



**MARKETWEST**  
CREDIT SERVICE

BUYER CODE:

***CREDIT APPLICATION AND  
CONTINUING CREDIT CONTRACT***

BETWEEN

**FPAА PTY LTD T/AS  
MARKET WEST CREDIT SERVICE**

**(ACN 008 669 181)**

AND

(2023 Revision)

MARKET WEST CREDIT SERVICE  
CREDIT APPLICATION AND CONTINUING CREDIT CONTRACT

**SECTION 1: APPLICANT DETAILS**

**1.1 APPLICANT:**

Company Name: \_\_\_\_\_

A.C.N. \_\_\_\_\_ ABN: \_\_\_\_\_

Incorporation Date: \_\_\_\_\_

Trust Name (if any): \_\_\_\_\_

\* If company is a trustee - copy of trust deed and all variations must accompany this Application

Business/Trading Name: \_\_\_\_\_

**OR**

Partnership or Sole Trader: \_\_\_\_\_

Applicants Name: \_\_\_\_\_

Date of Birth: \_\_\_\_\_ Drivers License : \_\_\_\_\_

Trust Name (if any) \_\_\_\_\_

Date Commenced: \_\_\_\_\_ Partnership Agreement: Written or Verbal

\*If Applicant is a trustee – copy of trust deed and all variations must accompany this Application.

\*If Partners are trustees – copy of trust deed and all variations must accompany this Application.

Business / Trading name: \_\_\_\_\_

**1.2 ADDRESSES:**

Postal Address: \_\_\_\_\_

\_\_\_\_\_  
P/C

Registered Address: \_\_\_\_\_

\_\_\_\_\_  
P/C

Trading Address: \_\_\_\_\_

\_\_\_\_\_  
P/C

Email Address: \_\_\_\_\_

Contact Numbers Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

Mobile Number: \_\_\_\_\_

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**FOR COMPANIES ONLY**

**1.3 DIRECTORS:**

1. Surname: \_\_\_\_\_ First & Other: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: B/H \_\_\_\_\_ A/H \_\_\_\_\_  
Appointed: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Drivers License: \_\_\_\_\_ State: \_\_\_\_\_
  
2. Surname: \_\_\_\_\_ First & Other: \_\_\_\_\_  
Address : \_\_\_\_\_  
Telephone: B/H \_\_\_\_\_ A/H \_\_\_\_\_  
Appointed: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Drivers License: \_\_\_\_\_ State: \_\_\_\_\_
  
3. Surname: \_\_\_\_\_ First & Other: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: B/H \_\_\_\_\_ A/H \_\_\_\_\_  
Appointed: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Drivers License: \_\_\_\_\_ State: \_\_\_\_\_
  
4. Surname: \_\_\_\_\_ First & Other: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: B/H \_\_\_\_\_ A/H \_\_\_\_\_  
Appointed: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Drivers License: \_\_\_\_\_ State: \_\_\_\_\_

**1.4 SHAREHOLDERS:**

1. Name: \_\_\_\_\_ Tel No: \_\_\_\_\_  
Private Address: \_\_\_\_\_
  
2. Name: \_\_\_\_\_ Tel No: \_\_\_\_\_  
Private Address: \_\_\_\_\_
  
3. Name: \_\_\_\_\_ Tel No: \_\_\_\_\_  
Private Address: \_\_\_\_\_
  
4. Name: \_\_\_\_\_ Tel No: \_\_\_\_\_  
Private Address: \_\_\_\_\_

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**1.5 FOR PARTNERS ONLY**

1. Surname: \_\_\_\_\_ First & Other: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: B/H \_\_\_\_\_ A/H \_\_\_\_\_  
Appointed: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Drivers License: \_\_\_\_\_ State: \_\_\_\_\_
2. Surname: \_\_\_\_\_ First & Other: \_\_\_\_\_  
Address : \_\_\_\_\_  
Telephone: B/H \_\_\_\_\_ A/H \_\_\_\_\_  
Appointed: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Drivers License: \_\_\_\_\_ State: \_\_\_\_\_
3. Surname: \_\_\_\_\_ First & Other: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: B/H \_\_\_\_\_ A/H \_\_\_\_\_  
Appointed: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Drivers License: \_\_\_\_\_ State: \_\_\_\_\_
4. Surname: \_\_\_\_\_ First & Other: \_\_\_\_\_  
Address: \_\_\_\_\_  
Telephone: B/H \_\_\_\_\_ A/H \_\_\_\_\_  
Appointed: \_\_\_\_\_ D.O.B. \_\_\_\_\_  
Drivers License: \_\_\_\_\_ State: \_\_\_\_\_

**1.6 FORMER BANKRUPTCY**

Has any Partner, Director or Individual ever been registered under any part of the Bankruptcy Act, or been or entered into any special financial arrangement including deed of composition, arrangement, assignment or otherwise? Yes  No

If yes, please give details: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**1.7 EXISTING CHARGES ETC:**

Has the Partnership, Company or individual in its own right or over Trust assets where applicable provided any Bills of Sale, Fixed and or Floating Charges, Mortgage/s or other Registered Charge/s over assets.? Yes  No

If yes please provide details: \_\_\_\_\_  
\_\_\_\_\_

**1.8 PLACE OF OPERATION:**

Are the business premises:       Owned                       Leased                       Rented

Is Plant and Equipment:       Owned                       Leased                       Rented

**1.9 BANK DETAILS:**

Bank Name: \_\_\_\_\_

Account Name: \_\_\_\_\_

Branch: \_\_\_\_\_ BSB No: \_\_\_\_\_

Account No: \_\_\_\_\_ Tel No: \_\_\_\_\_

Contact (if any): \_\_\_\_\_

**1.10 ACCOUNTANT:**

Name: \_\_\_\_\_ Tel No: \_\_\_\_\_

**1.11 TRADE REF:**

<b>Name &amp; Position</b>	<b>Company/Organisation</b>	<b>Telephone</b>

(N.B. All references should be notified of their naming.)

