



22 Geddes Street, Balcatta WA 6021

## DEED OF GUARANTEE AND INDEMNITY

Legal Entity Name – (According to ABN)	
Business Trading Name:	ABN or ACN:

**This is an important legal document.**

**The Guarantor should seek independent legal and financial advice before signing this document;**

This Guarantee and Indemnity is provided by the Guarantor (as defined in Section A of the Commercial Credit Application) ("Guarantor") to Brownes Foods Operations Pty Limited ACN 146 849 881 ("Brownes") from whom the Customer (as defined in Section A of the Commercial Credit Application) ("Customer") receives products and/or services.

In consideration of Brownes agreeing at the request of the Customer of which this Guarantee forms part to provide products and/or services and/or give credit to the Customer each person named as Guarantor hereunder ("Guarantor") enters into this Guarantee and Indemnity ("Guarantee") in favour of Brownes on the following terms:

- The Guarantor unconditionally and irrevocably guarantees to Brownes the due and punctual payment of the Guaranteed Moneys and agrees:
  - to pay an amount equal to the Guaranteed Moneys from time to time owing and whether or not any prior demand is made;
  - that a statement signed by an authorised representative of Brownes or its legal practitioner certifying the amount of the Guaranteed Moneys or the money owing by the Guarantor under this Guarantee is conclusive evidence as to the matters stated therein;
  - this Guarantee is a continuing guarantee and remains in full force and effect until all the Guaranteed Moneys are paid or satisfied in full; and
  - if any payment by the Guarantor under this Guarantee or by the Customer is avoided, set aside, ordered to be refunded or reduced or rendered unenforceable by any laws relating to bankruptcy, insolvency or liquidation, that payment will be taken not to have been made and Brownes is entitled to recover from the Guarantor the value of that payment as if that payment had never been made. This clause continues after this Guarantee is discharged.
- The Guarantor hereby charges to Brownes all its estate, title and interest in any land in which the Guarantor now has any legal or beneficial interest, or in which the Guarantor may later acquire any such interest by way of security with payment of all monies owing under this Guarantee. The Guarantor further agrees that immediately upon demand being made upon the Guarantor by Brownes, the Guarantor shall deliver to Brownes such an instrument of encumbrance in registrable form as Brownes may require to be executed by the Guarantor. In the event that the Guarantor should neglect or fail to deliver the required instrument, the Guarantor hereby, appoints Brownes to be the Guarantor's lawful attorney for the purpose of executing and registering any such instrument.
- This Guarantee binds the Guarantor both personally and as trustee of any trust of which the Guarantor is a trustee and the Guarantor warrants to Brownes that it has power to bind any such trust.
- The Guarantor will pay to Brownes all costs, expenses and disbursements incurred by Brownes (including any stamp duty), legal costs on an indemnity basis relating to the enforcement of this Guarantee.
- This Guarantee will be construed and have effect in accordance with the laws of the State of Western Australia and the Guarantor submits to the non exclusive jurisdiction of the courts of the said State.
- If the obligation of the Customer to pay the Guaranteed Moneys to Brownes is unenforceable for any reason, the Guarantor as a separate undertaking unconditionally and irrevocably indemnifies Brownes against any loss Brownes may suffer as a result.
- Until such time as the Guarantor is released from its obligations under this Guarantee by Brownes, the Guarantor undertakes not to prove in any Administration of the Customer or of any Guarantor in competition with Brownes.
- Brownes may give information about the Guarantor to any credit reporting agency to obtain a consumer credit report about the Guarantor, and/or to allow the credit reporting agency to establish a file containing information about the Guarantor. The Guarantor acknowledges and agrees that this form constitutes notice of disclosure of the Guarantor's credit information to a credit reporting agency as required under the Privacy Act 1988. Such information (which may be given before, during or after the provision of the guarantee) may include:
  - the Guarantor's identity particulars;
  - Brownes having sought a credit report in connection with the Guarantor having offered to act as a Guarantor in respect of credit applied for by, or provided to, the Customer;
  - the Guarantor's liability to make payments which have been notified to the Guarantor and which are overdue and for which debt collection recovery action has commenced;
  - that credit provided by Brownes has been paid or otherwise discharged;
  - cheques drawn by the Guarantor for \$100 or more which have been dishonoured twice; and
  - any other information permitted to be included in a credit information file under the Privacy Act.
- The Guarantor agrees that Brownes may obtain from a credit reporting agency a consumer credit report containing information about the Guarantor for the purpose of assessing whether to accept the Guarantor as a Guarantor for credit applied for by, or provided to, the Customer. The Guarantor agrees that Brownes may obtain information about the Guarantor from a business which provides information about the commercial creditworthiness of persons for the purpose of assessing the creditworthiness of the Guarantor. The Guarantor agrees that Brownes may exchange information (including a credit report) relating to the Guarantor's creditworthiness with other credit providers:
  - to assess an application by the Guarantor for credit;
  - to notify other credit providers of a default by the Guarantor;
  - to exchange information with other credit providers as to the status of this Guarantee where the Guarantor is in default with other credit providers;
  - to assess the Guarantor's creditworthiness; and
  - to provide a reference to another credit provider or to receive a reference from another credit provider in relation to assessing an application by the Guarantor for credit. The Guarantor understands that the information exchanged can include anything about the Guarantor's commercial and consumer creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

The Guarantor agrees that Brownes may obtain a consumer credit report containing information about the Guarantor from a credit reporting agency for the purpose of assessing any Guarantee made by the Guarantor from time to time. The Guarantor agrees that Brownes may obtain a consumer credit report about the Customer and Guarantor from a credit reporting agency for the purpose of collecting overdue payments relating to the Guarantee. The Guarantor may request access to the Guarantor's personal information held by Brownes.
- The Guarantor acknowledges that the Guarantor has read and understood the nature and effect of entering into this Guarantee and is entitled to seek independent legal advice before signing this Guarantee.
- In this Guarantee, unless the contrary intention appears all references to a party include the party's successors and permitted assigns and where there is more than one Guarantor, the obligations of each Guarantor are joint and several.
- In this Guarantee the following definitions apply: **Administration** includes any administration or liquidation, scheme of arrangement, composition with creditors, controller appointed or receivership, bankruptcy and any type of insolvency agreement; **Guaranteed Moneys** means all moneys which are, will or may at any time be owing to Brownes by the Customer.

*Note: Each witness must be over the age of 18 years and must not be a Guarantor.*

**EXECUTED AS A DEED – Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_**

<b>Guarantor 1</b>	Name:	Date of Birth:	Driver's Licence:
	Contact Number:	Residential Address:	
	Signed Sealed and Delivered by the Guarantor ( <i>Signature</i> )		
	In the presence of Witness ( <i>Signature</i> )	Full name of Witness ( <i>Please print Name</i> )	

<b>Guarantor 2</b>	Name:	Date of Birth:	Driver's Licence:
	Contact Number:	Residential Address:	
	Signed Sealed and Delivered by the Guarantor ( <i>Signature</i> )		
	In the presence of Witness ( <i>Signature</i> )	Full name of Witness ( <i>Please print Name</i> )	

**Please send completed document to Facsimile: 08 9463 6399 or Email: Credit.Applications@Brownesdairy.com.au**