

**UNITED CRATE CO-OPERATIVE LTD****ABN 41 159 900 301**

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CANNING VALE WA 6155

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**UnitedCrate**  
 CO-OPERATIVE LTD  
 Est 1963
**OFFICE USE ONLY**

Account No:

Long Term Hire: Yes  No **APPLICATION FOR COMMERCIAL CREDIT****Customer details**

Trading name			
Name of company, trust, person(s) or partnership operating business			
ACN		ABN	
Business street address			
Business postal address			
Farm / Shop address			
Farm / Shop address			
Farm / Shop address			
Farm / Shop address			
Farm / Shop address			
Contact person (sales/orders)		Tel (b/h)	
Fax (b/h)		Email	
Contact person (accounts payable)		Tel (b/h)	
Fax (b/h)		Email	
Preferred method of correspondence	Fax <input type="checkbox"/> Email <input type="checkbox"/> Mail <input type="checkbox"/>		
Name of bank		Branch	
Account no.		BSB	
Date business commenced		Nature of business	
Chep Pallet Acct No.		Loscam Pallet Acct No.	
Crate/Bin type		Estimated time of use	

**Details of directors/partners**

Name		DOB	
Address		Drivers licence	
Title		Mobile	
Name		DOB	
Address		Drivers licence	
Title		Mobile	

**Trade references**

Name		Telephone	
Address		Fax / Email	
Name		Telephone	
Address		Fax / Email	
Name		Telephone	
Address		Fax / Email	

# TERMS AND CONDITIONS

## Definitions

- In this Agreement, the following expressions shall have the following meaning:  
**'Agreement'** means this agreement and any annexure of attachment.  
**'Unicrate'** means United Crate Co-operative Limited ABN 41 159 900 301 and its related bodies corporate (as that term is defined in the *Corporations Act 2001*).  
**'Customer'** means the person, firm, organisation, partnership, corporation, trust or other entity hiring and/or purchasing Crates from Unicrate.  
**'Crates'** means any and all plastic crates, bulk bins and any other goods supplied by Unicrate (whether or not supplied on hire).  
**'Commencement Date'** means the date the Crates are delivered to the Customer pursuant to clause 33.  
**'Hire Period'** means the term the Crates are hired by the Customer as agreed between the Parties and starting on the Commencement Date.  
**'Parties'** means Unicrate and the Customer, and Party means either one of them.  
**'Produce'** means fresh fruit and/or vegetables.

## Purpose of credit

- The Customer acknowledges and agrees that the credit to be provided to the Customer by Unicrate is to be applied wholly or predominantly for commercial purposes.

## Formation of contract

- Quotations shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. Unicrate, in its discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a contract in accordance with clause 4.
- Quotations made by Unicrate will not be construed as an offer or obligation to supply in accordance with the quotation. Unicrate reserves the right to accept or reject, at its discretion, any offer received by it upon provision of written reasons to the Customer. Only written acceptance by Unicrate of the Customer's offer will complete a contract. An order placed by the Customer shall only constitute a binding contract between the Parties if the order has been accepted by Unicrate in writing. Such written acceptance may take the form of the issuing of an invoice by Unicrate, the issuing of an acknowledgement or confirmation by Unicrate or any other document indicating acceptance of an order.
- Placement of an order, either verbally or in writing, will imply acceptance of these terms and conditions.

## Deposit

- It is a condition of hire that the Customer must pay a deposit to Unicrate. The deposit amount or percentage of the price due will be stipulated at the time of the order and shall immediately become due and payable upon the formation of a contract in accordance with clause 4.
- The Customer acknowledges that:
  - Unicrate reserves the right to apply the deposit to any overdue or unpaid hire charges and/or additional charges;
  - Unicrate reserves the right to deduct from the deposit the cost of repair or replacement of any lost, damaged, or destroyed Crates;
  - the deposit will be refunded to the Customer upon the conclusion of the Hire Period, subject to the Crates being returned pursuant to clause 17, and subject to the Customer's due compliance of all terms and conditions herein.

