

CONFIDENTIAL



NQ RURAL FEEDS PTY LTD T/A TOP STOCK AGENCIES

ABN 34 620 264 271

Application for Credit
Terms and Conditions of Trade
Personal Guarantee & Indemnity
Privacy Act Consent

P O Box 171 Mareeba, Queensland, 4880
Telephone: 07 40434501
Fax: 07 40921499
Web: www.topstockagencies.com.au



How to Complete these Forms

Defined terms:

- Seller** means NQ Rural Feeds Pty Ltd T/A Top Stock Agencies ABN 34 620 264 271 and each of its subsidiaries, divisions, affiliates, associated companies and related entities.
- Applicant** means the person, entity, association, or trust named in section 1 of Part 1 Credit Application

1. Please read all documents carefully

- Part 1: Credit Application, Terms of Credit and Privacy Statement
Part 2: Terms and Conditions of Trade
Part 3: Personal Guarantee & Indemnity

IMPORTANT: *If you do not understand any part you should seek legal and/or financial advice*

2. Credit Application

- Complete all of sections 1,2, 6, 7 and 8
- If you are applying for yourself or as a sole trader, complete section 3
- If you are applying for your company, complete section 4
- If you are applying as a trustee (corporate or individual), complete section 5
- Read sections 9 and 10 carefully
- Sign in the appropriate shaded box in section 11
 - If you are a sole trader, you must sign
 - If you are applying as a partnership, all partners must sign
 - If you are applying for your company, all directors must sign
 - If you are applying as individual trustee, all individual trustees must sign
 - If you are applying for a company trustee, all directors must sign

IMPORTANT: *By signing, you are agreeing to be bound by the Terms and Conditions of Trade*

3. Personal Guarantee

- If you are a sole trader or partnership, you need not sign this form
- If you are applying for your company, all **directors** and the **directors' spouses** must sign
- If you are applying as a trustee, all trustees must sign
- For more than 3 Guarantors, additional Guarantors must sign a copy of the form
- Each signature must be witnessed by an independent adult witness

IMPORTANT: *All parties who sign the guarantee may become personally responsible instead of, or as well as, the Applicant to pay all amounts which the Applicant owes to Seller as well as Seller's costs and expenses in enforcing the guarantee and interest on a full indemnity basis.*

If the Applicant does not pay you must pay. This could mean you lose everything you own. Before signing, each guarantor should:

- *obtain independent legal advice*
- *consider obtaining independent financial advice*
- *make his or her own enquiries about the credit worthiness, financial position and honesty of the Applicant.*

4. When finished

- When all parts have been signed, please return all parts to the person who sent them to you.
- For any queries relating to this application please contact your relevant branch manager.



NQ RURAL FEEDS PTY LTD T/A TOP STOCK AGENCIES

PART 1: CREDIT APPLICATION

1. THE APPLICANT

Applicant Name: _____

ACN: _____ ABN: _____

Trading Name (if different from applicant): _____

Date business commenced: _____ Period under current ownership: _____

Principal physical address: _____

Postal Address _____

Delivery Address (if different from Principal physical address): _____

Contact Name: _____ Position: _____

Tel No: _____ Fax No: _____ Email: _____

Accounts Payable Contact Name: _____

Tel No: _____ Fax No: _____ Email: _____

2. OPERATING STRUCTURE

Tick appropriate

- | | | |
|-------------------------------------|--------------------------------------|---|
| <input type="checkbox"/> Pty. Ltd. | <input type="checkbox"/> Sole Trader | <input type="checkbox"/> Corporation as Trustee |
| <input type="checkbox"/> Public Co. | <input type="checkbox"/> Partnership | <input type="checkbox"/> Individual(s) as Trustee |

If an individual / sole trader, please complete section 3

3. INDIVIDUAL / SOLE TRADER DETAILS

Full Name: _____ Date of Birth: _____

Drivers Licence Number: _____ Copy of Drivers Licence Attached

If a company or partnership, please complete section 4



4. DIRECTOR, PARTNER AND INDIVIDUAL TRUSTEE DETAILS

Provide details of all directors (for company or corporate trustee), partners or individual trustees

Name: _____ Address: _____

Tel No: _____ Email: _____

Name: _____ Address: _____

Tel No: _____ Email: _____

Name: _____ Address: _____

Tel No: _____ Email: _____

if more than 3 please attach details

If a trustee, please complete section 5

5. TRUST DETAILS

Name of Trust: _____ ABN: _____

Type of trust: Family/Discretionary Unit Other (Details) *tick appropriate*

If a unit trust, please provide details of all unitholders

Name: _____ Address: _____

Name: _____ Address: _____

Name: _____ Address: _____

If more than 3 please attach details

6. APPLICANT'S FINANCIAL DETAILS

Estimated Monthly purchases \$ _____ Monthly Credit requested: \$ _____

Bank: _____ Branch: _____

Contact: _____ Tel: _____

Business Premises: Owned Leased

If leased, from whom: _____

Details of other security interests (eg. Mortgages, Debentures, Bills of Sale provided by Applicant over its business or property to third parties)

Type of security: _____ provided to: _____

Type of security: _____ provided to: _____



7. BUSINESS HISTORY

For all of the directors, partners, trustees or sole trader:

Have any been declared bankrupt? Yes No If yes, details: _____

Have any been involved in business that has failed or been liquidated: Yes No

If yes, Name of company liquidated: _____

Name of appointed liquidator(s): _____ Year: _____

Names of related or subsidiary companies or partnerships: _____

8. TRADE/BUSINESS REFERENCES

3 trade or business references must be provided from current major suppliers providing commercial credit