**1.12 CREDIT REQUIREMENTS:**

Estimated average **weekly** purchases in the  
Central Trading Area.:

\$ \_\_\_\_\_

(WHOLE DOLLARS)

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**1.13 FINANCIAL POSITION**

Please complete the assets and liabilities statement below:

<b>Assets (what the Applicant owns)</b>	<b>Liabilities (what the Applicant owes)</b>
Cash at bank     \$ _____	Creditors                     \$ _____
Debtors             \$ _____	Bank O/D                     \$ _____
Stock                 \$ _____	Short Term Liabilities \$ _____
Land/Buildings    \$ _____	Long Term Liabilities \$ _____
Plant/Equip         \$ _____	Long Term Loans         \$ _____
Other Assets         \$ _____	Other Liabilities             \$ _____
Total Assets [A] \$ _____	Total Liabilities [B]     \$ _____
	Net Worth     \$ _____ [A-B]

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SECTION 2: PRIVACY ACT STATEMENT AND ACKNOWLEDGMENT

PRIVACY ACT STATEMENT AND AUTHORISATION

1. Privacy Statement from Market West Credit Service

Market West Credit Service needs to collect information about you requested in this Credit Application and from other sources for the purpose of this Credit Application and any credit relationship with you. If Market West Credit Service cannot collect this information, we will be unable to process this Credit Application. Market West Credit Service respects your privacy and will only use or disclose personal information in accordance with the Privacy Act 1988 including amendments. You can access personal information about you in accordance with the Privacy Act 1988. To request access please write to the Credit Manager, Market West Credit Service, PO Box 1464, Canning Vale DC, Western Australia 6970.

2. Applicant/s and Guarantor/s Privacy Agreement

2.1 I/we understand that in this Section information means information about me/us collected by Market West Credit Service in this Credit Application and from other sources, including information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act 1988, and includes a credit report.

2.2 By submitting this Credit Application I/we being the Applicant/s or the Director/s of the Applicant named in Section 1 of this Credit Application (the "Applicant") and/or Guarantor/s named in Section 3 of this Credit Application agree that, subject to the Privacy Act 1988, Market West Credit Service may:

- (a) Obtain credit reports containing information about me/us from a credit reporting agency for the purpose of assessing my/our application for commercial credit and for the purpose of collecting overdue payments relating to commercial credit owed by me/us;
- (b) Obtain from a credit reporting agency a credit report containing information about me/us for the purpose of assessing whether to accept me/us as a guarantor for credit applied for by or provided to the Applicant and I/we agree that this agreement commences from the date of this Credit Application and continues until the credit covered by this Credit Application ceases;
- (c) Give to a person who is currently a guarantor or whom I/we had indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of the prospective guarantor/guarantors deciding whether to act as guarantor and to keep any other person also identified as a Guarantor in section 3 of this Credit Application informed about the guarantee;
- (d) Disclose information to credit reporting agencies before, during and after providing credit to the Applicant, including, but not limited to:
  - Identifying particulars –name, sex, address, date of birth and driver's licence number;
  - The fact that I/we have applied for credit, the credit limit and that Market West Credit Service is a credit provider to me/us;
  - Advice about payments at least 60 days overdue and which are in collection (and advice that payments are no longer overdue);
  - Advice that cheques drawn by me/us which are more than \$100 have been dishonoured more than once;
  - Market West Credit Service's opinion that I/we do not intend to meet my/our credit obligations (or that I/we have committed some other serious infringement); and
  - that credit provided to me/us has been paid or otherwise discharged;

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- (e) exchange information about me with those credit providers named in this Credit Application or named in a credit report issued by a credit reporting agency for the purposes of, but not limited to the following:
  - Accessing my/our credit worthiness, this Credit Application and any subsequent applications made by me/us for commercial credit;
  - Notifying other credit providers of a default by me/us;
  - Exchanging information with other credit providers as to the status of this credit facility where I am /we are in default with other credit providers;
  - Assisting me/us to avoid default in my/our credit obligations; and
  - Assessing my/our position if I/we fall into arrears;
  
- (f) exchanging information with any person whose name I/we give you from time to time in connection with this credit facility; and
  
- (g) notify and exchange information with Market West Credit Service's collection agent if I/we default on my/our credit obligations.

