

ACCOUNT APPLICATION

Clamms Seafood



Sales Rep

Customer Code

ABN 11 115 260 752

Telephone 03 9689 6322

Fax Orders 03 9689 4877

Fax Office 03 9689 8711

Email sales@clamms.com.au

P.O. Box 420 Yarraville 3013

Unit 1/2 Somerville Road, Yarraville Victoria 3013 www.clamms.com.au

Registered name of customer

Trading name of customer

ABN/ACN or Business Name Registration

Type of Entity: Sole Trader Partnership Company Trust Date Established: _____

Registered Address _____ Postcode _____

Phone _____ Fax _____

Trading Address _____ Postcode _____

Phone _____ Fax _____

Postal Address _____

Nature of Business _____

Payment Terms: Credit Limit Required \$ _____ COD 7 Days

Previous Trading Name(s) _____

Directors/ Partners/ Proprietors _____

Names (Please Print) _____ Address (Please Print) _____ License Number _____

1 _____

2 _____

3 _____

Sales Contact Name _____ Phone _____ E-mail _____

Accounts Contact _____ Phone _____ E-mail _____

Bank (Name & Address) _____

Account & BSB Details _____

Accountants (Name & Address) _____

BUSINESS REFERENCES

1 Name _____ Phone _____
Address _____ Fax _____

2 Name _____ Phone _____
Address _____ Fax _____

3 Name _____ Phone _____
Address _____ Fax _____

DECLARATION

The customer requests the abovenamed Clamms Seafood Pty Ltd (“The Seller”) to open an account on the basis of Clamms’ standard Terms & Conditions of Trading and agrees to be bound by such Terms & Conditions and by the Deed of Guarantee & Indemnity (if applicable). The Customer and the signatory to this Application further acknowledges that the information provided in the Application is true and correct and has been relied upon by Clamms to determine whether to grant the Customer credit and that the signatory has full authority to complete this Application Form on behalf of the Customer.

Signature of person signing on behalf of the Customer	Print Name	Position	Date

Your information is collected by Clamms Seafood Pty Ltd and will be used and held in accordance with our Privacy Policy located at www.clamms.com.au/privacy. Information you provide will be used for the purpose of assisting Clamms to assess your Account Application, eligibility for credit, and (if it is required) for the purposes of registration of any security interest under the Personal Property Securities Act (“PPSA”). If you do not provide this information, we may not be able to accept your Account Application. By signing this Account Application you acknowledge that this information may be kept on a credit information file and/or for the purposes of registration under the PPSA and may be disclosed, to the extent permitted by law, to the Personal Property Securities Register, credit reporting agencies, companies who provide commercial credit references, people you authorize us to contact in connection with this application and other service providers for the purpose of assessing the credit application or ongoing credit provision or as required by law. To access or change your information or to make a complaint please contact our privacy officer at privacy@clamms.com.au.

- Opt out of Direct Marketing Information – by providing us with your personal information, you will be deemed to have consented to receive direct marketing content from Clamms Seafood Pty Ltd about our products and services, if you do not want to receive this content please tick this box.

In the absence of any partnership agreements by the customer who is ultimately responsible for the debt?

Owner Manager Chef

Payment Terms: Payment must be made within Clamms Seafood Pty Ltd standard terms, as indicated on the relevant invoice or otherwise in accordance with the Terms & Conditions. A default charge of 1% per month may be applied for late payments. All accounts will be COD until credit references have been checked to the satisfaction of Clamms Seafood Pty Ltd.

DEED OF GUARANTEE & INDEMNITY

In consideration of CLAMMS SEAFOOD PTY LTD (ACN 115 260 752) (“The Seller”)

Agreeing to supply goods to _____ (“The Customer”)

I/We

_____ (“The Guarantor(s)”)

Of

(Please print full name and residential address)