1. Name: _____ Address: _____

Contact: _____ Tel: _____ Fax: _____

2. Name _____ Address: _____

Contact: _____ Tel: _____ Fax: _____

3. Name: _____ Address: _____

Contact: _____ Tel: _____ Fax: _____

9. TERMS OF CREDIT

The Applicant applies for credit (the **Credit Account**) from NQ Rural Feeds Pty Ltd T/A Top Stock Agencies ABN 34 620 264 271 (the **Seller**) in connection with the supply of goods and/or services on the following terms and conditions:

The Applicant Agrees:

1. That the Seller may accept or reject the application for credit made in this form in its absolute discretion.
2. That it is not entitled to any credit unless and until it receives notice in writing from the Seller that credit has been approved and the maximum amount of credit approved (the **Credit Limit**)
3. That the Credit Limit is a maximum limit, and the Applicant must always ensure that the total amount of all outstanding invoices issued by the Seller to the Applicant is less than the Credit Limit.
4. If the total amount of all outstanding invoices reaches (or, with the further supply of goods or services, would reach) the Credit Limit, then any goods or services that are to be supplied to the Applicant by the Seller will only be provided on a cash in advance basis.
5. That it may apply to increase or reduce the Credit Limit at any time in writing and the Seller may:
 - (a) agree or refuse to increase the Credit Limit in its absolute discretion and, if it agrees, on such conditions as the Seller requires; or
 - (b) reject an application to reduce the Credit Limit if the requested limit is less than the total amount payable by the Applicant under outstanding invoices issued by the Seller.
6. That the Seller may at any time vary, suspend, withdraw, or terminate the Credit Account or increase/decrease Credit Limit in respect of the Credit Account at its discretion and by written notice to the Applicant.
7. If credit is terminated, all money payable by the Applicant to the Seller becomes immediately due and payable.
8. That if the Seller accepts this application the provision of goods and/or services to the Applicant are subject to the Terms and Conditions of Trade.



9. That to secure payment of all monies for which the Applicant may become liable, the Applicant charges as beneficial owner all of the Applicant's freehold and leasehold interest in land (including land acquired in the future) to the Seller and consents to the Seller having a caveatable interest over such land.
10. The Seller may at any time impose, as a condition precedent to the granting of any further credit, the requirement that the Applicant gives or procures such security or additional security as is required by the Seller in its absolute discretion. The Seller is entitled to withhold the supply of goods and/or services until such security or additional security is provided.
11. To notify the Seller in writing as soon as practicable and in any event within 3 Business Days of the occurrence of:
 - (a) a change in the legal status, ownership or control of the Applicant.
 - (b) a change in the directors (if it is a company or other body corporate) or partners (if it is a partnership) of the Applicant.
 - (c) the appointment of a liquidator, administrator, controller or receiver, or the liquidation, administration, arrangement, receivership or bankruptcy of the Applicant; or
 - (d) any step being taken to sell an asset or assets of the Applicant with a value of 20% or more of the gross assets of the Applicant, or sell, transfer, encumber or otherwise dispose of 20% or more of the shares (if it is a company or other body corporate) of the Applicant.
 (collectively the **Notifiable Events**)
12. On the occurrence of any of the Notifiable Events, the Seller may reduce, suspend until further notice, or terminate the provision of credit to the Applicant and/or may require the Applicant to make a new application for credit.
13. The Seller may amend or replace these terms of credit in its absolute discretion by providing prior written notice to the Applicant which notice may be endorsed on or accompany an invoice, statement, correspondence, or other document provided to the Applicant. The amended or replacement conditions apply with effect from the date stipulated in the notice (which must be no earlier than the date the notice is given to the Applicant) and do not affect accrued rights and obligations.
14. These terms of credit are governed by the laws of Queensland. The Applicant submits to the non-exclusive jurisdiction of the courts of Queensland and courts of appeal from them.

10. PRIVACY STATEMENT

1. This privacy statement is made pursuant to the *Privacy Act 1988 Act* (Cth) (**Privacy Act**) and provides information about the Personal Information that the Seller collects, and the ways in which it uses that Personal Information.
2. For the purposes of this privacy statement, the following definitions apply:
 - (a) **Primary Purposes** means assessment of a credit application, reviewing existing credit terms, assessing Credit Worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing
 - (b) **Information** means Personal Information, Sensitive Information, Credit Eligibility Information, Credit Reporting Information and Credit Information, both severally and collectively.
 - (c) **Commercial Credit Related Purpose, Consumer Credit Related Purpose, Credit Eligibility Information, Credit Guarantee Purpose, Credit Information, Credit Provider(s), Personal Information, Sensitive Information, Credit Reporting Code, Credit Reporting Body(ies) and Credit Reporting Information** each have the same meaning as under the Privacy Act.
 - (d) **Creditworthiness Information** means information that is both positive (eg. payment information) and negative (eg. defaults or serious credit infringements).
3. The Seller may collect Personal Information about the Applicant for the Seller's Primary Purposes.
4. The Applicant consents to the Seller collecting, using and disclosing Personal Information (including Sensitive Information) for both its Primary Purposes and purposes other than its Primary Purposes.
5. The Seller may collect, and may already have collected, Information from the Applicant and/or Guarantor, other Credit Providers, Credit Reporting Bodies and other third parties for the purposes of its functions and activities including credit, sales, marketing and administration. If the Information was not collected by the Seller it may restrict or impede upon the Seller trading with, extending credit to, continuing to extend credit to or extending further credit to the Applicant or their related bodies corporate. Further, if the Applicant chooses not to provide Personal Information, the Seller may not be able to provide the Applicant with credit account facilities and/or assess persons to be a guarantor of the credit facility.
6. The Applicant consents to the Seller obtaining and making disclosure of information about the Applicant from and to a Credit Reporting Body and/or another Credit Provider for any or all of the following purposes: Commercial Credit Purpose, Consumer Credit Purpose Credit Guarantee Purpose or another related purpose.
7. The Seller notifies the Guarantor that it may use and/or disclose Credit Eligibility Information under section 21G of the Privacy Act.