**Note all persons signing this Credit Application as Applicant/s or Guarantor/s must sign below.**

1..... Signature	2..... Signature
..... Full name	..... Full name
3..... Signature	4..... Signature
..... Full name	..... Full name
5..... Signature	6..... Signature
..... Full name	..... Full name



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**SECTION 3: GUARANTEE AND INDEMNITY**

THIS DEED is made and entered into on the date set forth in the schedule:

BY: The party or parties whose name(s) and address(es) are set forth in the Schedule as Guarantor (“Guarantor”)

IN FAVOUR OF: FPAA Pty Ltd T/As Market West Credit Service and each of the members of Chamber of Fruit Vegetable Industries (jointly and severally the “Beneficiaries”)

WHEREAS:

- A. The entity named and described in the Schedule as the Applicant (“the Applicant”) has, at the request of the Guarantor, submitted a Credit Application.
- B. The Guarantor acknowledges that it is a condition of the approval of the Credit Application that the Guarantor give this Guarantee and Indemnity. The Guarantor further acknowledges that the Credit Application and its approval by Market West Credit Service will govern the provision of produce on credit to or at the request of the Applicant by the Beneficiaries.
- C. The Guarantor acknowledges and agrees that the benefit of this Guarantee and Indemnity may, in addition to any other lawful means of acceptance, be accepted by the Beneficiaries by the issue of a current buyer code to the Applicant.
- D. The Guarantor acknowledges that Market West Credit Service will facilitate the provision of produce on credit to the Applicant and will continue to administer the credit relationship as it applies between the Applicant and the Beneficiaries during the term of this Guarantee and Indemnity.
- E. This Guarantee and Indemnity may be enforceable by any one or more of the Beneficiaries or by Market West Credit Service on behalf of the any one or more of the Beneficiaries.

NOW THIS DEED WITNESSES that:

- 1. The Guarantor hereby guarantees unconditionally and irrevocably to the Beneficiaries:-
  - 1.1 the due payment by the Applicant of all monies (hereinafter referred to as “the monies hereby secured”) at any time and from time to time owing or payable or hereinafter to become owing or payable by the Applicant to the Beneficiaries on any account or in any manner whatsoever; and
  - 1.2 the due performance, observance and fulfilment by the Applicant of all of the terms, provisions and conditions of any agreement from time to time in force between the Applicant and the Beneficiaries (including but not limited to the Credit Application) with respect to the provision of produce on credit by the Beneficiaries.
- 2. The Guarantor agrees as a separate and additional obligation:
  - 2.1 to indemnify and to keep the Beneficiaries indemnified against all losses, costs, charges and expenses whatsoever (including but not limited to the monies hereby secured all administration costs, debt collection agency fees, legal and other professional fees on a full indemnity basis) which the Beneficiaries may incur as a consequence of the failure for any reason of the due and punctual payment of the moneys hereby secured by the Applicant and/or the Guarantor or as a consequence of the Applicant failing to do any or all of the things specified in clause 1.2; and

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- 2.2 as principal debtor to pay to the Beneficiaries on demand a sum equal to the amount of any losses, costs, charges and expenses described in clause 2.1.
3. Market West Credit Service may at any time serve the Guarantor with notice that it requires the Guarantor to pay interest on all monies which remain unpaid and for which demand has been made by Market West Credit Service. Such interest to be calculated at a rate which is 2 per centum above that charged by Market West Credit Service's bankers on overdrafts of less than \$100,000, calculated on daily rests and computed from the date of demand until the date of payment.
4. This Guarantee and Indemnity is a principal obligation and will not be treated as ancillary or collateral to any other right or obligation however created or arising.
5. This Guarantee and Indemnity is not prejudiced or otherwise affected and is still enforceable:-
- 5.1 if any amounts owing to the Beneficiaries by the Applicant are not recoverable from the Applicant for any reason at all;
- 5.2 if the Beneficiaries do not comply with any law or any agreement with the Applicant;
- 5.3 if the Beneficiaries grant any time, release or other concession to the Applicant and/or the Guarantor or any one or more of the persons comprising the Guarantor;
- 5.4 if one or more of the persons comprising the Guarantor or any other party does not execute this Guarantee and Indemnity;
- 5.5 if any person who was intended to provide a security in favour of the Beneficiaries in respect of the Applicant fails to do so or does so ineffectively or the Beneficiaries exercise or refrain from exercising any other security or guarantee;
- 5.6 in the event of death, incapacity, administration, bankruptcy or insolvency of the Applicant or any other one or more of the persons comprising the Guarantor;
- 5.7 if a payment by the Applicant or by one or more of the persons comprising the Guarantor to the Beneficiaries is set aside in bankruptcy, liquidation or official management of the Applicant or of any one or more of the persons comprising the Guarantor;
- 5.8 if one or more of the persons comprising the Guarantor ceases to be a director of (if the Applicant is company) or be involved with the Applicant in whatever capacity or the status or structure of the Applicant changes at all;
- 5.9 if the Applicant's obligations under the Credit Application or any part of it are wholly or partially void, voidable or unenforceable;
- 5.10 any alteration, addition or variation to any agreement the making of which constitutes or includes the consideration for this Guarantee and Indemnity or any security from time to time held by the Beneficiaries;

