenforceable the remaining terms will remain in full force and effect.
- 21.3. These terms will be governed by New Zealand law and you agree to submit to the exclusive jurisdiction of the New Zealand Courts.
- 21.4. You may not assign your rights and obligations under these terms. If you sell ownership of your business without written notice to us you will remain liable to us for all Products we deliver to that business until we receive written notice and the business is granted new credit terms.
- 21.5. We may assign all or part of your credit account with us. If we assign all or part of your indebtedness the assignee will have the same rights of recovery as us.

22. PPSA

- 22.1. Where we are giving you credit you agree to grant to us, if we so require at any time, a security interest in all Products supplied by us to you from time to time. To protect our security interest you agree to allow us to register a financing statement under the New Zealand Personal Property Securities Act 1999 ("PPSA") or, if you are not in New Zealand, to register our security interest as permitted by law in your jurisdiction.
- 22.2. You must, upon request, promptly give us all assistance and information as is necessary to register our security interest.
- 22.3. You must pay to us promptly on request our costs in registering the security interest, and the costs of enforcing or attempting to enforce our rights under these terms and the security interest.
- 22.4. In respect of registration in New Zealand (where applicable) you agree that sections 114(a), 121, 131 of the PPSA will not apply to the security interests created by these terms and conditions, and you waive your right to receive a verification statement under section 148 of the PPSA.

DEFINITIONS

The following definitions are used in these terms:

"**You**" and "**your**" means the applicant as set out at the front of these terms.

"**We**", "**our**" and "**us**" means Fonterra Brands (New Zealand) Limited or any Fonterra Group company that supplies Products to you under these terms.

"**Products**" means the products supplied or to be supplied by us and includes any related services.

Guarantee and Indemnity

In consideration of Fonterra Brands (New Zealand) Limited (“FBNZ”) agreeing to supply, supplying and continuing to supply Products and the Equipment to

.....
(Registered Company Name) (“Applicant”)

I/We jointly and severally:

1. **GUARANTEE** - guarantee the due and punctual payment to you by the Applicant, in the manner and at the times agreed between FBNZ and the Applicant, or in the event that no times shall have been agreed then upon demand, of all monies which are presently owing or which may in the future become owing to FBNZ by the Applicant, in respect of Products and/or the equipment supplied by FBNZ by the Applicant, in respect of Products and/or the equipment supplied by FBNZ to the Applicant, or which may otherwise become payable by the Applicant to FBNZ.
2. **ACKNOWLEDGE** – acknowledge that:
 - 2.1 FBNZ may at any time in their discretion and without giving notice refuse further credit to the Applicant.
 - 2.2 I/ we will be bound as principal debtors so that the liability of each of us under this Guarantee shall not be released by any delay or other indulgence or concession which FBNZ may grant to the Applicant or any compromise which FBNZ may reach or variation FBNZ may agree with the Applicant or any of us, or by any other act, matter, circumstances of law whereby I/we would but for the provision of this clause have been released from my/our liability under the Guarantee.
 - 2.3 I/we will not in anyway compete with FBNZ for payment in the event of bankruptcy or liquidation of the Applicant.
 - 2.4 This guarantee is in addition to, and not in substitution for, any other security or rights which FBNZ may presently have or may subsequently acquire and this Guarantee may be enforced against each of us without having recourse to any such securities or rights and without making demand or taking proceedings against the Applicant or me or any of us.
 - 2.5 This Guarantee shall bind our respective personal representatives.
 - 2.6 FBNZ may, in the event of default in payment by the Applicant and the Guarantor(s) complete and register an all obligations mortgage (Registrar General of Land approval 1998/2072) and/or caveat at my/our cost over any of our property to secure monies owned by the Applicant to FBNZ and for that purpose I/we irrevocably appoint the directors of FBNZ severally as my/our attorneys for the purpose of completing the mortgage and/or caveat.
3. **AGREE** - agree that:
 - 3.1 Independently of the Guarantee to indemnify FBNZ against all damage, claims and losses (including costs) which FBNZ may suffer or incur as a result of any failure by the Applicant to make due and punctual payment of the monies under this Guarantee, whether or not the liability of the Applicant is or has become void or unenforceable for any reason and whether or not the foregoing guarantee shall be void or unenforceable against me/us or any of us for any reason.
 - 3.2 This Guarantee and Indemnity shall be unconditional and continuing Guarantee and Indemnity and shall be irrevocable and shall remain in full force and effect until all the monies owing to FBNZ by the Applicant and all the obligations under the Applicant’s credit account with FBNZ have been fully paid, satisfied or performed and my be enforced by FBNZ either jointly or severally.

Guarantor –1

SIGNED:

Full Name:.....

Present Address:

SIGNATURE OF WITNESS:.....

Name of Witness:.....

Present Address:

Occupation:.....

Executed this _____ day of _____ 200

Guarantor –2

SIGNED:

Full Name:.....

Present Address:

SIGNATURE OF WITNESS:.....

Name of Witness:.....

Present Address:

Occupation:.....

Executed this _____ day of _____ 200

I/we acknowledge that FBNZ has recommended that I/we obtain independent legal advice as to the effect of the above Guarantee and Indemnity and the potential liability faced by me/us a guarantor(s). I/we confirm that I/we have obtained, or elected not to obtain, such independent legal advice and have agreed to provide the Guarantee and Indemnity.

Guarantor 1 Guarantor 2.....