8. The Seller may provide Personal Information and disclose default information about the Applicant to any or all the Credit Reporting Bodies referred to below. The Applicant consents to such disclosure.
 - a. Illion
w: www.illion.com.au
e: pacaustral@illion.com.au
t: 1300 734 806
 - b. Veda Advantage
w: www.veda.com.au/contact
m: PO Box 964 North Sydney, NSW 2059
t: 02 9278 7333
 - c. National Credit Insurance Brokers
w: www.nci.com.au
m: PO Box 3315 Rundle Mall, SA 5000
t: 1800 885 820
9. The Applicant acknowledges that his/her/its consent to the Seller disclosing Information to the Seller's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective Credit Providers of the Applicant and/or Guarantor or their related bodies corporate, including for the purpose of that person considering whether to offer to act as Guarantor or offer security for that credit. The Seller does not disclose Information to overseas recipients.
10. A full copy of the Seller's privacy policy may be obtained from the Seller's website or by making a request in writing directed to the Seller. The Seller's privacy policy has more information on how the Seller manages Personal Information and how the Applicant may access, correct and make complaints about its Personal Information.
11. The Applicant will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Seller within 14 days of receipt of this statement that its terms are not accepted, continuing to trade with the Seller after receipt of this statement.
12. The terms of this privacy statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in the credit application, terms and conditions of trade or otherwise. This privacy statement shall prevail to the extent of any inconsistency.

11. EXECUTION

By signing this application for credit, the Applicant:

•... Warrants that:

- the information in the application is true, correct and not misleading.
- the Applicant is not aware of any information, notice or court proceedings that may result in the appointment of a trustee in bankruptcy, administrator, controller or managing controller, receiver or receiver manager or liquidator to it or any of its property.
- the Applicant does not intend to enter into any scheme of arrangement with creditors either formally through a court or otherwise.
- none of the Applicant's officers (if it is a company or other body corporate), partners (if it is a partnership) or it (if it is a sole trader) has been a director of a company which has been placed in liquidation or has been declared bankrupt or has entered into an arrangement under the Bankruptcy Act 1966 (Cth) (as amended).
- he/she/it/they can pay his/her/its/their debts as they become due.
- there is no other material circumstance or event that is known to the Applicant which, if known by the Seller, would likely affect the consideration as to whether to grant a credit account.
- the person(s) executing this application have full authority to execute it and that they have obtained any necessary consents or approvals.
- Acknowledges that he/she/they/it has been provided with and the Terms and Conditions of Trade and has read and understood them together with the Terms of Credit above and advised to seek legal and financial advice prior to signing this Application.
- Agrees that the Terms of Credit and the Terms and Conditions of Trade apply to the provision of goods and services to it by Seller and to the terms of the Privacy Statement pursuant to the Privacy Act contained in the Terms of Credit.

If company or corporate trustee – signed by the Applicant in accordance with s.127 Corporations Act 2001 (Cth)

Director Name: _____	Director/Secretary Name: _____
Signature: _____	Signature: _____
Date: _____	Date: _____

If sole trader, partnership or individual(s) as trustee - all partners and individuals must sign

Name: _____	Signature: _____	Date: _____
Name: _____	Signature: _____	Date: _____
Name: _____	Signature: _____	Date: _____

If more than 3 directors or individuals, please have additional directors/individuals sign a copy of this page

OFFICE USE ONLY:

Credit Application checked by:	Approved	Rejected
_____	_____	_____
Signed	Date	
_____	_____	
Name (printed)	Position	
_____	_____	



PART 2: TERMS AND CONDITIONS OF TRADE

1. Definitions

In these Terms:

ACL means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended;

Agreement means any agreement for the provision of goods or services by the Seller to the Buyer;

Business Days means any day that banks are generally open for business but not a Saturday, Sunday or a public holiday.

Buyer means the person, jointly and severally if more than one, acquiring goods or services from the Seller and includes the Applicant named in section 1 of Part 1 Credit Application

consumer is as defined in the ACL and in determining if the Buyer is a consumer, the determination is made if the Buyer is a consumer under the Agreement;

Days means calendar days;

goods means goods supplied by the Seller to the Buyer;

GST means the Goods and Services Tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended;

Intellectual Property means all copyright, patents, trademarks, designs, names, formulae, Specifications, confidential information and all modifications, improvements and enhancements (whether registrable or not) owned by or licensed to the Seller in respect of the goods or services;

PPSA means the *Personal Property Securities Act 2009* (Cth) as amended;

Seller means NQ Rural Feeds Pty Ltd T/A Top Stock Agencies ABN 34 620 264 271 and each of its subsidiaries, divisions, affiliates, associated companies and related entities, successors, transferees or assigns;

services means the services supplied by the Seller to the Buyer;

Site means any site at which services are to be performed;

Specifications means all drawings, illustrations, descriptive matter and particulars contained in the Seller's catalogues, price lists and marketing documents; and

Terms means these Terms and Conditions of Trade.

