

**Customer Account Application Form**

<b>1. COMPANY DETAILS</b>		<i>Date of Application:</i>	
<b>Your Company Name:</b> (as listed with ASIC):			
<b>Are you a:</b>		<input checked="" type="checkbox"/>	*If Sole trader or Partnership, please provide name(s) and date of birth of Owners / Partners, (for identification purposes).
• Sole Trader?*		<input type="checkbox"/>	Name: ..... D.O.B.....
• Partnership?*		<input type="checkbox"/>	Name: ..... D.O.B.....
• Limited Liability Company?		<input type="checkbox"/>	ABN number:.....
<b>Is the business trading under any other name?</b>		If Yes, please give the trading name:  Is this trading name preferred for invoices?	
<b>Company address?</b>		<b>Physical address:</b>	
		<b>Mailing address:</b> (if different from above)	
		<b>Post code:</b>	
<b>Website:</b>			
<b>Main Office Phone No:</b>		<b>Fax:</b>	
<b>Is the delivery address different from the physical address above?</b>		If Yes, please provide primary delivery address:	
<b>2. CONTACTS</b>		<b>Name</b>	
<b>CEO / General Manager:</b>			
<b>Food Safety / Quality:</b>			
Please provide DDI / Mobile to allow prompt contact in the unlikely event of a Food Safety incident.			
<b>Accounts / Financial:</b>			
<b>Email address for invoices and statements:</b>			
<b>Purchasing:</b>			
<b>Technical Contact:</b>			

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3. CREDIT REFERENCES		Name	Phone & email				
Please provide the names of 3 current suppliers who can provide a credit reference	1.						
	2.						
	3.						
4. YOUR REQUIREMENTS							
Estimated monthly purchases from HWA?	AU\$ <span style="float: right;">per month</span>						
Do deliveries require a booked time slot?	If Yes, please confirm contact: Name ..... Phone: .....						
Times deliveries can be made to your site?	<input type="checkbox"/> <b>Mon</b>	<input type="checkbox"/> <b>Tues</b>	<input type="checkbox"/> <b>Wed</b>	<input type="checkbox"/> <b>Thurs</b>	<input type="checkbox"/> <b>Fri</b>		
Any other specific requirements? (i.e. Delivery / purchasing)							

Please review our terms of trade on the next four pages. By signing below you acknowledge that you have read and understood the terms of trade of Hawkins Watts Australia Pty Ltd, that you have the authority on behalf of your business to complete and sign this application, and that you agree to be bound by these terms of trade.

**Name:** ..... **Position:** .....

**Signature:** ..... **Date:** .....

Please scan and email to [sales@hawkinswatts.com.au](mailto:sales@hawkinswatts.com.au)

We regret that we are unable to ship any product prior to this completed application being approved by our Accounts department. Payment terms are cash sale in advance, until the application is approved and a payment history established over multiple purchases.

Thank you

HWA OFFICE USE ONLY	
HWA Account Manager:(Dimension)	
Approved by:	Date:
Credit Limit:	Terms Approved:
Other:	

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### HAWKINS WATTS AUSTRALIA PTY LIMITED - TERMS OF TRADE

#### 1. Definitions

In these Terms of Trade:

“**Commingled**” has the meaning given to it under the PPSA.

“**Customer**” means any person or entity to which HWA supplies Goods or Services.

“**Event of Default**” means as set out in clause 5.2

“**Goods**” means any functional food ingredients or food processing products supplied by HWA to the Customer, as described on any invoice or other document of HWA, as well as any other goods or property supplied by HWA to the Customer, and in each case includes all such goods and property so supplied: (a) whether or not by item or kind that enables them to be identified; (b) which are or comprise inventory of the Customer.

“**GST**” means the Goods and Services Tax as described in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“**HWA**” means Hawkins Watts Australia Pty Ltd.

“**Price**” means the amount stated on any invoice provided by HWA to the Customer, being the cost of the Goods to the Customer plus any other costs incurred by HWA in delivering the Goods to the Customer.

“**PPSA**” mean the *Personal Properties Securities Act 2009* (Cth) and any regulations made pursuant to it, as amended from time to time.

“**PPS Register**” means the personal properties securities register established under section 146 of the PPSA.

“**Purchase Money Security Interest**” has the meaning given to it under the PPSA.

“**Security Agreement**” has the meaning given to it under the PPSA.

“**Security Interest**” has the meaning given to it under the PPSA.

“**Services**” means any service provided by HWA to the Customer, as described on any invoice or other document of HWA, as well as any other services supplied by HWA to the Customer.