## Payment terms

- The terms of payment are strictly seven (7) days from the date of invoice (or such other period as nominated by Unicrate herein).
- The Customer must check all invoices and advise Unicrate of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice may be deemed accepted by Unicrate.
- Should the Customer not pay for the Crates supplied by Unicrate in accordance with the credit terms as provided herein, or as agreed in writing by Unicrate and the Customer from time to time, after issuing a written demand to the Customer demanding payment within fourteen (14) days, Unicrate will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.
- The Customer acknowledges that Unicrate shall be at liberty to charge a surcharge for credit card transactions equal to the merchant fees incurred by Unicrate.

## Hire services

- The Hire Period shall commence on the Commencement Date.
- Upon delivery of the Crates pursuant to clause 33, the Customer must inspect the Crates and must, within twenty-four (24) hours, notify Unicrate in writing if the Crates are unsuitable for the purpose of hire. If the Customer fails to provide Unicrate with such notice, then, to the extent permitted by law, Unicrate shall be deemed to have inspected the Crates and satisfied itself as to the suitability of the Crates for the purpose of this Agreement.
- Unless Unicrate has agreed to supply Crates on a long term hire basis, the maximum period of hire for Crates is fourteen (14) days.
- At any time prior to the conclusion of the Hire Period, the Customer may request that the Hire Period be extended. Unicrate may at its discretion agree to or refuse to grant such an extension.
- If Unicrate agrees to an extension of the Hire Period pursuant to clause 15, the Customer shall be liable to pay to Unicrate additional hire charges in units of fourteen (14) days (even if the Crates are in the Customer's possession for a period of less than fourteen (14) days) until such time as the Crates are collected by Unicrate or are returned to Unicrate.
- Upon the conclusion of the Hire Period:
  - if the contract or quotation provides that the Crates are to be collected by Unicrate, then the Customer shall make the Crates ready for collection at the time and place agreed between the Parties and shall ensure that the Crates are in a condition at their time of collection at least equal to the condition of the Crates at the time the Crates were initially delivered or collected (fair wear and tear excepted); or
  - if the contract or quotation provides that the Crates are to be returned by the Customer, then the Customer shall immediately, and without delay, return the Crates to Unicrate's premises in a condition at least equal to the condition of the Crates at the time the Crates were initially delivered or collected (fair wear and tear excepted).
- If, for whatever reason, the Customer fails to return the Crates to Unicrate upon the conclusion of the Hire Period pursuant to clause 17, then the Customer shall be liable to pay to Unicrate:
  - if the contract or quotation is for the supply of Crates on a short term hire basis, additional hire charges in units of fourteen (14) days (even if the Crates are in the Customer's possession for a period of less than fourteen (14) days);
  - if the contract or quotation is for the supply of Crates on a long term hire basis, additional hire charges at the daily rate prescribed by the contract for each day (or part thereof) the Crates remain unreturned or uncollected;until such time as the Crates are collected by Unicrate or are returned to Unicrate.

## Variations

- Where the Customer requests or directs that any additional Crates be supplied that are not strictly in accordance with the quotation, then such Crates shall constitute a variation, unless otherwise agreed between the Parties.
- The Customer acknowledges that:
  - all variations must be agreed between the Parties in writing prior to the Crates being supplied; and
  - all variations shall be, at Unicrate's discretion, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with Unicrate's prevailing price list (as updated from time to time).

- Notwithstanding clauses 19 and 20, and subject to any rights the Customer might have under any relevant legislation, Unicrate reserves the right to vary the quoted price if:
  - there is any movement in the cost of supplying the Crates specified in the Customer's order;
  - the Crates specified in the Customer's order are varied from the Crates specified in Unicrate's quotation;
  - the Customer over orders and seeks to return Crates during the Hire Period; or
  - otherwise provided for in these terms and conditions.