2. Basis of Agreement

2.1 Unless otherwise agreed by the Seller in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other terms, including the Buyer's terms and conditions of purchase (if any).

2.2 Any quotation provided by the Seller to the Buyer for the proposed supply of goods or services is:

- (a) valid for 30 Days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 The Terms may include additional terms in the Seller's quotation, which are not inconsistent with these Terms.

2.4 An Agreement is accepted by the Seller when the Seller accepts, in writing or electronic means, an offer from the Buyer or provides the Buyer with the goods or services.

2.5 The Seller has absolute discretion to refuse to accept any offer.

2.6 The Buyer must provide the Seller with its specific requirements, if any, in relation to the goods and services.

2.7 The Seller may vary or amend these Terms by written notice to the Buyer at any time. Any variations or amendments will apply to orders placed after the notice date.

3. Pricing

3.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services. In addition to payment of the price of goods and services, the Buyer must pay any GST and any other taxes or duties imposed on the goods and services.

3.2 Prices for goods and services are set in accordance with the Seller's price list as amended from time to time.

3.3 If the Buyer requests any variation to the Agreement, the Seller may increase the price to account for the variation.

3.4 Where there is any change in the costs incurred by the Seller in relation to goods or services, the Seller may vary its price to take account of any such change, by notifying the Buyer.

4. Payment

4.1 Unless otherwise agreed in writing:

- (a) subject to 4.1(b), full payment for the goods or services must be made within 30 Days of the date of the Seller's invoice.
- (b) the Seller reserves the right to require payment in full on delivery of the goods or completion of the services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment terms may be revoked or amended at the Seller's sole discretion immediately upon giving the Buyer written notice.

4.4 The time for payment is of the essence.



5. Set off

- 5.1 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 5.2 Any amount due to the Buyer from time to time, may be deducted from any monies which may or may become payable to the Buyer by the Seller.

6. Payment Default

- 6.1 If the Buyer defaults in payment by the due date of any amount payable to the Seller, then all money which would become payable by the Buyer to the Seller later any account, becomes immediately due and payable without the requirement of any notice to the Buyer, and the Seller may, without prejudice to any of its other accrued or contingent rights:
- (a) charge the Buyer interest on any sum overdue calculated at a rate of 18% per annum from the due date until the date of payment in full;
 - (b) charge the Buyer for, and the Buyer must indemnify the Seller from, all costs and expenses on a full indemnity basis (including without limitation all mercantile agency costs, legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;
 - (c) cease or suspend supply of any further goods or services to the Buyer;
 - (d) by written notice to the Buyer, terminate any uncompleted contract with the Buyer.
- 6.2 Clauses 6.1(c) and (d) may also be relied upon, at the Seller's option:
- (a) where the Buyer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
 - (b) where the Buyer is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Buyer.

7. Passing of Property

- 7.1 Until the Seller receives full payment in cleared funds for all goods and services supplied by it to the Buyer, as well as all other amounts owing to the Seller by the Buyer:
- (a) title and property in all goods remains vested in the Seller and does not pass to the Buyer;
 - (b) the Buyer must hold the goods as fiduciary bailee and agent for the Seller;
 - (c) the Buyer must keep the goods separate from its own goods and maintain the Seller's labeling and packaging;
 - (d) the Buyer must hold the proceeds of any sale of the goods on trust for the Seller in a separate account with a bank to whom the Buyer has not given security however failure to do so will not affect the Buyer's obligation to deal with the proceeds as trustee;
 - (e) in addition to its rights under the PPSA, the Seller may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of the Seller, and for this purpose the Buyer irrevocably licenses the Seller to enter such premises and also indemnifies the Seller from and against all costs, claims, demands or actions by any party arising from such action.

8. Personal Property Securities Act

- 8.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 8.2 For the purposes of the PPSA:
- (a) terms used in this clause 8 that are defined in the PPSA have the same meaning as in the PPSA;
 - (b) these Terms are a security agreement and the Seller has a Purchase Money Security Interest in all present and future goods supplied by the Seller to the Buyer and the proceeds of the goods;
 - (c) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Buyer at any particular time;
 - (d) the Seller has, where applicable, an agricultural PMSI in relation to the goods supplied by the Seller to the Buyer; and
 - (e) the Buyer must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by the Seller on the Personal Property Securities Register.
- 8.3 The security interest arising under this clause 8 attaches to the goods when the goods are collected or dispatched from the Seller's premises and not at any later time.
- 8.4 Where permitted by the PPSA, the Buyer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.

- 8.5 The Seller and the Buyer agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 8.6 To the extent permitted by the PPSA, the Buyer agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Buyer or which place obligations on the Seller will apply only to the extent that they are mandatory or the Seller agrees to their application in writing; and
 - (b) where the Seller has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 8.7 The Buyer must immediately upon the Seller's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
 - (b) procure from any person considered by the Seller to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Seller may at any time require.
- 8.8 The Seller may allocate amounts received from the Buyer in any manner the Seller determines, including in any manner required to preserve any Purchase Money Security Interest or any Agricultural PMSI it has in goods supplied by the Seller.