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- 5.11 if there is any change or changes in the business name of the Applicant or where applicable any change or changes in the shareholders or partners of the Applicant, the death, retirement, introduction of a new partner or partners, or any other change in the constitution of the Applicant and the liability of the Guarantor shall continue and the provisions of this Guarantee and Indemnity shall be applicable to all monies secured whether those monies becoming owing before or after such changes; and
- 5.12 if any other matter or thing occurs which could otherwise limit at law or in equity the effect of this Guarantee and Indemnity;
6. This Guarantee and Indemnity is a continuous guarantee and indemnity and is not wholly or partially discharged until all credit arrangements between the Applicant and the Beneficiaries are ended and all the moneys hereby secured are paid and all obligations of the Applicant to the Beneficiaries are complied with in full. Any settlement, discharge or release between the Guarantor and the Beneficiaries will be conditional upon no security or payment to the Beneficiaries by the Applicant or any other person being avoided or reduced by virtue of any provisions or enactments relating to insolvency for the time being in force, and the Beneficiaries may recover the value or amount of any security or payment from the Guarantor subsequently as if that settlement, discharge or release had not occurred.
7. This Guarantee and Indemnity shall be independent of any other guarantee or security either from the Applicant or from any other person which the Beneficiaries now hold or may hereafter hold for any present or future indebtedness of the Applicant to the Beneficiaries. This Guarantee and Indemnity may be enforced against the Guarantor without the Beneficiaries first being required to exhaust any remedy they may have against the Applicant or to enforce any security they may hold with respect to the moneys hereby secured.
8. Where there are two or more persons comprising the Guarantor their obligations are joint and several and references to the "Guarantor" take effect as references to all of those persons or to any of them as the case requires. None of them shall be discharged from their obligations under this Guarantee and Indemnity if:-
- 8.1 this Guarantee and Indemnity is not enforceable against one of them or if the liability of one of them ceases;
- 8.2 any of them dies; or
- 8.3 if any one of them is unable to perform his or her obligations under this Guarantee and Indemnity.
9. Each of the persons comprising the Guarantor hereby charges with payment of the monies hereby secured and the compliance with all obligations secured by this Guarantee and Indemnity all beneficial interests in land and personal property held now or in the future by the Guarantor. Each person comprising the Guarantor agrees that if demand is made upon him or her by the Beneficiaries that such person hereby consents to a caveat being lodged against such interest or interests in land and will immediately execute a mortgage or other instrument or instruments of security as required by the Beneficiaries. The Guarantor hereby irrevocably and by way of security appoints the Company Secretary of Market West Credit Service to be his or her true and lawful attorney to execute and register such instrument or instruments.

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10. Until the moneys hereby secured have been received in full the Guarantor shall not:
  - 10.1 be entitled to share in any security held or money recovered by the Beneficiaries or to stand in the Beneficiaries' place in respect of any security or money;
  - 10.2 take any steps to enforce a right or claim against the Applicant in respect of any money paid by the Guarantor under this Guarantee and Indemnity or otherwise owing to the Guarantor or to any company of which the Guarantor is a director or a shareholder in any respect; or
  - 10.3 have or exercise any right as surety in competition with the Beneficiaries.
11. Notices and communications may be delivered by hand or by post to the address of the parties specified herein or at such other address as one party may specify in writing to the other party. Such notices and communications shall be deemed to be duly served when delivered in case of delivery by hand and one business day after posting in the case of service by post.
12. A certificate in writing signed by an officer of Market West Credit Service certifying:
  - 12.1 the amount of any sum or sums of money due, owing or payable by the Applicant or the Guarantor in connection with the Credit Application or this Guarantee and Indemnity, is sufficient evidence of the amount unless it is proved to be incorrect; and
  - 12.2 as to the Members of the CFVI, shall be accepted by the Guarantor as final and conclusive evidence of membership of the Association.
13. This Guarantee and Indemnity shall be governed by the law of Western Australia and the parties agree to submit to the exclusive jurisdiction of the courts of that State.
14. In this Guarantee and Indemnity, unless the context otherwise requires:-
  - 14.1 "Credit Application" means an application form completed by the Applicant and submitted to Market West Credit Service requesting registration as a buyer in order to purchase produce on credit in the Central Trading Area of Market City, Canning Vale, Western Australia;
  - 14.2 "Market West Credit Service" means FPAA PTY LTD T/As Market West Credit Service ACN 008 669 181.
  - 14.3 "produce" has the same meaning given to "prescribed produce" under the Perth Market Act, 1926 as amended;
  - 14.4 "person" includes "corporation" and vice versa;
  - 14.5 words importing the singular include the plural and vice versa;
  - 14.6 words importing one gender include all other genders; and
  - 14.7 a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
  - 14.8 "Members of CFVI" means each of the members of The Chamber of Fruit and Vegetables Industries in Western Australia (Inc) from time to time.

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<b>SECTION 4:</b>	<b>TERMS OF TRADE</b>
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4.1 Except where the context otherwise requires:

- (a) a reference to “the Applicant” includes Applicant’s successors and assigns.
- (b) a reference to “Buyer” means a purchaser of produce at the Central Trading Area of Market City, Canning Vale, Western Australia;
- (c) a reference to “Buyer Code” means the identifying series of letters allocated to a Buyer by Market West Credit Service for the purpose of obtaining credit from members of Market West Credit Service when purchasing produce;
- (d) a reference to the signatory shall mean each person (apart from the Applicant) who signs this application both jointly and each of them severally;
- (e) a reference to a Member herein shall mean a reference to any member of The Chamber of Fruit and Vegetables Industries in Western Australia (Inc) and a reference to the Members shall mean a reference to each and every shareholder of Market West Credit Service;
- (f) a reference to “produce” has the same meaning given to “prescribed produce” under the Perth Market Act, 1926 as amended;
- (g) a reference to “business day” means a day upon which banks are open for business generally in Perth, Western Australia;
- (h) a reference to an “Authorised Credit” means that amount which represents a credit allowed by United Crates Co-Operative Limited and WA Crates Pty Ltd for crates returned to it by 2.00pm each Friday; and
- (i) words importing the singular include the plural and vice versa and words importing one gender include all other genders.