#### 2. Acceptance of Order

- 2.1. These Terms of Trade set out the terms and conditions on which HWA provides Goods and Services to the Customer.
- 2.2. Any order for Goods or Services placed by the Customer with HWA is irrevocable and binding on the Customer and the Customer agrees that it will be deemed to be acceptance by the Customer of the provisions of these Terms of Trade.
- 2.3. HWA may, at its sole discretion, decline or accept an order in whole or in part at any time and with or without further notice to the Customer.
- 2.4. HWA will not be required to accept an order unless the Customer provides an order number in writing or other written or electronic notification of its request and commitment acceptable to HWA.

#### 3. Price and Payment

- 3.1. In the absence of any written agreement by HWA to the contrary, the Customer agrees to pay the Price for the Goods and Services to HWA.
- 3.2. Notwithstanding clause 3.1, the Customer acknowledges that, given the nature of the Goods and Services, and the impact that the fluctuation of commodity prices has on the cost of supply of the Goods and Services, the Price may be subject to change from time to time. HWA agrees to notify the Customer of any necessary Price changes to Goods and Services if such changes occur after receipt of an order from the Customer. The Customer will be required to pay any notified price increase.
- 3.3. The Customer shall pay the Price in accordance with the terms stated on the invoice or in the event that an invoice does not contain payment terms, within 30 days of the date of invoice.
- 3.4. HWA may charge the Customer interest at the rate of 7.5% per month (or part month thereof) on any amount not paid by the Customer to HWA within the terms stated on an invoice.
- 3.5. HWA may, at any time, and at its discretion, allocate any payment received from the Customer towards any sum owed by the Customer to HWA, including in such manner as preserves the maximum value of any Purchase Money Security Interest HWA may have in the Goods. HWA may do so at the time of receipt of that payment or at any time thereafter.

#### 4. Warranties and Exclusion of Liability

- 4.1. HWA warrants, to the best of its knowledge, that the Goods and Services when delivered to the Customer will comply with any description for the Goods and Services contained within any industry standard specifications for the Goods and Services or as described by HWA.
- 4.2. The Customer acknowledges, agrees, represents and warrants that:
  - (a) it has conducted its own enquiries, tests and apply all mandatory or prudent quality control checks and procedures to ensure the Goods and any product that is produced from them will be without defect and will be suitable or fit for any purpose required for them; and
  - (b) the Customer acknowledges that it has not been influenced into purchasing the Goods as a result of any representations made by HWA, or its employees or agents that are not set out in these Terms of Trade.

- 4.3. The Customer releases and indemnifies HWA and its officers, employees, consultants and agents from and against all actions, claims, proceedings and demands (including those brought by third parties) which may be brought against it or them, whether on their own or jointly with the Customer, and whether at common law, under tort (including negligence), in equity, pursuant to statute or otherwise, in respect of any loss, death, injury, illness, cost or damage arising out of the Customer's use of the Goods and Services or any breach by the Customer of any warranty provided under paragraph 4.2 of this clause, including any legal costs incurred in response.
- 4.4. To the maximum extent possible under the law, HWA excludes all liability in respect of the Goods and Services arising from warranties, guarantees, or conditions, implied by statute and makes no representations or gives any warranties whether express or implied in relation to the Goods and Services.
- 4.5. HWA will not accept liability to the Customer or any other party for any loss (including economic loss) arising from any breach of contract, or breach of any statutory obligation, or error, or omission, or advice given, including negligence, on the part of HWA or its employees or agents. HWA agrees to deal (whether directly or indirectly) with any such claims in good faith in accordance with appropriate advice it may receive. The benefit of this particular term shall extend to such employees or agents of HWA.
- 4.6. HWA's liability (if any) for defective Goods or Services will be limited to either the resupply of any defective Goods or Services by HWA to the Customer or the cost of the the resupply of any defective Goods or Services by a third party. HWA's liability for any other acts or omissions, including negligence, on the part of HWA or its employees or agents, will not exceed the Price of the Goods or Services in respect of which any claim is made.
- 4.7. The Customer acknowledges and agrees that HWA will not be liable in any way whatsoever, including for negligence, in respect of any advice that it may provide to the Customer or any third party claiming through the Customer. The Customer acknowledges and agrees that HWA does not and cannot give any warranty or guarantee, whether express or implied, regarding advice given by it, its employees, its agents, or its suppliers.
- 4.8. HWA recommends that Customers conduct their own tests to determine the suitability of any Goods or Services, products or information from HWA for its own purpose. HWA accepts no liability whatsoever in respect of the Customer's use of the Goods of Services and the Customer agrees to hold HWA harmless in respect of any claims arising out of the Customer's use of the Goods and/or Services.