9. Security/Charge

- 9.1 The Buyer charges in favour of the Seller all of its estate and interest in any real or personal property that the Buyer owns at present and in the future with the amount of its indebtedness in this Agreement until discharged.
- 9.2 The Buyer appoints as its duly constituted attorney the Seller's secretary from time to time to execute in the Buyer's name and deed, real property mortgage, bill of sale or consent to any caveat the Seller may choose to lodge against real property that the Buyer may own in any Land Titles Office in any state or territory in Australia, even though the Buyer may not have defaulted in carrying out its obligations in this Agreement.
- 9.3 Where the Buyer has previously entered into an agreement with the Seller by which the Buyer has granted a charge, mortgage or other security interest (including a security interest as defined in the PPSA) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Agreement and will secure all indebtedness and obligations of the Buyer under this Agreement. The Seller may, at its election, vary the terms of such previous charges, mortgage or other securities to reflect the terms in this Agreement.
- 9.4 The Buyer hereby undertakes to execute and to procure the execution by the intended guarantor(s) (if any) at its own cost (whenever called upon so to do) a proper legal form of security including but not limited to a legal mortgage to the Seller of any real property owned by the Buyer or the intended guarantors, a registerable charge over the Buyer's assets, a goods and chattel mortgage, banker's guarantee, credit insurance policy or other security acceptable to the Seller to secure all monies for the time being due or to become due to the Seller in relation to the supply of Goods. The said security shall be in a form and contain such powers and provisions as the Seller shall reasonably require.

10. Risk and Insurance

- 10.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Buyer immediately on the goods being delivered to the Buyer or taken from the Seller's premises.
- 10.2 The goods are sold to the Buyer on the basis that the Buyer has obtained all necessary licenses or permits under all relevant laws and regulations in relation to the goods.
- 10.3 The Buyer assumes all risk and liability for loss, damage or injury to persons or to property of the Buyer, or third parties arising out of the use, installation, storage or possession of any of the goods sold by the Seller, unless recoverable from the Seller on the failure of any statutory guarantee under the ACL.

11. Warranties

- 11.1 Any warranties given by the Seller with respect to the goods are set out on the packaging in which the goods are supplied or in enclosures supplied with the goods.

12. Performance of Agreement

- 12.1 Any period or date for delivery of goods or provision of services stated by the Seller is an estimate only and not a contractual commitment.
- 12.2 The Seller will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Buyer or any third party for failure to meet any estimated date.
- 12.3 If the Seller cannot complete the services by any estimated date, it will do so within a reasonable time.

13. Delivery

- 13.1 Subject to clause 13.6, the Seller will arrange for the delivery of the goods to the Buyer.
- 13.2 Unless otherwise agreed, the Buyer is responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Buyer to the point of delivery.
- 13.3 The Seller may make part delivery of goods and services and may invoice the Buyer for the goods or services so delivered or completed.
- 13.4 The Buyer indemnifies the Seller against any loss or damage suffered by the Seller, its sub-contractors or employees as a result of delivery, except where the Buyer is a consumer and the Seller has not used due care and skill.
- 13.5 If delivery is attempted and is unable to be completed, the Buyer is deemed to have taken delivery of the goods. The Buyer is liable for storage charges payable monthly on demand.
- 13.6 If agreed that the Buyer will collect the goods:
- (a) the Buyer must collect the goods within 7 Days of being advised that they are ready;
 - (b) if the Buyer does not collect the goods within this time, the Buyer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.

14. Site Requirements

- 14.1 The Buyer must provide suitable and practical means of access to the Site and ensure that the Site is suitably prepared for the provision of the Services.
- 14.2 The Buyer indemnifies the Seller against any loss or damage suffered by the Seller, its sub-contractors or employees as a result of providing the services, except where the Buyer is a consumer and the Seller has not used due care and skill.
- 14.3 Where the Seller provides the services at the Site, the Buyer warrants that it is the owner of the Site or is authorised to request the services be conducted at the Site, and that it has all of the required permissions, permits, approvals and authorisations for this to occur.
- 14.4 At no time does the Seller take or accept any ownership of or responsibility for the Site. All risk and liability in and relating to the Site remains with the Buyer at all times.

15. Liability

- 15.1 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 15.2 If the Buyer is a consumer, nothing in these Terms restricts, limits or modifies the Buyer's rights or remedies against the Seller for failure of a statutory guarantee under the ACL.
- 15.3 If the Buyer on-supplies the goods to a consumer:
- (a) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Seller's liability to the Buyer;
 - (b) if the goods or services are of a kind ordinarily acquired for personal, domestic or household use or consumption, then payment of any amount required under section 274 of the ACL is the absolute limit of the Seller's liability to the Buyer, howsoever arising under or in connection with the sale, installation, use of, possession of, storage of, or any other dealings with the goods or services by the Buyer or any third party.
- 15.4 If clause 15.2 or 15.3 does not apply, then other than as stated in the Terms or any written warranty statement, the Seller is not liable to the Buyer in any way howsoever arising under or in connection with the sale, installation, use of, possession of, storage of, or any other dealings with the goods or services by the Buyer or any third party.
- 15.5 The Seller is not liable for any indirect or consequential losses or expenses suffered by the Buyer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party, except to the extent of any liability imposed by the ACL.
- 15.6 The Buyer acknowledges that:
- (a) it has not relied on any service involving skill and judgment, or on any advice, recommendation, information or assistance provided by the Seller in relation to the goods or services or their use or application.
 - (b) it has not made known, either expressly or by implication, to the Seller any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for its use.
- 15.7 Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be so excluded, restricted or modified.