## Customer's obligations

- In respect of Crates supplied on hire, the Customer warrants and covenants that it shall:
  - only use the Crates for the purpose of transferring Produce;
  - not allow any person to use the Crates for any other purpose other than transferring Produce;
  - not use the Crates for storage or display purposes;
  - take all reasonable steps to securely store the Crates and protect the Crates against acts of theft and vandalism;
  - not move the Crates (or allow the Crates to be moved) outside of the State of Western Australia;
  - not move the crates (or allow the Crates to be moved) to the North West of the State of Western Australia beyond the 26<sup>th</sup> parallel;
  - not alter, tamper with, modify, repair (or attempt to alter, tamper with, modify or repair) the Crates without the express written consent of Unicrate;
  - not alter, remove, deface, or cover up any labels, logos, or marks on the Crates, which bear the name of Unicrate, or any trade marks or trade names used in relation to the Crates; and
  - not sell, pledge, assign, transfer, or otherwise deal with the Crates in a manner inconsistent with Unicrate's rights and interest in the Crates.

## Cancellation of orders

- Unless otherwise agreed in writing between the parties, the Customer may not cancel an order (or any part of an order) unless the Customer pays to Unicrate (in Unicrate's sole discretion) any and all costs incurred by Unicrate in relation to the cancelled order (or cancelled part of an order) up until and including the date of cancellation.
- Notwithstanding any other rights Unicrate may have under this Agreement, Unicrate may cancel any order or delivery of any order for the supply Crates, by providing written notice to the Customer if the Customer:
  - defaults in payment of any invoice by the due date;
  - enters into liquidation or, in the case the Customer is an individual, becomes bankrupt; or
  - breaches an essential term of this Agreement.
- To the fullest extent permitted by law, Unicrate accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of Unicrate exercising its rights under clause 24.

## Cancellation of terms of credit

- Unicrate reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.
- Notwithstanding clause 26, if the Customer defaults in the payment of any amount due to Unicrate pursuant to this Agreement and does not cure such default within seven (7) days after being given notice of such default, Unicrate may terminate this Agreement (to be effective immediately) upon notice to the Customer.
- Upon the withdrawal of credit in accordance with clause 26, or upon termination of this Agreement in accordance with clause 27, all liabilities incurred by the Customer become immediately due and payable to Unicrate.
- For the avoidance of doubt, termination of this Agreement will not affect:
  - the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
  - the rights and/or obligations pursuant to this Agreement which by their nature are intended to survive termination of this Agreement.

## Delivery

- The Customer shall pay all costs associated with delivery, including freight, insurance, handling and other charges.
- The Customer acknowledges and accepts that any estimated delivery or supply of Crates provided by Unicrate is an estimate only and Unicrate will not be liable for any loss suffered by the Customer as a result of any delay in delivery or non-delivery of the Crates.
- Delivery will be made within normal business hours between Monday to Friday, 5.00am to 5.00pm only (unless otherwise agreed to in writing).
- Delivery is deemed to occur at the earlier of:
  - the collection of Crates from Unicrate by the Customer or any third party on behalf of the Customer;
  - the time of loading of Crates at Unicrate's premises for the purpose of delivery to the Customer.
- Unicrate is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Crates.
- The Customer accepts that Unicrate may deliver the Crates by instalments and may require payment for each separate instalment in accordance with these terms and conditions.
- The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery or non-delivery of the Crates.

## Returns

- In respect of Crates sold under this Agreement, the Customer must inspect the Crates immediately upon delivery and must within seven (7) days after the date of inspection give written notice to Unicrate with particulars, of any claim that the Crates are not in accordance with this Agreement. If the Customer fails to give notice, then to the extent permitted by law, the Crates must be treated as having been accepted by the Customer and the Customer must pay for the Crates in accordance with these terms and conditions.
- Where Crates have been sold by Unicrate under this Agreement, the Customer cannot return Crates to Unicrate without the written agreement of Unicrate.
- The Customer acknowledges and agrees that any return of purchased Crates will incur a handling and administration charge of ten (10) percent of the purchase price of the returned Crates.
- Unless otherwise agreed in writing, the Customer must pay all costs associated with the return of any Crates (either to Unicrate or from Unicrate to the Customer or any third party) including delivery and handling charges. Crates to be returned to Unicrate must be packed and wrapped appropriately and must include all original packaging and documentation (where applicable). Unicrate accepts no liability for any damage or loss that occurs to any Crates in return transit.