Do hereby (jointly and severally in the case of more than one Guarantor) guarantee and indemnify the Seller for the due and punctual payment of all monies which may now or in the future be or become due and payable to Seller by the Customer under the Clamms’ Terms & Conditions of Trading (“Principal Agreement”) or whether arising in any other way on any other account whatsoever AND I/WE DECLARE that this guarantee shall be a continuing guarantee and shall remain in full force and effect and the Guarantor shall remain liable hereunder notwithstanding any issues or failure in enforcing the Principal Agreement or any other contract between Seller and the Customer, or the granting by the Seller of any waiver or consent in respect of any breach by the Customer of its obligations to the Seller or the liquidation of the Customer or the bankruptcy or death of the Guarantor or the liability of the Customer ceasing or becoming extinguished for any reason AND I WE DECLARE that I/WE will make due and punctual payments to the Seller upon demand being made by notice or letter given to the Guarantor and such demand or notice or letter shall be deemed to be duly made or given if the same shall be in writing and left at or sent by pre-paid post to the address of the Guarantor as set out above (whether or not the Seller has first made a demand of the Customer) AND I/WE FURTHER DECLARE that the Guarantor shall pay all costs, fees charges, and expenses including legal costs on a solicitor and own client basis incurred by the Seller of and incidental to this Guarantee or any matter arising out of or incidental to this or the performance or failure to perform by the Guarantor of the covenants herein contained AND I/WE indemnify the Seller in respect of any failure by the Customer to make payment to perform or observe any covenant, obligation, term or condition of this Guarantee and from and against all losses, damages, costs, charges and expenses of any kind which the Seller may incur because or arising out of the default by the Customer under the Principal Agreement or howsoever arising AND I/WE FURTHER DECLARE that the proper law of this Guarantee shall be of the law of Victoria, Australia, and that each party irrevocably and unconditionally submits to the non-inclusive jurisdiction of the Courts there. EXECUTED AS A DEED.

SIGNED, SEALED & DELIVERED by the Guarantor

In the presence of:

.....
Witness signature

.....
Guarantor Signature

.....
Witnesses’ full name and address

.....
Print name

Date:

SIGNED, SEALED & DELIVERED by the

Guarantor

In the presence of:

.....
Witness signature

.....
Guarantor signature

.....
Witnesses’ full name and address

.....
Print name

Date:.....

CLAMMS SEAFOOD PTY LTD

PRIVACY ACTS CONSENTS

The Customer and the Guarantors named below hereby gives it/ his/her consent to the Clamms Seafood Pty Ltd (“the Company”) to the following matters required under the *Privacy Act 1988* (Cth) (as amended) (**Privacy Act**):

(a) The Company may disclose certain information to a Credit Reporting Agency

That the Company may disclose the information contained in the Application and arising out of the operation of the Account to a Credit Reporting Agency in accordance with the provisions of the Privacy Act including without limitation the fact that an Account has been applied for and the amount of credit applied, details of any payments which have become overdue for more than 60 days for which collection action has commenced, any cheques that have been written that have been dishonoured more than once, advice that payments are no longer overdue and that the credit that has been provided has been discharged.

(b) The Company may obtain certain credit information

That the Company and any authorised agent under the Privacy Act are authorised for the purpose of assessing this Application and any later requests for credit and/ or for the collection of overdue payments in respect of commercial credit information about the Applicant, and a report containing information about it/ his/ her commercial and consumer credit activities and credit worthiness from a Credit Reporting Agency and any financial institutions or credit providers named in this Application or whose names are included in a credit report about their credit worthiness.

(c) The Company may exchange certain information with other credit providers that the Company may give and obtain from:

- (i) any credit providers named in this Application;
- (ii) any authorised agent deemed to be a credit provider under the Privacy Act; and
- (iii) any credit provider named in a commercial credit report issued by a credit or commercial reporting agency about the Applicant’s personal or commercial arrangements, credit worthiness and credit history for the purposes permitted under the Privacy Act.

The Applicant acknowledges that each of the above authorities and consents remain in force until any Account facility granted by the Company is at an end and all sums owing in the relation thereto have been paid in full.

Signature of person signing on behalf of Applicant

Print Name:.....

Name of Applicant:.....

Position of Signatory:.....

Date:

CLAMMS SEAFOOD PTY LTD

TERMS & CONDITIONS OF TRADING

1 General:

- (a) These Terms & Conditions (**Terms**) are binding on any person who purchases or orders goods (**purchaser**) from Clamms Seafood Pty Ltd (**Clamms**).
- (b) Any order placed by a purchaser will be taken to be an offer from the purchaser to Clamms to purchase the goods described in the order for the price stated on the order. Clamms may accept or reject any order (or any variation or modification of an order requested) by the purchaser in its sole discretion. If Clamms accepts the offer by supplying or taking any step to supply the goods, then the parties will be deemed to have formed a contract of sale for the goods incorporating these Terms. To the extent that there is an inconsistency between these Terms and an order, these Terms prevail.
- (c) These Terms and all contracts of sale entered into in accordance with these Terms are governed by and will be construed in accordance with the laws of Victoria & the parties submit to the non-exclusive jurisdiction of the Courts of Victoria.
- (d) All terms, conditions, representations & warranties expressed or implied by statute, common law, equity, trade, custom or usage or otherwise are expressly excluded to the maximum extent permitted by law.
- (e) Clamms may at its sole discretion vary these Terms by giving the purchaser notice of the varied terms. When the purchaser offers to purchase goods from Clamms, the purchaser offers to acquire them on the current version of these Terms as notified to the purchaser.