4.2 The Applicant and each signatory:

- (a) acknowledge that prior to entering into this Credit Application and/or Guarantee and Indemnity each of them has received a copy of this Credit Application, has read and understood the Credit Application and has only relied on his/her/their own enquiries as to the Applicant and other relevant persons and has not received any inducements, representations, statements, promise or conduct of any kind whatsoever by or on behalf of the Members or Market West Credit Service;
- (b) accept the terms and conditions contained in this Credit Application and all amendments thereto and agree to be bound by them;
- (c) acknowledge that credit provided to the Applicant as a result of the acceptance of this Application will only be utilised to purchase goods for commercial purposes;

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- (d) warrant at the time this Credit Application is executed and on each date on which weekly statements for produce issued by Market West Credit Service become due for payment, that the information comprised in this Application is true, accurate and correct and is supplied for the purpose of obtaining credit;
  - (e) make application for the Applicant to become a Buyer and for the allocation of a current Buyer Code to the Applicant; and
  - (f) will from time to time, upon receiving a request from Market West Credit Service, execute a new credit application and any security or additional security required by Market West Credit Service for the purposes of the provision of credit to the Applicant by the Members; and
  - (g) warrant that they will ensure that the Applicant and each of the Applicant's employees comply with the terms and conditions associated with the hire of crates from United Crates Co-operative Limited and WA Crates Pty Ltd and acknowledge that a breach by any of them of those hiring agreements may be considered a default by the Applicant under this Credit Agreement.
- 4.3 The Applicant acknowledges that Market West Credit Service represents and is agent for the Members and is the body responsible for the approval or otherwise of this Credit Application and for the ongoing management of the credit relationship (including enforcement of all of Market West Credit Service and Members rights hereunder) that will operate between the Applicant and the Members should this Credit Application be approved. The Applicant further acknowledges that Market West Credit Service is under no obligation whatsoever to approve this Application for credit but may do so upon such terms and conditions as Market West Credit Service in its absolute discretion deems necessary from time to time, including the provision of such security as Market West Credit Service requires.
- 4.4 Following approval of this Credit Application the Applicant shall immediately deposit with Market West Credit Service such sum and provide and execute all other securities as is determined appropriate by Market West Credit Service as security for the provision of credit to the Applicant by the Members. The Applicant will only be issued with a Buyer Code once Market West Credit Service has received the deposit and is satisfied that all other security required by it has been provided in a form satisfactory to Market West Credit Service.
- 4.5 During the period the deposit is held by Market West Credit Service:
- (a) Market West Credit Service may accumulate the amount with other deposits and jointly invest the amount accumulated in a trustee approved investment; and
  - (b) it will be credited annually with an amount of interest at such rate as is determined by Market West Credit Service at its discretion.
- 4.6
- (a) In the event of default in payment of an account with a Member by the due date or of any breach of any terms and conditions hereof or of the Applicant being declared bankrupt, going into administration or liquidation, entering into a scheme, composition or arrangement with its creditors or committing an act of bankruptcy, the Applicant acknowledges that the provision of credit to the Applicant will immediately cease.
  - (b) If at any time the provision of credit to the Applicant ceases in accordance with clause 4.6(a) Market West Credit Service in its absolute discretion may elect to:
    - (i) suspend the Applicant's Buyer Code until such time as Market West Credit Service is satisfied that the default or breach, as the case may be, has been remedied; or
    - (ii) terminate the Credit Application without notice to the Applicant and de-register the Buyer Code allocated to the Applicant.

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- 4.7 (a) The Applicant agrees that should it cease to buy from Members, it will advise Market West Credit Service in writing within 30 days of so ceasing and make an application for a refund of the deposit and interest prorated accordingly.
- (b) Market West Credit Service reserves the right to terminate this Credit Application at any time with or without cause and without notice.
- 4.8 Where this Credit Application is terminated in accordance with clause 4.6 or 4.7, Market West Credit Service shall be entitled to deduct from the deposit and any interest earned thereon any amounts outstanding to Members as well as any administration expenses (including audit and secretarial fees) and all enforcement charges incurred by the Members or by Market West Credit Service as is determined by Market West Credit Service in its discretion.
- 4.9 (a) The Applicant agrees to pay direct to Market West Credit Service the amount included on any weekly statements for produce supplied by the Members plus any additional charges applicable thereto but less any Authorised Credits.
- (b) The due date for payment of the total amount owed to the Members in respect of produce supplied and included in any statement delivered or sent to the Applicant is prior to 9.00am on that day which is 7 days after the statement date or such longer period as Market West Credit Service might agree. The Applicant is in default if payment in full is not received by Market West Credit Service by that time, unless the Applicant has previously given Market West Credit Service notice fully detailing any discrepancy the Applicant has with the weekly statement. If the problem cannot be resolved immediately then pending resolution of the problem, Market West Credit Service will place a temporary credit on any disputed amount, but all other amounts must be paid. If after an investigation of the problem Market West Credit Service determines that the amount has been correctly included on the weekly statement, the temporary credit will be removed and the amount in question must be paid immediately.
- (c) The Applicant shall pay the Members interest on all amounts which remain outstanding pass the due date for payment, such interest to be at 2 per centum above that charged by Market West Credit Service bankers on overdrafts of less than \$100,000, calculated on daily rests and computed from the date of due payment until payment in full.
- (d) Payments received by Market West Credit Service shall be applied first in payment of any default charges, second in payment of any enforcement expenses, third in payment of any government charges and duties and fourth in payment for produce supplied.
- (e) The Applicant agrees to pay all enforcement charges, including but not limited to administration expenses, debt collection agency fees, legal and other professional fees and expenses on a full indemnity basis.