16. Cancellation

- 16.1 If the Seller is unable to deliver or provide the goods or services, then it may cancel the Buyer's order (even if it has been accepted) by written notice to the Buyer.
- 16.2 No purported cancellation or suspension of an order or any part of it by the Buyer is binding on the Seller once the order has been accepted.



17. Shortages and Exchanges

- 17.1 Subject to clause 17.2 and 17.4, the Seller will not be liable for any shortages, damage or non-compliance with the specifications in the Agreement unless the Buyer notifies the Seller with full details and description within 10 Days of delivery. Otherwise, the Buyer is deemed to have accepted the goods.
- 17.2 When any shortages, claim for damaged goods or non-compliance with the Agreement specifications is accepted by the Seller, the Seller may, at its option, repair the goods, replace the goods, or refund the price of the goods.
- 17.3 Subject to clause 17.4, the Seller will not under any circumstances accept goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil the Agreement;
 - (b) are discontinued goods or no longer stocked by the Seller;
 - (c) have been altered in any way;
 - (d) have been used; or
 - (e) are not in their original condition and packaging.
- 17.4 If the Buyer is a consumer, nothing in this clause 17 limits any remedy available for a failure of the statutory guarantees in sections 56 and 57 of the ACL.

18. Specifications

- 18.1 All Specifications are indicative only may not be current nor accurate. The Buyer acknowledges that it has not relied on the Specifications in making its purchasing decision.

19. Intellectual Property

- 19.1 The Buyer acknowledges that it has no proprietary right or interest in the Intellectual Property.
- 19.2 The Buyer must not register or record or attempt to register or record anywhere in the world the Intellectual Property or any part thereof nor any patents, inventions, trademarks or designs derived from or similar to it, nor aid or abet anyone else in doing so.
- 19.3 The Buyer must not at any time create, sell, manufacture or process any products using or taking advantage of the Intellectual Property.
- 19.4 Any Intellectual Property provided to the Buyer by the Seller in connection with the goods or services remains the exclusive property of the Seller and must be returned to the Seller on demand. The Buyer must not copy nor communicate the Intellectual Property to any third party without the Seller's express prior written consent.

20. Force Majeure

- 20.1 The Seller is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by events beyond its reasonable control, including, without limitation, industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism, or acts of war. If an event of force majeure occurs, the Seller may suspend or terminate the Agreement by written notice to the Buyer.

21. Miscellaneous

- 21.1 The law of Queensland from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 21.2 The Seller's failure to enforce any of these Terms shall not be construed as a waiver of any of the Seller's rights.
- 21.3 If a clause is unenforceable it must be read down so as to be enforceable or, if it cannot be so read down, it must be severed from these Terms without affecting the enforceability of the remaining terms.
- 21.4 A notice must be in writing and handed personally or sent by facsimile, email or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received 3 Business Days after posting. Notices sent by facsimile or email are deemed received upon confirmation of successful transmission.

22. Privacy Statement

- 22.1 A full copy of the Seller's privacy policy may be obtained from the Seller's website or by making a request in writing directed to the Seller. The Seller's privacy policy has more information on how the Seller and the above Credit Reporting Bodies manage Personal Information and how the Applicant may access, correct and make complaints about its Personal Information.

NQ RURAL FEEDS PTY LTD T/A TOP STOCK AGENCIES

PART 3: DEED OF GUARANTEE AND INDEMNITY

TO: NQ Rural Feeds Pty Ltd T/A Top Stock Agencies ABN 34 620 264 271 of PO Box 171, Mareeba, Queensland, 4880 (the Seller)

APPLICANT CUSTOMER: _____

ACN / ABN: _____

CURRENT DEBT ACKNOWLEDGED: Existing Applicant Customer: \$ _____ as at _____

GUARANTOR 1:

Name: _____ Driver's Licence No: _____

Address: _____ Date of Birth: _____

GUARANTOR 2:

Name: _____ Driver's Licence No: _____

Address: _____ Date of Birth: _____

GUARANTOR 3:

Name: _____ Driver's Licence No: _____

Address: _____ Date of Birth: _____

In consideration of the Seller having agreed at the Guarantor's request to supply or continue to supply the Applicant with goods or services on credit or grant an indulgence outside the Seller's agreed credit terms, the person(s) identified above as guarantors, hereby covenant and undertake, and if more than one, jointly and severally, as follows:

Definitions

- The Following definitions apply to this guarantee and indemnity:
 - Applicant** means the party listed above including all related and associated companies, trusts and other entities, all successors and/or assigns, any party or parties who acquire, have any beneficial interest in and/or conduct any part of the business of the Applicant.
 - Guarantee** means this guarantee and indemnity as may be varied, amended or supplemented from time to time.
 - Guaranteed Monies** means all monies at any time actually or contingently owing to the Seller by the Applicant either alone or jointly or severally with others on any account arising from past or present and/or future dealing with the Applicant.
 - Guarantor** means each of the person(s) named above including their respective executors, administrators and successors.
 - Privacy Act** means the Privacy Act 1988 Act (as amended);
 - Seller** means NQ Rural Feeds Pty Ltd T/A Top Stock Agencies ABN 34 620 264 271 and each of its subsidiaries, divisions, affiliates, associated companies and related entities, successors, transferees or assigns;
 - We** and **us** means any and all of the Guarantors listed above and if more than one jointly and severally and in any event (to the extent applicable) the joint and several successors and/or assign of each.