## 5. Default

- 5.1. The following shall constitute an event of default by the Customer under these Terms of Trade:
  - (a) the non-payment of any sum due to HWA by the due date for that sum; or
  - (b) the Customer intimating that it will not pay any sum due to HWA by the due date for that sum; or
  - (c) if any other creditor of the Customer seizes any Goods or any other creditor intimates that it intends to seize any Goods; or
  - (d) if any Goods in the possession of the Customer are materially damaged while any sum due by the Customer to HWA remains unpaid; or
  - (e) the Customer becomes insolvent or is placed into administration, liquidation, or a receiver or manager (or similar) is appointed to any part or all of of the Customer's assets, or a landlord distrains against any of the Customer's assets; or
  - (f) a court judgment is entered against the Customer and remains unsatisfied for seven (7) days; or
  - (g) if in the opinion of HWA acting reasonably, any material adverse change in the financial position of the Customer occurs.
- 5.2. On the happening of an Event of Default, following an Event of Default or if in the reasonable opinion of HWA an Event of Default is imminent:
  - (a) any amounts owing to HWA by the Customer become immediately payable by the Customer to HWA in full;
  - (b) HWA may reallocate any payments previously received and allocated in any manner it sees fit;
  - (c) the Customer gives irrevocable authority to HWA, its employees or agents to enter any premises occupied or controlled by the Customer, or on which any Goods are situated, in order to remove and repossess any Goods and any other products which the Goods may have become part of without notice to the Customer and without liability to the Customer. HWA shall not be liable for any costs or losses incurred by the Customer or any third party as a result of HWA exercising any of its rights under these Terms of Trade;
  - (d) each of HWA's rights in associated with its Security Interest become immediately enforceable;
  - (e) HWA may demand the return of the Goods and the Customer must then immediately return those Goods;
  - (f) HWA may retain, sell or otherwise dispose of the Goods on any terms and in any manner it sees fit, and subject to section 140 of the PPSA, may apply the proceeds to repay any debt owed to it by the Customer (including the recovery of any costs incurred by HWA); and/or
  - (g) HWA may appoint any person to be a receiver of all or any of the Goods. The receiver has the power to do all things in relation to the Goods as if the receiver has absolute ownership of the Goods, without in any way affecting any other powers conferred on a receiver by law or otherwise.
- 5.3. HWA may charge the Customer any costs (including legal costs) incurred by HWA in the enforcement of any rights contained in these Terms of Trade.
- 5.4. The Customer agrees to indemnify HWA, its employees or agents against any claim (including negligence) in respect of any damage to property of, or the premises occupied by, the Customer in accordance with clause 5.2(c).

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### 6. Risk and Damage

- 6.1. Risk in the Goods shall pass to the Customer on delivery of the Goods to the Customer's premises or to such other location as specified by the Customer. Whenever the Goods are transported from HWA by a carrier requested by the Customer, risk in the Goods shall pass to the Customer at the time the Goods are taken by that carrier from HWA.
- 6.2. If upon delivery to the Customer (when HWA is responsible for the freight costs) (, the Customer notices any damage to the Goods, the Customer must immediately notify the Freight Forwarder concerned and send full particulars of the damage (including invoice, freight numbers and the date of the notification of damage to the Freight Forwarder) to HWA (Damage Notice). Upon receipt of a Damage Notice, HWA will in its absolute discretion consider issuing a credit notice to the Customer for the damage to the Goods. No credit can may be issued unless a Damage Notice is received within five days of delivery.
- 6.3. HWA accepts no responsibility or liability in respect of any damage caused to Goods transported by a freight carrier arranged by the Customer.
- 6.4. In any instance where the Customer believes that Goods supplied by HWA are damaged or below acceptable quality (other than where clauses 6.2 or 6.3 would apply), any claim to be made by the Customer in respect of any such alleged Goods must be notified to HWA within 7 days of delivery. No such claim can be made by the Customer after the expiry of 7 days.
- 6.5. Customer accepts that HWA is not a manufacturer, but an importer and distributor of international food ingredients, and is therefore unable to comply with Customer minimum shelf life remaining requirements. HWA will supply stock on a FIFO basis with a reasonable shelf life remaining and warrants the shelf life of the product from the Customer delivery date through to expiration date. HWA will not deliver products with less than two months shelf life remaining without consulting with Customer prior to dispatch.