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- 4.10 (a) The Applicant hereby acknowledges that produce supplied by a Member shall remain the property of the Member until payment is received for the same.
- (b) During this time the Applicant retains the produce as bailee.
- (c) Provided that the Applicant adheres to the terms and conditions of this Credit Application, the Applicant shall be allowed to deal, sell or trade with the produce in the normal course of its business and to retain the sale proceeds of such sale or dealing.
- (d) In the event of the Applicant defaulting in any of the terms of this Credit Application including the payment of any monies due under this Credit Application then the Member shall have the right (without giving notice) to retake possession of the produce supplied to the Applicant by the Member and the Applicant hereby authorises and allows the Member or its representative, servant, agent or employee to enter the premises upon which the produce is housed or stored for the purposes of retaking possession of same and the Member shall not be liable for any costs, losses, damages, expenses or any other monies or losses suffered by the Applicant as a result of the Member retaking possession of the produce.
- (e) The Applicant agrees that if any of the produce is on-sold or if it obtains a refund on any crates supplied by the Member in connection with the produce sold it will place the proceeds of sale of the produce as well as the refunds received on the associated crates into a bank account conducted in the Applicant's name and acknowledges that it will not withdraw any of those moneys until payment in full for the produce or crates as the case may be has been received by the Member.
- 4.11 The Applicant shall not later than 14 days prior to any proposed change in its registered particulars, name, composition or structure notify Market West Credit Service of the proposed change, alteration or addition and shall provide full details thereof to Market West Credit Service and the Applicant shall be liable for any produce supplied by a Member after such change alteration or addition unless Market West Credit Service shall have agreed in writing to a release of the Applicant.
- 4.12 The Applicant hereby charges with payment of moneys due to the Members the whole of its beneficial interest in land upon which the goods are situated or the work carried out and other land owned or in the future acquired by the Applicant from time to time and the Applicant agrees immediately upon being required so to do by Market West Credit Service to enter into a mortgage, at the Applicant's cost, to be prepared by Market West Credit Service solicitors on the terms and conditions as Market West Credit Service's solicitor shall think fit to secure any sum due hereunder and Applicant further agrees and permits and authorises the Members to register a caveat over any land now owned by the Applicant or in the future acquired by the Applicant to secure any sum due hereunder at any time during the continuance of the Agreement.
- 4.13 (a) The issuance of a Buyer Code to an Applicant after the satisfactory completion of all terms and conditions shall constitute acceptance of this Application. Following such acceptance all references to Applicant shall be read as Buyer and vice versa.
- (b) A Buyer Code issued to an Applicant remains the property of Market West Credit Service and may not be sold or transferred by the Applicant to any other person.
- 4.14 The Applicant warrants and undertakes to and covenants with the Members that where it has executed this Application in the capacity of a trustee pursuant to a trust deed ("the Trust") that:-
- (a) the Trust is lawfully and validly constituted and all deeds and other instruments in respect thereof have been properly executed;



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- (b) the Trust is and throughout the provision of credit by the Members will remain unrevoked and not varied without the prior written consent of Market West Credit Service;
  - (c) the assets of the Trust as well as the assets of the Applicant will at all times be available to satisfy the obligations of the Applicant hereunder;
  - (d) the consents or approvals of all parties necessary to execute this Application so as to bind the property of the Trust have been obtained and all necessary conditions precedent for that purpose have been met;
  - (e) no one has taken or threatened nor is the Applicant aware of anyone who is likely to take action to have the Trust wound up or otherwise administered by action brought in any court of competent jurisdiction or to charge the Applicant or any person at any time connected with the Applicant or acting on behalf of or purportedly on behalf of the Applicant with any breach of trust or misappropriation of trust money in connection with the Trust; and
  - (f) no facts are known to the Applicant whereby the Trust might be wound up voluntarily or otherwise or the trustee thereof changed or the assets of the Trust vested in any person or that the Trust might cease to operate or be deprived of funds during the period of provision of credit by the Members.
- 4.15 Notwithstanding anything to the contrary contained herein, the Applicant acknowledges that these terms and conditions including the right to commence proceedings against the Applicant for amounts owing to Members, may be enforced either by Market West Credit Service and or any one or more of the Members.
- 4.16 This Agreement supersedes and revokes any previous Terms of Trading Agreement entered into between Market West Credit Service and/or the Members and the Applicant with effect from the date of execution hereof.
- 4.17 The Applicant agrees to pay all Government charges and duties of any kind (including without limitation all stamp duties, financial institution duties and any other charges or duties of a kind) incurred in or in connection with the provision of credit to it.
- 4.18 Neither the Members nor Market West Credit Service shall in any event or circumstance be required to enquire into the powers of the Applicant or any corporate guarantor or its officers or any person purporting to act on its behalf.
- 4.19 In the event that any part of this Credit Application becomes void or revocable, whether due to the provision of any legislation or otherwise, then that part shall be severed from this Credit Application, to the intent that all parts that shall not be or become void or unenforceable shall remain in full force and effect and be unaffected by such severance.
- 4.20 Notices and communications may be delivered by hand or by post to the address of the parties specified herein or at such other address as one party may specify in writing to the other party. Such notices and communications shall be deemed to be duly served when delivered in case of delivery by hand and one business day after posting in the case of service by post.
- 4.21 The Applicant and each signatory acknowledge that Market West Credit Service may amend or vary the terms of this Credit Application or of any amended version hereof at any time. Market West Credit Service will give the Applicant and each signatory notice in writing of the amendment or variation in accordance with this Credit Application. By continuing to use the credit facility provided after notification, you are deemed to have agreed to the amendments or variations.