## Risk

- Risk of damage to or loss of the Crates passes to the Customer on delivery and the Customer must insure the Crates on or before delivery.
- If any of the Crates are damaged, destroyed or stolen following delivery, Unicrate is entitled to receive all insurance proceeds payable for the Crates. The production of these terms and conditions by Unicrate is sufficient evidence of Unicrate's rights to receive the insurance proceeds without the need for any person dealing with Unicrate to make further enquiries.

43. If the Customer requests that Crates are delivered either to an unattended location or left outside, the Customer acknowledges that Unicrate will deliver the Crates as requested at the Customer's risk.
- Retention of title**
44. Title in the Crates does not pass to the Customer until the Customer has made payment in full for the Crates and, further, until the Customer has made payment in full of all the other money owing by the Customer to Unicrate (whether in respect of money payable under a specific contract or on any other account whatsoever).
45. Whilst the Customer has not paid for the Crates supplied in full at any time, the Customer agrees that property and title in the Crates will not pass to the Customer and Unicrate retains the legal and equitable title in those Crates supplied and not yet sold.
46. Notwithstanding clauses 44 and 45, the Customer acknowledges that the Crates supplied on hire are and shall remain the absolute property of Unicrate.
47. Until payment in full has been made to Unicrate, and at all times where the Crates are at the Customer's risk, the Customer will hold the Crates in a fiduciary capacity for Unicrate and agrees to store the Crates in such a manner that they can be identified as the property of Unicrate, and will not mix the Crates with other similar goods.
48. Except for Crates supplied on hire, the Customer will be entitled to sell the Crates in the ordinary course of its business, but until full payment for the Crates has been made to Unicrate, the Customer will sell as agent and bailee for Unicrate and the proceeds of sale of the Crates will be held by the Customer on trust for Unicrate absolutely.
49. The Customer's indebtedness to Unicrate, whether in full or in part, will not be discharged by the operation of clause 48 hereof unless and until the funds held on trust are remitted to Unicrate.
50. The Customer agrees that whilst property and title in the Crates remains with Unicrate, Unicrate has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the Crates of Unicrate and to repossess the Crates which may be in the Customer's possession, custody or control when payment is overdue.
51. The Customer will be responsible for Unicrate's reasonable costs and expenses in exercising its rights under clause 50. Where Unicrate exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Unicrate, its employees, servants or agents.
52. The Customer agrees that where the Crates have been retaken into the possession of Unicrate, Unicrate has the absolute right to sell or deal with the Crates, and if necessary, sell the Crates with the trademark or name of the Customer on those Crates, and the Customer hereby grants an irrevocable licence to Unicrate to do all things necessary to sell the Crates bearing the name or trademark of the Customer.
53. For the avoidance of doubt, Unicrate's interest constitutes a 'purchase money security interest' pursuant to the PPSA.
- Lost, damaged, or destroyed Crates**
54. If any Crates supplied on hire are lost, damaged, or destroyed while in the Customer's possession, custody, or control, then the Customer agrees to indemnify Unicrate in respect of any such Crates and agrees to pay to Unicrate the then current value of the Crates immediately upon demand.
55. The Customer agrees to continue to pay hire charges in accordance with this Agreement until such time as the Customer makes payment in accordance with clause 54.
56. If, in Unicrate's reasonable opinion, any Crates returned to Unicrate in accordance with clause 17 are contaminated, soiled, vandalised, damaged or are otherwise rendered unusable, then the Customer agrees to indemnify Unicrate in respect of any such damage and must pay to Unicrate, in Unicrate's sole discretion, for the costs of cleaning, repairing or replacing the Crates. For the purposes of clarity, this indemnity extends to all costs and expenses incidental to the repair and/or disposal of damaged and/or destroyed Crates, including, but not limited to, transportation and disposal fees.
- Security/charges**
57. The Customer charges in favour of Unicrate all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
58. The Customer charges in favour of Unicrate all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
59. The Customer appoints as its duly constituted attorney Unicrate's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat Unicrate may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder).
60. Where the Customer has previously entered into an agreement with Unicrate by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009 (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 Customer under this Agreement. Unicrate may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.
- Indemnity**
61. The Customer agrees to indemnify Unicrate and keep Unicrate indemnified against any claim that arises out of the Crates supplied under this Agreement. This indemnity includes any legal fees and expenses Unicrate incurs in order to enforce its rights, on an indemnity basis.
- Provision of further information**
62. The Customer undertakes to comply with any reasonable written requests by Unicrate to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
63. If the Customer is a corporation (with the exception of a public listed company), it must advise Unicrate of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders Unicrate may ask for new guarantors to sign a guarantee and indemnity.
- Corporations**
64. If the Customer is a corporation, the Customer warrants that all of its directors have signed this Agreement and that all of its directors may be required to enter into a guarantee and indemnity with Unicrate in relation to the Customer's obligations to Unicrate.
- Trustee capacity**
65. If the Customer is the trustee of a trust (whether disclosed to Unicrate or not), the Customer warrants to Unicrate that:
- the Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;
  - the Customer has the right to be reasonably indemnified out of trust assets;
  - the Customer has the power under the trust deed to sign this Agreement; and
  - the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising Unicrate.
66. The Customer must give Unicrate a copy of the trust deed upon request.
- Partnership**
67. If the Customer enters into this Agreement as partners, the Customer warrants that all of the partners have signed this Agreement and that all of the partners may be required to enter into a guarantee and indemnity with Unicrate in relation to the Customer's obligations to Unicrate.
68. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising Unicrate. In the case of a change of partners, Unicrate may ask for new guarantors to sign a guarantee and indemnity.
- Insolvency**
69. If the Customer becomes insolvent, the Customer remains liable under this Agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this Agreement even if Unicrate receives a dividend or payment as a result of the Customer being insolvent.
- Waiver**
70. A waiver of any provision or breach of this Agreement by Unicrate must be made by an authorised officer of Unicrate in writing. A waiver of any provision or breach of this Agreement by the Customer must be made by the Customer's authorised officer in writing.
71. The Customer waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by Unicrate and the Customer), including, under section 157(1) and 157(3) to receive a notice of any verification statement.
- Costs**
72. The Customer must pay for its own legal, accounting and business costs and all costs incurred by Unicrate relating to any default by the Customer under this Agreement. The Customer must also pay for all stamp duty and other taxes payable on this Agreement (if any).
73. The Customer will pay Unicrate's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.
74. Subject to clauses 75 and 76, payments by, or on behalf of, the Customer will be applied by Unicrate as follows:
- Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 51 and 73.
  - Secondly, in payment of any interest incurred in accordance with clause 80.
  - Thirdly, in payment of the outstanding invoice(s).
75. In circumstances where Unicrate seeks to enforce a purchase money security interest under the PPSA over collateral or proceeds (these terms being consistent with the terms defined in the PPSA), payments received from the Customer will be allocated in a manner at Unicrate's absolute and unfettered discretion, so as to attribute, to the greatest extent possible, the unpaid balance of the debt to the purchase money obligation in respect of the collateral and/or proceeds over which Unicrate seeks to enforce its purchase money security interest.
76. To the extent that payments have been allocated to invoices by Unicrate in its business records, Unicrate may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at Unicrate's absolute discretion, including in a manner inconsistent with clause 74 herein.
77. Payments allocated (and/or reallocated) under clause 74 and/or 75 will be treated as though they were allocated (and/or reallocated) in the manner determined by Unicrate on the date of receipt of payment.
- Taxes and duty**
78. The Customer must pay GST on any taxable supply made by Unicrate to the Customer under this Agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.
79. If as a result of:
- any legislation becoming applicable to the subject matter of this Agreement; or
  - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- Unicrate becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay Unicrate these additional amounts on 48 hours' written demand.
- Interest rates**
80. The interest rate on any outstanding debts is a fixed rate of fifteen (15) percent per annum.
- Set-off**
81. All payments required to be made by the Customer under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by Unicrate and the Customer in writing.
82. Any amount due to Unicrate from time to time may be deducted from any monies which may be or may become payable to the Customer by Unicrate.
- Miscellaneous**
83. Unicrate is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotions, Unicrate shortages, plant or mechanical breakdown, acts of God or any other activity beyond Unicrate's control.
84. In relation to the supply of Crates, to the extent permitted by law, Unicrate's liability is limited to:
- replacing the Crates or supplying similar Crates;
  - repairing the Crates;
  - providing the cost for replacing the Crates;
  - providing the cost for having the Crates repaired.
85. Unicrate is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the Crates supplied under this Agreement.
86. The Customer understands and agrees that Unicrate may license, assign, transfer and/or novate all or any part of its rights and/or obligations under this Agreement upon notice to the Customer.
87. The Customer will, at the request of Unicrate, execute documents and do such further acts as may be required for Unicrate to register the security interest granted by the Customer under the PPSA.
88. The Customer agrees to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to Unicrate by the Customer or the Customer's authorised representative.
89. The Customer further agrees that where Unicrate has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
90. The Customer irrevocably grants to Unicrate the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if Unicrate has cause to exercise any of their rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify Unicrate from any claims made by any third party as a result of such exercise.
91. Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this Agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
- Severance**
92. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
93. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.
- Variation of agreement**
94. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of Unicrate at any time by written notice to the Customer. The Customer will be provided with fourteen (14) days to accept the variation(s), failing which the variation(s) may be deemed accepted by Unicrate.
95. If the Customer does not agree with the variation(s) proposed by Unicrate, they must notify Unicrate in writing within fourteen (14) days from receipt of the written notice that