### 7. Security Interest

- 7.1. Title in the Goods supplied by HWA to the Customer will not pass to the Customer until such time as the Goods have been paid for in full.
- 7.2. Until title in the Goods passes to the Customer in accordance with clause 7.1, the Customer shall store the Goods separately from other goods held by the Customer and in such a manner that they are clearly identifiable as the property of HWA.
- 7.3. If the Goods become part of a product or mass through manufacturing, processing or assembly, or become Commingled, HWA's security interest continues in that product or mass (Commingled Property) to the extent permitted by law.
- 7.4. The Customer acknowledges that if it sells or otherwise deals with the Goods or Commingled Property before title in the Goods passes to the Customer in accordance with clause 7.1:
  - (a) It does so as trustee and agent for HWA; and
  - (b) It must hold the proceeds of sale or such dealing as trustee and agent for HWA; and
  - (c) It must be able to separately and clearly identify such proceeds once deposited into the Customer's account as the property of HWA.
- 7.5. Despite clause 7.4, the Customer must not represent to any third parties that it is acting as the agent of HWA and HWA will not be bound by any contracts with third parties to which the Customer is a party.
- 7.6. The Customer acknowledges that HWA has a Security Interest in the goods and any proceeds described in clause 7.4 until the title in the Goods passes to the Customer in accordance with clause 7.1. This Security Interest secures all moneys owing by the Customer to HWA under any contract or otherwise.
- 7.7. The Customer acknowledges that each Security Interest over Goods or their proceeds arising under this clause 7 is a Purchase Money Security Interest to the extent that it secures payment over the amount owing in relation to those particular Goods.
- 7.8. The Customer must not assign or grant a Security Interest in respect of any accounts owed to it in relation to the Goods without HWA's prior written consent.
- 7.9. The Customer consents to HWA effecting a registration on the PPS register (in any manner HWA deems appropriate) in relation to any Security Interest contemplated by this clause 7 and the Customer agrees to provide all assistance reasonably required to facilitate this registration.
- 7.10 The Security Interest arising under this clause 7 attaches to the Goods when the Customer obtains possession of the Goods and the Customer and HWA confirm that they have not agreed that any Security Interests arising under this clause 7 attach at any later time.

### 8. Enforcement of Security Interests and Notices under the PPSA

- 8.1. HWA and the Customer agree that sections 96 (person with an interest in the whole may retain accession), 125 (obligation to dispose of or retain collateral), 132(3)(d) (contents of statement of account after disposal) and 132(4) (statement of account if no disposal) of the PPSA do not apply to the Security Agreement created under these Terms of Trade.
- 8.2. The Customer waives its right to receive notices under sections 95 (notice of removal of accession), 118 (enforcing security interests in accordance with land law decisions), 121(4) (enforcement of liquid assets – notice to grantor), 130 (notice of disposal), 132(3)(d)(secured party to give statement of account) and 132(4) (secured party to give statement of account).
- 8.3. The Customer waives its right to receive notice of a verification statement in relation to any registration on the PPS Register.

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8.4. The Customer acknowledges that HWA does not need to give the Customer any notice under the PPSA unless the notice required under the PPSA has not been excluded under clause 9.2.

### 9. GST

9.1. A party to this agreement must pay GST on a Taxable Supply to it made under this agreement in addition to any consideration (excluding GST) that is payable for that Taxable Supply. It must do so at the same time and in the same way as required to pay the consideration for the Taxable Supply.

9.2. Any party making a Taxable Supply to another party under this agreement must provide a tax invoice to the other party setting out the amount of the GST payable by that other party.

9.3. In this clause, "GST" and "Taxable Supply" have the meaning given to them in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

### 10. Miscellaneous

10.1. These Terms of Trade represent the entire contract between HWA and the Customer and overrides all other agreements or representations. Each supply and sale shall be effected pursuant to these Terms of Trade unless otherwise agreed in writing as per clause 10.5. Any invoice or other document evidencing or describing any Goods or Services is incorporated into and forms part of these Terms of Trade.

10.2. If two or more persons or entities are named as the Customer then any of the Customers and/or each of the Customers individually agree to comply with these Terms of Trade.

10.3. Any failure by HWA to enforce any provision of these Terms of Trade shall not be deemed to be a waiver by HWA of its rights pursuant to that provision.

10.4. A term or part of a term of these Terms of Trade that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the Terms of Trade continue in force.

10.5. These Terms of Trade can only be varied or altered by doing so in writing and being executed by all parties.