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SECTION 5: IDENTIFICATION OF PARTIES AND SIGNATURES

**SCHEDULE**

1. Guarantor(s) full name: \_\_\_\_\_

Guarantor(s) address: \_\_\_\_\_

2. Guarantor(s) full name: \_\_\_\_\_

Guarantor(s) address: \_\_\_\_\_

3. Guarantor(s) full name: \_\_\_\_\_

Guarantor(s) address: \_\_\_\_\_

4. Guarantor(s) full name: \_\_\_\_\_

Guarantor(s) address: \_\_\_\_\_

Applicant(s) full name: \_\_\_\_\_

Applicant(s) address: \_\_\_\_\_

Rate of Interest:      BANK LOAN RATES FOR LOANS < \$100,000 charged by Market West Credit Service bank + 2 per centum calculated daily

IN WITNESS WHEREOF the parties hereto have executed this Deed the day and year hereinbefore mentioned.

**Execution where the Guarantor is a corporation:**

EXECUTED BY \_\_\_\_\_ )  
in accordance with Section 127 of \_\_\_\_\_ )  
The Corporations Act in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Secretary

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Name of Director/Secretary in full

**MARKET WEST CREDIT SERVICE  
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**Execution where the Guarantor is/are an individual:**

<p>1.SIGNED by the said ) in the presence of: ) ..... Signature of Witness ..... Name of Witness: ..... Occupation: ..... Address: .....</p>	<p>..... Signature of Guarantor</p> <p>I certify: (i) that I am a legal practitioner instructed and employed independently of Market West Credit Service and the Beneficiaries; (ii) that I am satisfied..... understands the true import and effect of this document; and (iii) that..... Has voluntarily executed this document in my presence.</p> <p>..... Signature of Legal Practitioner ..... Name of Legal Practitioner</p>
--	---

<p>2.SIGNED by the said ) in the presence of: ) ..... Signature of Witness ..... Name of Witness: ..... Occupation: ..... Address: .....</p>	<p>..... Signature of Guarantor</p> <p>I certify: (i) that I am a legal practitioner instructed and employed independently of Market West Credit Service and the Beneficiaries; (ii) that I am satisfied..... understands the true import and effect of this document; and (iii) that..... Has voluntarily executed this document in my presence.</p> <p>..... Signature of Legal Practitioner ..... Name of Legal Practitioner</p>
--	---

**MARKET WEST CREDIT SERVICE  
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<p>3.SIGNED by the said ) in the presence of: )  ..... Signature of Witness  ..... Name of Witness:  ..... Occupation:  ..... Address:</p>	<p>..... Signature of Guarantor  I certify: (i) that I am a legal practitioner instructed and employed independently of Market West Credit Service and the Beneficiaries; (ii) that I am satisfied..... understands the true import and effect of this document; and (iii) that..... Has voluntarily executed this document in my presence.  ..... Signature of Legal Practitioner ..... Name of Legal Practitioner</p>
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**Execution by Applicant Partners**

\_\_\_\_\_  
**Name of Partner**

\_\_\_\_\_  
**Signature of Partner**

\_\_\_\_\_  
**Name of Witness**

\_\_\_\_\_  
**Signature of Witness**

\_\_\_\_\_  
**Name of Partner**

\_\_\_\_\_  
**Signature of Partner**

\_\_\_\_\_  
**Name of Witness**

\_\_\_\_\_  
**Signature of Witness**

\_\_\_\_\_  
**Name of Partner**

\_\_\_\_\_  
**Signature of Partner**

\_\_\_\_\_  
**Name of Witness**

\_\_\_\_\_  
**Signature of Witness**

\_\_\_\_\_  
**Name of Partner**

\_\_\_\_\_  
**Signature of Partner**

\_\_\_\_\_  
**Name of Witness**

\_\_\_\_\_  
**Signature of Witness**

**MARKET WEST CREDIT SERVICE  
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\_\_\_\_\_  
**Name of Partner**

\_\_\_\_\_  
**Signature of Partner**

\_\_\_\_\_  
**Name of Witness**

\_\_\_\_\_  
**Signature of Witness**

\_\_\_\_\_  
**Name of Partner**

\_\_\_\_\_  
**Signature of Partner**

\_\_\_\_\_  
**Name of Witness**

\_\_\_\_\_  
**Signature of Witness**

**2. Execution by Applicant**

EXECUTED BY \_\_\_\_\_ )  
in accordance with Section 127 of )  
The Corporations Act in the presence of: )

\_\_\_\_\_  
**Signature of Director**

\_\_\_\_\_  
**Signature of Director/Secretary**

\_\_\_\_\_  
**Name of Director in full**

\_\_\_\_\_  
**Name of Director/Secretary in full**

**SECTION 6: STATEMENT OF ASSETS AND LIABILITIES OF GUARANTORS**

Each Guarantor to

the Credit Application must complete a confidential Statement of Assets and Liabilities. No credit will be extended until the same is received. The following points are to assist persons in correctly completing these forms:

- Identify only your share of any assets that are owned jointly with other persons.
- Married couples may complete one form.
- Failure to complete these forms truthfully may result in fraud charges being laid.
- Copies of title deeds and proof of ownership/value of other assets should accompany this form to allow faster processing.
- If you have offered your house as security for an overdraft facility or to secure other buying, then this is a liability and must be disclosed as such in the Statement to the maximum overdraft value or credit limit.
- If you are unsure about how to fill in the Statement or any other part of this Credit Application, you should seek professional financial and/or legal advice.