Consideration

- The Guarantor agrees to guarantee the performance of all obligations and the payment to the Seller of all money which is now or at any time in the future becomes due and payable to the Seller by the Applicant on any account or accounts whether they now exist or which may in the future be opened or in any manner whatsoever in consideration of the Seller extending or agreeing to extend credit, or further credit to the Applicant, for goods or services sold or to be sold from time to time.

Guarantee and Indemnity

- The Guarantor indemnifies the Seller against all loss, damage or expense it may suffer as a result, either directly or indirectly, of any failure by the Applicant to make due payment of any money owing to the Seller whether for goods sold, services rendered or otherwise or to observe the terms of any agreement between the Applicant and the Seller including costs on an indemnity basis.



4. The Guarantor unconditionally and irrevocably guarantee to the Seller the due and punctual payment by the Applicant to the Seller of the Guaranteed Monies, including without limitation, by way of:
 - (a) monies payable for goods and/or services;
 - (b) interest;
 - (c) costs and charges; and
 - (d) indemnity for damages.
5. If the Applicant defaults in payment of the Guaranteed Monies, the Guarantor must pay those monies on demand to or as directed by the Seller to discharge the debt owed by the Applicant in full.
6. The Guarantor agrees that the Guarantee will be a continuing guarantee and indemnity and will not be considered as wholly or partially satisfied or discharged by any money which may at any time or times in the future be received or applied by the Seller to the credit of any account of the Applicant or us, or deemed to be held on trust by the Applicant for the Seller, and will be available as a guarantee and indemnity for the whole of the Guaranteed Monies.
7. The Guarantor agrees that where two or more persons execute this guarantee and indemnity, the guarantees, covenants, obligations in this guarantee given or undertaken by me/us will be deemed to bind me/us jointly and severally and the Seller will be entitled to seek payment in full from any one or more of us without seeking payment from the other Guarantors.
8. This Guarantee will continue in force until such time as the Seller releases the Guarantor in writing and notwithstanding the fact that he/she or they may no longer be directors, shareholders or owners of the Applicant.
9. The Seller need not incur any expenses or make any payment before enforcing its right to indemnity.
10. The Guarantor agrees:
 - (a) to pay to a stakeholder nominated by the Seller the amount the Seller certifies is payable before being entitled to dispute whether or not that amount is payable;
 - (b) that this Guarantee shall remain effective notwithstanding any act, matter, event or omission which might otherwise operate to discharge, impair or otherwise affect the liability of the Applicant or the liability under this Guarantee and any failure of any Guarantor to sign this Guarantee and even if the Guarantor executes in the Seller's favour any later agreement, guarantee and/or security whatsoever;
 - (c) that any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid;
 - (d) that the Guarantor signs both in his/her/its personal capacity and as Trustee of every trust of which he/she/it are trustee; and
 - (e) to notify the Seller within seven days of any change in the Applicant's structure, management and/or position including:
 - i. any sale or disposition of any part of the business of the Applicant; any change in director, shareholder, management, partnership and/or trusteeship;
 - ii. any new charge, mortgage and/or security given to any supplier and/or financier; any involvement in any franchised business in any capacity.

Credit Limit

11. Any credit granted by the Seller to the Applicant is at the Seller's discretion and shall not limit the Guarantor's joint and several liability to the Seller.

Acknowledgment of Current Debt

12. The Guarantor acknowledges that the Applicant is indebted to the Seller in the sum noted above as at the date noted above and acknowledges and agrees that the guarantee under the Guarantee is unlimited.

Charge

13. The Guarantor agrees to charge in the Seller's favour all of his/her/its estate and interest in any real or personal property that the Guarantor owns at present and in the future with the amount of his/her/its indebtedness under this Guarantee until discharged, such indebtedness to include the entire Guaranteed Monies.
14. The Guarantee secures the repayment of the Guaranteed Monies owed by the Applicant to the Seller.

Attorney

15. The Guarantor irrevocably appoints any solicitor for the Seller from time to time as attorney to give effect to the Guarantor's obligations arising under the Guarantee.

Personal Property Securities Act

16. For the avoidance of doubt, the security interest(s) created by the Guarantee, in favour of the Seller, constitutes a security interest pursuant to the *Personal Property Securities Act 2009* (Cth).
17. The Guarantor agrees to waive any right or entitlement to receive notice of the registration of any security interest(s) created by this Guarantee on the Personal Property Securities Register.

Service of Notices

18. Service of notices or any document required to be served, including any notice under this Guarantee, the *Personal Property Securities Act 2009* (Cth) or any originating process, may be by prepaid post at the address nominated in this application or any other address later notified to the Seller by the Guarantor or his/her/its authorised representative.



Variation

19. The Seller may give time or any other indulgence or consideration to the Applicant in respect of compliance with its obligations to the Seller, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantor's liability under this Guarantee.
20. This Guarantee will not be avoided, released or affected by the Seller making any variation or alteration in the terms of its agreement(s) with the Applicant, even if such variations or alterations have the effect of increasing the Guarantor's liability under this Guarantee.

Severability

21. If any part of the Guarantee shall be severable without affecting any other part of this Guarantee should any part of it be not enforceable.

Costs and Stamp Duty

22. The Seller is at liberty from time to time to charge the account of the Applicant with all costs, charges and expenses, legal or otherwise that the Seller incurs in connection with:
 - (a) The account of the Applicant;
 - (b) This Guarantee;
 - (c) Any other security in respect of the indebtedness of the Applicant to the Seller;
 - (d) any stamp duty applicable to this Guarantee;
 - (e) any charge created pursuant to this Guarantee;
 - (f) the exercise of attempted exercise of any right, power or remedy conferred on the Seller under or by virtue of this Guarantee,and such amounts will form part of the Guaranteed Monies.
23. The Guarantor agrees to pay to the Seller all costs and disbursements incurred in recovering or attempting to recover the Guaranteed Monies including debt collection costs or commission payable to any commercial or mercantile collection agency and legal costs on a full indemnity basis.

