

DONKEY HILL ORGANIC PRODUCTS PTY LTD ABN 132 703 649 (“Seller”)

GENERAL TERMS AND CONDITIONS OF TRADE

1. **GENERAL:** These Terms and Conditions will be deemed to be incorporated in all agreements for the sale of any goods and/or services by the “seller” to any party (“customer”) and apply in place of and prevail over any terms and conditions contained or referred to elsewhere or implied by trade (including, without limitation, any customer order documentation and any terms and conditions that attempt to oust the operation of these General Terms And Conditions Of Trade). The “seller’s” catalogues, price lists and quotations do not constitute offers made by the “seller”. The customer’s order will be deemed to be an offer to the “seller” which may be accepted by the “seller” by written notice or by delivery of the goods and/or services to the customer.

2. **PRICING AND AVAILABILITY:** The “seller’s” price lists, catalogues and quotations are subject to change without notice. Prices for goods and allied services are subject to alteration without notice.

3. **PAYMENT:** The customer agrees to comply with the trading terms of the “seller” and payment for goods or services shall be made by the customer to the “seller” Fourteen (14) days from the date of the statement. Customers that exceed the “seller’s” payment terms may have their orders held, without notification until receipt of payment.

4. **CLAIMS:** The customer will be deemed to have accepted the goods as being in accordance with its order unless it notifies the “seller” in writing of its claim within 7 Days of receipt of the goods. The customer must provide physical proof of allegedly defective or faulty goods to the “seller” to enable any claim or return. The “seller” will accept no return of allegedly defective or faulty goods unless the “seller” has given prior written authorisation for the return.

5. **FORCE MAJUERE:** If for any reason beyond the control of the “seller” (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 customer, the “seller” shall be entitled to determine the Contract and the customer shall not have any claims for damages arising out of such cancellation, without prejudice to the rights of the “seller” to recover all sums owing to it in respect of deliveries made or services provided prior to the date of such determination.

6. **WARRANTY:** All warranties whether expressed or implied and whether statutory or otherwise with regard to the goods supplied by the “seller” as to quality, fitness for purpose or any other matter are hereby excluded except insofar as any such warranties are incapable of exclusion at law. The liability of the “seller” for damages arising out of the contract shall be limited to the costs of rectification of any faulty workmanship or material or the replacement of any faulty goods and the “seller” accepts no responsibility or liability whatsoever including liability for negligence, goods, that do not correspond with the description on the “seller’s” invoice and/or the packaging of the goods sold or any liability for consequential loss however arising.

7. **FREIGHT COSTS:** Freight costs into central business and metropolitan districts are included. Additional freight may be charged to customers in country regions. The “seller” shall not be liable for freight costs on goods returned to it by the customer.

8. **DEFAULT:** In the event of the customer’s default under these Terms and Conditions the customer shall pay to the “seller” on demand all costs including without limitation all legal costs (on a solicitor/own client basis) all mercantile agents fees incurred by the “seller” in recovering or attempting to recover all amounts outstanding and payable under these Terms and Conditions and any dishonour or bank fees incurred by the “seller” relating to payments made by the customer from time to time.

9. **CHANGE OF OWNERSHIP:** The customer agrees to notify the “seller” in writing of any change of ownership of the customer within 7 days from the date of such change and indemnifies the “seller” against any loss or damage incurred by it as a result of the customer’s failure to notify the “seller” of any change.

10. **CANCELLATION:** Orders placed with the “seller” cannot be cancelled without the written approval of the “seller”. In the event that the “seller” accepts the cancellation of any order placed with it shall be entitled to charge a reasonable fee for any work done on behalf of the “seller” to the date of the cancellation including a fee for the processing and acceptance of the customer’s order and request for cancellation.

11. **LIEN:** The customer hereby acknowledges that the “seller” has a lien over all goods in its possession belonging to the customer to secure payment of any or all amounts and taxes outstanding from time to time.

12. **TITLE TO GOODS:** 12.1 Until the “seller” receives payment in full in cleared funds for all goods sold or provided by the “seller” to the customer, as well as all other amounts owing to the “seller” by the customer from time to time: (a) title and property in all goods sold and delivered by the “seller” to the customer shall remain vested in the “seller” and shall not pass to the customer; (b) the customer shall hold all goods sold and delivered to it by the “seller” as fiduciary bailee and agent for the “seller”; (c) the customer shall keep all goods sold and delivered to it by the “seller” separate from its other property, and in a manner to enable them to be identified; and (d) if the customer sells, disposes of or uses the whole or any part of the goods sold and delivered to it by the “seller” before payment in full in cleared funds is received by the “seller”, then until such payment in full in cleared funds is received by the “seller”, all monies resulting from the customer’s said sale, disposal or use shall be held in trust for the “seller” and shall be kept in a separate account, shall not be mixed with the customer’s or any other monies and further shall be specifically earmarked in the accounts of the customer as the property of the “seller”. 12.2 Failure to pay the price for the goods when due shall, without prejudice to any other remedies the “seller” may have, entitle the “seller” to repossess the goods or so much thereof as the “seller” may determine from any premises where they may be. For the purpose of repossessing the goods or any part thereof the customer grants to the “seller”, its employees or agents, an irrevocable licence to enter upon such premises as the “seller” reasonably suspects the goods may be located. 12.3 The customer may in the ordinary course of its business sell and deliver the goods in which the property remains with the “seller” to any third party as a principal and not as agent for the “seller”, but if the goods are sold the benefit and proceeds of such sale belong to the “seller” absolutely. The customer shall upon request assign to the “seller” the legal and beneficial title of any right against any third party arising out of such sale. The customer shall be entitled to receive from the “seller” the excess of the proceeds of sale over the amounts due to the “seller” from the customer. 12.4 Notwithstanding the provisions of this clause 12, the “seller” is entitled to bring an action against the customer for the price of the goods in the event of non-payment by the customer by the due date as if the property in the goods had already passed to the customer and/or shall have the right by notice in writing to the customer at any time after the agreed delivery date to pass the property in the goods to the customer as from the date of such notice.