2 Prices and Quotations:

Prices quoted by Clamms or shown in Clamms' price lists may be altered, in Clamms' sole discretion, and notified to the purchaser. Unless Clamms agrees otherwise in writing, all goods will be charged at the prices set out in the order. Unless agreed otherwise in writing, the prices exclude GST & any other applicable statutory taxes or charges, which must be paid to Clamms by the purchaser when payments for the goods are due. Prices are in Australian dollars unless expressly stated otherwise.

3 Descriptions:

Any description of the goods is given for identification only. Goods are provided "as is" and (to the maximum extent permitted by law) without any representation express or implied as to fitness for purpose, quality, or any other attribute. It is the purchaser's sole responsibility to determine whether the goods provided by Clamms are suitable for its purposes or needs. Nothing in this clause excludes any non-excludable provision of the Australian Consumer Law.

4 Payment Terms:

The purchaser must make full payment to Clamms without deduction or offset within 14 days after the date of the invoice for the goods (or such other period of time agreed in writing by Clamms, including without limitation any period specified in an Account Application). Clamms reserves the right to vary the terms of payment, alter a purchaser's credit limit or terminate the provision of credit & to require payment in full prior to delivery for any reason including without limitation if, at any time, the credit worthiness of the purchaser is, in Clamms' opinion, unsatisfactory. If the purchaser has not paid Clamms in full when payment is due, Clamms may, at its option, resell or dispose of any goods in its possession or control (including by effect of clause 5) without prejudice to any claim it may have against, and without incurring any liability to, the purchaser. Clamms may require, at its sole discretion, that a representative of the purchaser enter into a personal Deed of Guarantee & Indemnity as a condition of the initial or continued provision of credit by Clamms to the purchaser.

Clamms' decisions under this clause 4 are final and Clamms will not be liable for any loss, cost, damage, or claim (including consequential loss), howsoever arising, incurred by the purchaser due to the exercise of its rights under this clause.

Without prejudice to any of the rights or remedies of Clamms, if any payment is not made on or by the due date for payment the purchaser will be in default, and without limiting any of the rights of Clamms, the purchaser must pay to Clamms, as compensation for the costs of the debt and the operational and administrative costs caused by late payment, the rate of 12% percent per year on the amount outstanding, calculated from the due date for payment until payment is made in full.

In the event of any default in payment the purchaser shall pay to Clamms its costs of & incidental to the recovery of such sums as may be due from the purchaser to Clamms including all mercantile & like fees & legal fees & charges on a full indemnity basis & any stamp duty, taxes or any other fees payable, assessed or incurred in relation to such recovery process.

CLAMMS SEAFOOD PTY LTD

5 Property & Risk:

- (a) The risk of loss or damage to the goods shall pass to the purchaser on delivery of the goods.
- (b) Property in the goods shall not pass from Clamms to the purchaser until the purchaser has paid all monies outstanding from the purchaser to Clamms on any account in full.
- (c) The purchaser agrees to store the goods separately & mark them as the property of Clamms so as to render them identifiable as being from or with goods which are the property of Clamms and further agrees to comply with all of its obligations under the *Seafood Safety Act 2003* (Vic) and the *Food Act 1984* (Vic) (together the **Food Laws**)
- (d) Until title in the goods passes, the purchaser:
- i. is bailee of the goods;
 - ii. must at its expense store the goods safely and securely;
 - iii. consents to Clamms, its agents and servants, entering the premises at which the goods are stored at any time without notice and removing any of the goods which remain Clamms' property; and
 - iv. must procure consent from the owner and occupier of property on which the goods are situated, to permit Clamms, its agents and servants to enter the premises and remove any of the goods which remain Clamms' property.
- (e) The purchaser may in the ordinary course of its business sell and deliver any goods prior to title passing and may incorporate the goods into another product, provided that:
- i. any proceeds of a sale are received by the purchaser on trust for Clamms and must be held in an account separate from all other funds held by the purchaser; and
 - ii. any debt owing to the purchaser in respect of a sale is a debt held on trust for Clamms and must be assigned to Clamms on demand.
- (f) The purchaser's right to hold & sell the goods will immediately cease if an administrator, liquidator, receiver or a controller within the meaning of section 9 of the *Corporations Act 2001* (Cth) or similar officer is appointed to all or any assets or undertaking of the purchaser or an order is made or resolution passed for the winding up of the purchaser or the purchaser is deregistered or becomes bankrupt or dies. In any such case, & without the need for notice or demand by Clamms, the purchaser acknowledges any sale or purported sale of the goods by or on behalf of Clamms will be deemed to be not in the ordinary course of the purchaser's business & the proceeds of the sale of any goods in such circumstances will be held on trust for Clamms by the purchaser or its successor in title, administrator, liquidator, receiver, controller or similar officer as the case may be.
- (g) Any provision of this clause 5 which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this clause 5 nor affect the validity or enforceability of the provision in any other jurisdiction.