- the variation(s) are not agreed to. Unicrate and/or the Customer will then be at liberty to suspend/withdraw credit facilities if no agreement can be reached between the parties regarding the proposed variation(s). Absent notice from the Customer, the varied terms and conditions of trade may be deemed accepted. Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction without notification.
96. Any proposed variation to these terms and conditions by the Customer must be requested in writing. Unicrate may refuse any such request without providing reasons either orally or in writing.
97. Variations requested by the Customer will only be binding upon Unicrate if they are accepted in writing.
- Consent to register**
98. The Customer hereby consents to Unicrate recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by Unicrate to effect such registration.
99. The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.
- Jurisdiction**
100. The Customer acknowledges and agrees that this Agreement will be governed by the laws of Western Australia, and the laws of the Commonwealth of Australia which are in force in Western Australia.
101. The Customer acknowledges and agrees that any contract for the supply of Crates between Unicrate and the Customer is formed at the address of Unicrate.
102. The parties to this agreement submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.

**Entire agreement**

103. This Agreement constitutes the entire Agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by Unicrate and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.
104. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and Unicrate, these terms and this Agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
105. For the avoidance of doubt, the Customer understands and agrees that these terms will prevail over, and Unicrate will not be bound by, any conditions (express or implied) added or provided by the Customer, whether in an order or otherwise, unless otherwise agreed in writing by Unicrate

**Privacy Act**

106. The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.

**The Customer hereby applies for the opening of an account and provides the above information in support thereof. I am/We are authorised to sign this credit application form on behalf of the Customer and the information given is true and correct to the best of my/our knowledge.**

<b>Signature</b>		<b>Signature</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			

<b>Signature</b>		<b>Signature</b>	
<b>Name (print)</b>		<b>Witness name (print)</b>	
<b>Position</b>		<b>Date</b>	
<b>Date</b>			

**FOR COMPLETION BY UNICRATE**

The Customer's credit application is accepted. Signed for and on behalf of United Crate Co-operative Limited ABN 41 159 900 301.