13. **CERTIFICATE:** A Certificate signed by an officer of the “seller” will be prima facie evidence of the customer’s liability to the “seller” at the date of the Certificate.

14. **JURISDICTION:** The proper law of all contracts arising between the “seller” and the customer is the law of the State or Territory in which the “seller’s” principal office is located and the parties agree that all claims and disputes relating to the goods sold shall be determined in a Court of competent jurisdiction nearest such principal office and the parties irrevocably agree to submit the non-exclusive jurisdiction of such Court.

Establishment Name:

Sales Representative:

DONKEY HILL



Credit Account Application

**C/O - 288 Lorimer Street, Port Melbourne, Victoria, Australia, 3207
Telephone: 03-9647 0000 Facsimile: 03-9646-8383**

APPLICATION FOR A 14 DAY TRADING ACCOUNT

Trading Name of Applicant

Registered Name of Applicant

ABN or Business Name Registration No.

Type of Entity Sole Trader Partnership Company Trust Company

Registered Address

Postcode Phone Fax

Trading Address

Postcode Phone Fax

Postal Address (For Accounts)

Postcode Email

Accounts Contact Phone Fax

Establishment Type (Please Circle) Retail Wholesaler Private

Date Of Acquisition By Applicant

Previous Trading Name(s)

Buyer

Manager

Bank (Name & Address)

Accountant (Name & Address)

BUSINESS REFERENCES

1 Name Phone

2 Name Phone

3 Name Phone

DECLARATION:-

The Applicant requests the abovenamed Company/Firm (“The Seller”) to open an account on the basis of the Seller’s standard Terms and Conditions of Trading and agrees to be bound by such Terms and Conditions. The Applicant and the signatory to this Application further acknowledge that the information provided in this Application is true and correct and has been relied upon by the Seller to determine whether to grant the Applicant credit and that the signatory has full authority to complete this Application Form on behalf of the Applicant.

Signature Of Person Applying For Credit Print Name Position of Signatory Date

PAYMENT TERMS: Payments must be made within 14 days from the statement date.

GUARANTEE

IN CONSIDERATION

of **DONKEY HILL ORGANIC PRODUCTS PTY. LTD. ABN 132 703 649**
("the Seller")

agreeing to supply the following Company/Firm:-

("the Customer") with goods on credit

I/WE ("the Guarantor")

of (Insert Address Of Guarantor)

do hereby (jointly and severally in the case of more than one Guarantor) guarantee the due and punctual payment of all monies which may now or in the future be or become due and payable to the Seller by the Customer under the Seller's Terms and Conditions of Trading 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 the granting by the Seller of time, credit or any other indulgence or concession to the Customer or the Guarantor or the waiver by the Seller 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 **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 Guarantee or the performance or failure to perform by the Guarantor of the covenants herein contained **AND I/WE FURTHER DECLARE** that if any of the obligations hereby guaranteed shall not be enforceable against the Customer purported to be primarily liable this Guarantee shall be construed as an indemnity and the Guarantor hereby indemnifies the Seller in respect of any failure by the Customer to make payment or perform or observe any covenant, obligations, 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 of or arising out of the default by the Customer under the Seller's Terms and Conditions of Trading or howsoever arising **AND I/WE FURTHER DECLARE** that the proper law of this Guarantee shall be the law of the State or Territory in which the principal office of the Seller is located and that any proceedings to be taken by the Seller may be taken in the Courts of such State or Territory and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of such State or Territory.

AND THE PARTIES DECLARE in the above provisions, references to persons include references to a firm a body corporate, an association, whether incorporated or not, a government and a governmental, semi-governmental and local authority and agency and words and expressions, including defined terms, in singular form include a reference to cognate words and expressions in plural form and vice versa and words and expressions importing a particular gender include respective references to cognate words and expressions importing each other gender.

AND THE GUARANTOR HEREBY DECLARES that **I/WE** understand the nature and effect of the within Guarantee and **I/WE** have had the opportunity of obtaining independent legal advice before signing this Guarantee.

DATED day of 20

SIGNED by the Guarantor:)
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)
)

Print Full Name and Address:)
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in the presence of:)
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)
)

Witness' Full Name and Address:)
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