6 Returns & Exchanges:

Any claim by the purchaser for short or wrongful delivery of the goods must be notified to Clamms in writing within 24 hours of delivery whether fresh fish or frozen fish are supplied. After that time, the goods are deemed to be accepted by the purchaser as is, and any claim which the purchaser does not notify within that time will be taken to have been absolutely waived to the extent permitted by law. Acceptance of any claim to return goods & obtain credit will be at the discretion of Clamms, subject to the law. Unless goods have been incorrectly supplied by Clamms, all delivery & related costs for the returned goods must be paid by the purchaser.

7 Delivery:

- (a) Any time quoted for delivery is an estimate only. The purchaser is not relieved of any obligation to accept or pay for goods because of any delay in delivery.
- (b) Clamms will make all reasonable efforts to deliver the goods to the purchaser at the time and on the date agreed as the delivery date. However, time is not of the essence under these Terms and, except where Clamms has an obligation under the Australian Consumer Law, Clamms is not liable for any failure to deliver or delay in delivery for any reason, including without limitation, where an event of Force Majeure occurs in accordance with clause 8 of these Terms.

CLAMMS SEAFOOD PTY LTD

8 Force Majeure:

If for any reason beyond the control of Clamms (including without limitation as a result of any strike, trade dispute, fire, tempest, theft or breakdown) orders cannot be filled at the time stipulated by the purchaser, Clamms shall be entitled to delay or cancel delivery and the purchaser agrees that Clamms will not be liable to the purchaser for any costs, expenses, losses or damages arising out of such cancellation.

9 Change of Ownership:

The purchaser agrees to notify Clamms in writing of any changes of ownership of the purchaser within 7 days from the date of such change & indemnifies Clamms against any loss or damage incurred by it as a result of the purchaser's failure to notify Clamms of any change. Failure to nominate any changes from the purchaser will result in the purchaser being personally liable to Clamms in connection with any supply of goods or otherwise in connection with these Terms.

10 Cancellation:

Orders placed with Clamms cannot be cancelled without the written approval of Clamms given in its sole discretion. In the event Clamms accepts the cancellation of any order placed with it, it shall be entitled to charge a reasonable fee for any work done on behalf of Clamms to the date of the cancellation including a fee for the processing & acceptance of the purchaser's orders & request for cancellation. The purchaser acknowledges and agrees that any cancellation fee charged by Clamms will be a genuine pre-estimate of the loss incurred by Clamms as a result of the cancellation by the purchaser.

11 Product Recalls:

- (a) The purchaser agrees and acknowledges that in relation to any person or entity that acquires goods or parts of the goods from the purchaser, the purchaser is the supplier of products made from, or otherwise incorporating, the goods or parts of the goods and the purchaser is legally responsible to any recipient or user of the purchaser's products in respect of such products.
- (b) The purchaser must at all times comply with its legal obligation to recall any unsafe or defective purchaser product and must comply with the Australian Competition and Consumer Commission's Consumer Product Safety Recall Guidelines, the *Australia New Zealand Food Standards Code* (Cth), the Food Standards Australia New Zealand Food Industry Recall Protocol (collectively **the Safety Laws**) and the Food Laws, including making all notifications required under the relevant document(s).
- (c) Clamms may give the purchaser reasonable assistance in respect of a product recall upon request from the purchaser at the purchaser's cost unless otherwise agreed, provided that the purchaser agrees and acknowledges that Clamms will not conduct the recall.
- (d) The purchaser must indemnify Clamms in respect of any expense, cost, loss or damage suffered or incurred by Clamms arising out of or in connection with a recall of the purchaser's product(s) save to the extent that the recall was caused by Clamms' negligent acts or omissions.