[CONTINUED NEXT PAGE]  
[SEPARATE PAGES MUST BE ADDEDD FOR EACH GUARANTOR]

**MARKET WEST CREDIT SERVICE**  
**CREDIT APPLICATION AND CONTINUING CREDIT CONTRACT**

Guarantor's Surname: \_\_\_\_\_

First & Other Names: \_\_\_\_\_

Address: \_\_\_\_\_ P/C \_\_\_\_\_

Date: \_\_\_\_\_

ASSETS	\$	LIABILITIES	\$
<b>CASH AT BANK:</b>		<b>BORROWINGS:</b>	
SAVINGS A/C _____	_____	BANK OVERDRAFT _____	_____
CHEQUE A/C _____	_____	VISA, M/CARD, B/CARD _____	_____
<b>REAL ESTATE:</b>		<b>MORTGAGES/CAVEATS:</b>	
HOME _____	_____	HOME _____	_____
OTHER _____	_____	OTHER _____	_____
_____	_____	_____	_____
<b>MOTOR VEHICLES: TYPE &amp; REGO</b>		_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
<b>GENERAL:</b>		<b>OTHER LIABILITIES:</b>	
FURNITURE _____	_____	_____	_____
LIFE INSURANCE ( SURRENDER) _____	_____	_____	_____
INVESTMENTS _____	_____	_____	_____
_____	_____	_____	_____
OTHER: _____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
<b>TOTAL ASSETS:</b>	\$	<b>TOTAL LIABILITIES</b>	\$
<b>NET ASSETS/(DEFICIENCY) \$</b>			

I/We hereby certify that the above information of my/our financial position is true and complete.

Signed \_\_\_\_\_ Dated \_\_\_\_\_

Signed \_\_\_\_\_ Dated \_\_\_\_\_

**MARKET WEST CREDIT SERVICE  
CREDIT APPLICATION AND CONTINUING CREDIT CONTRACT**

**SECTION 7: OFFICE USE ONLY**

**MARKET WEST CREDIT SERVICE  
OFFICE USE ONLY**

1. Code .....
2. Buyer Classification Accelerated.....Extended.....
3. Maximum Weekly Limit: \$.....
- Bond Required: \$.....
- Other Security: .....
- Special Terms: .....
- Related codes: .....
4. Credit Check: Yes/No  
.....  
.....
5. Directors Check: Yes/No

6. Trade Reference Checks:

How long has the applicant conducted account	Average weekly purchases	Approved trading terms	Prompt payer Yes/No
1.			
2.			
3.			

Comments: .....  
.....  
.....

7. (1) APPROVAL / RECOMMENDATION / COMMENTS  
.....  
.....
- (2) DATE APPROVED.....By.....
- (3) INPUT BY.....CHECKED.....
8. Copy of Trust Deed obtained Yes  No  N/A.



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CREDIT APPLICATION AND CONTINUING CREDIT CONTRACT

**SECTION 8: SOLICITOR'S CERTIFICATE**

**PART A** TO: FPAA Pty Ltd T/As Market West Credit Service

THIS CERTIFICATE IS PROVIDED BY:

\_\_\_\_\_

A solicitor holding a current Practising Certificate subject to the Legal Practice Act 2003.

I have been asked to interview \_\_\_\_\_ of \_\_\_\_\_ (hereinafter called "the guarantor") and am not acting for you or the borrower in this transaction.

I have been provided with the following documents:

- 1)
- 2)
- 3)
- 4)

(the "documents").

**PART B EXPLANATIONS GIVEN BY THE CERTIFYING SOLICITOR**

I certify that in the absence of the borrower and before the guarantor signed the documents I explained to the guarantor:

- the general nature and effects of the documents required to be signed by the guarantor;
- that if the borrower defaults in payment or in other obligations to you the guarantor would be liable to make good that default which could involve all amounts owed by the borrower to you and substantial arrears of interest.
- that the giving of a guarantee involves considerable risk, including the risk of losing any security, property and other assets and requires very careful thought.

**PART C EXCLUDED EXPLANATIONS**

I informed the guarantor in very clear terms that I was not expressing any opinion nor advising on:

- the borrower's ability to make the required payments to you;
- the viability of the transaction which the borrower was undertaking; or
- the client's (guarantor's) ability to make payments to you.

I further informed the guarantor that I was not expressing any opinion or advising on any financial aspects of the transaction and if any doubt of those aspects he/she/they should obtain independent financial advice before signing the documents.

**PART D STATEMENTS BY THE PERSONS SIGNING DOCUMENTS**

Following the above explanations, the guarantor stated to me:

- that he/she/they understood the general nature and effect of the documents and the obligations and risks involved in signing those documents. It appeared to me that he/she/they did have such understanding; and
- that he/she/they were signing the documents freely, voluntarily and without pressure from the borrower or any other person.



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CREDIT APPLICATION AND CONTINUING CREDIT CONTRACT

**PART E IDENTIFICATION OF PERSONS SIGNING DOCUMENTS**

The following evidence of identification was produced to me by the guarantor:

- 1.
- 2.
- 3.

**PART F TRANSLATION/INTERPRETATION**

Mr/Mrs/Ms \_\_\_\_\_ was present at this interview with the guarantor and interpreted the statements made by all persons present. A certificate by the interpreter is held by me.

**SOLICITOR'S CERTIFICATE**

I CERTIFY the above information. The borrower was not present during my interview with the guarantor.

SIGNED:

DATED:

**CLIENT'S CERTIFICATE**

I CERTIFY that

I have been handed a copy of this certificate.

I have read this certificate.

I am the client named.

The above information is true.

SIGNED

DATED