Jurisdiction

24. The law of Queensland from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Queensland, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.

Insolvency

25. The Guarantor will not compete with Seller for any dividend or distribution in the event of the Buyer being declared bankrupt, going into liquidation or being wound up or entering any deed or scheme of arrangement or assignment or composition in respect of its affairs or its assets and liabilities.

Privacy Statement

26. This privacy statement is made pursuant to the Privacy Act and provides information about the Personal Information that the Seller collects, and the ways in which it uses that Personal Information.
27. For the purposes of this privacy statement, the following definitions apply:
 - (a) **Primary Purposes** means assessment of a credit application, reviewing existing credit terms, assessing Credit Worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
 - (b) **Information** means Personal Information, Sensitive Information, Credit Eligibility Information, Credit Reporting Information and Credit Information, both severally and collectively.
 - (c) **Commercial Credit Related Purpose, Consumer Credit Related Purpose, Credit Eligibility Information, Credit Guarantee Purpose, Credit Information, Credit Provider(s), Personal Information, Sensitive Information, Credit Reporting Code, Credit Reporting Body(ies) and Credit Reporting Information** each have the same meaning as under the Privacy Act.
 - (d) **Creditworthiness Information** means information that is both positive (eg. payment information) and negative (eg. defaults or serious credit infringements).
28. The Seller may collect Personal Information about the Applicant and/or Guarantor for the Seller's Primary Purposes.
29. The Guarantor consents to the Seller collecting, using and disclosing Personal Information (including Sensitive Information) for both its Primary Purposes and purposes other than its Primary Purposes.
30. The Seller may collect, and may already have collected, Information from the Applicant and/or Guarantor, other Credit Providers, Credit Reporting Bodies and other third parties for the purposes of its functions and activities including credit, sales, marketing and administration. If the Information was not collected by the Seller it may restrict or impede upon the Seller trading with, extending credit to, continuing to extend credit to or extending further credit to the Applicant and/or Guarantor or their related bodies corporate. Further, if the Applicant chooses not to provide Personal Information, the Seller may not be able to provide the Applicant with credit account facilities and/or assess persons to be a guarantor of the credit facility.
31. The Guarantor consents to the Seller obtaining and making disclosure of Information about the Guarantor from and to a Credit Reporting Body and/or another Credit Provider for any or all of the following purposes: Commercial Credit Purpose, Consumer Credit Purpose Credit Guarantee Purpose or another related purpose.
32. The Seller notifies the Guarantor that it may use and/or disclose Credit Eligibility Information under section 21G of the Privacy Act.



33. The Seller may provide Personal Information and disclose default information about the Guarantor to any or all the Credit Reporting Bodies referred to below. The Guarantor consents to such disclosure.
- a. Illion
w: www.illion.com.au
e: pacaustral@illion.com.au
t: 1300 734 806
 - b. Veda Advantage
w: www.veda.com.au/contact
m: PO Box 964 North Sydney NSW 2059
t: 02 9278 7333
 - c. National Credit Insurance Brokers
w: www.nci.com.au
m: PO Box 3315 Rundle Mall, SA 5000
t: 1800 885 820
34. The Guarantor acknowledges that his/her/their consent to the Seller disclosing Information to the Seller's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective Credit Providers of the Applicant and/or Guarantor or their related bodies corporate, including for the purpose of that person considering whether to offer to act as Guarantor or offer security for that credit. The Seller does not disclose Information to overseas recipients.
35. A full copy of the Seller's privacy policy may be obtained from the Seller's website or by making a request in writing directed to the Seller. The Seller's privacy policy has more information on how the Seller and the above Credit Reporting Bodies manage Personal Information and how the Guarantor may access, correct and make complaints about its Personal Information.
36. The Guarantor will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to the Seller within 14 days of receipt of this statement that its terms are not accepted, continuing to trade with the Seller after receipt of this statement or, if the Guarantor is a director of the Applicant, by not taking steps to prevent the Applicant from continuing to trade with the Seller after receipt of this statement.
37. The terms of this privacy statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in the credit application, terms and conditions of trade or otherwise. This privacy statement shall prevail to the extent of any inconsistency.

Read and Understood

- I/We have read and understood this document before signing it.
- I/We understand that I/we may be required to pay someone else's debt and warrant that I/we have read and understand this Guarantee and its terms, and if necessary, sought independent professional legal and/or financial advice prior to executing this Guarantee.
- I/We agree to the terms of the Privacy Statement pursuant to the Privacy Act contained in this Guarantee.

Executed as a Deed	
Signed sealed and delivered by the Guarantor(s) in the presence of the below witness(es)	
GUARANTOR 1:	
Date: _____	
Guarantor Signed: _____	Guarantor Name: _____
Witness Signed: . _____	Witness Name: _____
GUARANTOR 2:	
Date: _____	
Guarantor Signed: _____	Guarantor Name: _____
Witness Signed: . _____	Witness Name: _____
GUARANTOR 3:	
Date: _____	
Guarantor Signed: _____	Guarantor Name: _____
Witness Signed: . _____	Witness Name: _____