12 RESALE OF GOODS

If the purchaser resells any goods provided by Clamms, the purchaser or its contractors must:

- (a) provide to the purchaser any instructions or information about the use or storage or care of the goods which are provided by Clamms to the purchaser;
- (b) not make any statement or representation about the goods which is inconsistent with information provided by Clamms or make any representation on behalf of Clamms;
- (c) not make any misleading or deceptive statements about the goods or any statements which disparage the goods of Clamms;
- (d) promptly notify Clamms of any claims that the goods do not comply with the mandatory guarantees under the Australian Consumer Law or which involve safety or food safety issues or non-compliance with any of the Food Laws or the Safety Laws or serious injury or death, and then co-operate with Clamms in relation to the handling of those claims;
- (e) comply with its obligations under the Australian Consumer Law, the Safety Laws, and the Food Laws.

The purchaser indemnifies Clamms against all liability, loss, costs, damages or expense (including legal costs and expenses) incurred or suffered by Clamms on a full indemnity basis to the extent that it arises from a breach of this clause 12 by the purchaser or its contractors.

13 Liability:

- (a) Except for the non-excludable consumer guarantees contained in the Australian Consumer Law (**Consumer Guarantees**) and any express warranties made in writing by Clamms, Clamms disclaims and excludes all other warranties and representations in relation to the goods and/or any services provided by Clamms.
- (b) To the maximum extent permitted by law, Clamms:
 - i. will not be liable to the purchaser for any indirect or consequential loss or damage or any loss of profits or business revenue arising out of or in consequence of any fault or defect in the goods and/or services;
 - ii. limits its liability to the purchaser under any applicable Consumer Guarantees as applicable and at Clamms' discretion to, (1) in the case of services, the supply of the relevant services again or the payment of the cost of having those services supplied again, (2) in the case of goods: (A) replacement of the goods or the supply of equivalent goods, or (B) the repair of the goods or the cost of replacing or acquiring equivalent goods or (C) payment of the cost of having the goods repaired;
 - iii. excludes all other liability for any loss, cost, damage, or claim suffered or incurred by the Customer or any third party which arises in connection with these Terms or any related goods or services;
 - iv. subject to the above, to the extent that any liability to the purchaser cannot be excluded, limits its liability to the purchaser under these Terms and/or arising out of or related to any goods and/or services, for breach of agreement, negligence, breach of statutory duty or any other cause of action, loss, cost, damage, or claim, howsoever and whenever arising to the total monetary amount paid for the relevant goods and/or services (as appropriate).

14 PPSA:

- (a) All capitalised terms in this clause 14 have the meanings given to them in the *Personal Properties Securities Act 2009* (Cth) (**PPSA**) unless otherwise defined in these Terms.
- (b) The purchaser acknowledges and agrees that these terms evidence a Security Agreement and that a Security Interest exists in the goods (whether supplied previously or in the future).
- (c) The purchaser acknowledges and agrees that Clamms may apply to register a Purchase Money Security Interest in the Goods at any time before or after delivery of the goods. The purchaser waives its right under s 157 of the PPSA to receive notice of any verification of the registration.
- (d) If the purchaser defaults under these Terms or any other agreement for Clamms to supply goods to the purchaser, Clamms may enforce its Security Interest. To the maximum extent permitted by law, the purchaser agrees that the following provisions of the PPSA do not apply to the enforcement by purchaser of its Security Interest in the Goods: sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143.
- (e) The parties agree not to disclose information of the kind mentioned in s 275(1) of the PPSA, except in circumstances required by sections 275(7)(b)-(e) of the PPSA.
- (f) The purchaser must promptly do anything required by Clamms to:
 - i. ensure that Clamms' Security Interest is an enforceable and perfected Security Interest which has priority over all other Security Interests against the purchaser; and/or
 - ii. enable Clamms to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority Clamms requires (including a registration for whatever collateral class Clamms thinks fit and the purchaser consents to any such registration or notification and agrees not to make an amendment demand); or
 - iii. enable Clamms to exercise rights in connection with the Security Interest.
- (g) The purchaser must 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 Clamms has perfected its Security Interest including registration as a Purchase Money Security Interest.
- (h) The purchaser will indemnify Clamms for and against all costs and expenses arising as a result of actions taken by Clamms or its agents pursuant to this clause 14.

NIN 11115 260 752



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www.clamms.com.au

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