<b>Signature</b>		<b>Position</b>	
<b>Name (print)</b>		<b>Date</b>	

**ACCOUNT APPROVED FOR CASH ON DELIVERY / 7 DAYS / 14 DAYS / 30 DAYS**  
(Unicrate to nominate)

**PRIVACY STATEMENT**

- This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012*) (Act).
- The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
- For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
- Unicrate may collect personal information about the Customer and/or Guarantor(s) for Unicrate's primary purposes which include the 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.
- The Customer and/or Guarantor(s) consent to Unicrate collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
- Unicrate may collect, and may already have collected, Information from the Customer and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by Unicrate it may restrict or impede upon Unicrate trading with, extending credit to, continuing to extend credit to or extending further credit to the Customer and/or Guarantor(s) or their related bodies corporate.
- The Customer and/or Guarantor(s) consent to Unicrate obtaining and making disclosure of Information about the Customer and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. Unicrate notifies the Customer and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
- Unicrate may provide personal information about the Customer and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. Unicrate intends to disclose default information to any or all of the credit reporting bodies listed below. The Customer and/or Guarantor(s) consent to such disclosure. Unicrate's credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what Unicrate may disclose and the Customer's and/or Guarantor(s) right to request limitations to the use of their information.

Equifax Australia Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820
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Illion Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: 07 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: 03 9699 0100
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- Unicrate may disclose Information to, and about them and the Customer and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to Unicrate's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Customer and/or Guarantor(s) 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, and/or overseas recipients and recipients who do not have an Australian link.
- By reason of the Customer's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to Unicrate's dealing with the Customer's and/or Guarantor(s)' information.
- A full copy of Unicrate's privacy policy and credit reporting policy can be obtained from Unicrate's website (details above) or by making a request in writing directed to Unicrate's privacy officer. Unicrate's privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how Unicrate will deal with any such complaint.
- The Customer and/or Guarantor(s) 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 Unicrate within fourteen (14) days of receipt of this statement that its terms are not accepted, continuing to trade with Unicrate after receipt of this Statement or, if the Customer and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with Unicrate after receipt of this statement.

## DEED OF GUARANTEE & INDEMNITY

**To** United Crate Co-Operative Ltd ABN 41 159 900 301 and its related bodies corporate **(Unicrate)**

<b>Name of guarantor</b>	<b>Address</b>	
<b>Name of guarantor</b>	<b>Address</b>	

**(Guarantors)** hereby covenant and undertake and if more than one, jointly and severally, as follows.

**Jurisdiction**

- The Guarantors acknowledge and agree that this guarantee and indemnity is governed by the laws of Western Australia, and the laws of the commonwealth of Australia which are in force in Western Australia.
- The parties to this guarantee and indemnity submit to the non-exclusive jurisdiction of the courts of Western Australia and the relevant federal courts and courts competent to hear appeals from those courts.

**Consideration**

- In consideration of Unicrate extending or agreeing to extend credit or further credit to the Customer at the Guarantors' request (testified by the Guarantors' execution of this agreement) for goods sold and/or supplied on hire from time to time, the Guarantors guarantee payment to Unicrate of all money which is now or at any time in the future becomes due and payable to Unicrate by the Customer on any account or accounts whether now existing or which may in the future be opened or in any manner whatsoever, including but not limited to amounts payable by the Customer to Unicrate arising out of a relationship of trustee and beneficiary.

**Guarantee and indemnity**

- The Guarantors agree to guarantee and indemnify Unicrate against all losses damages or expenses that Unicrate may suffer as a result, either directly or indirectly, of any failure by the Customer to make due payment of any money owing to Unicrate whether for goods supplied on hire or otherwise or to observe the terms of any agreement between the Customer and Unicrate, including costs on an indemnity basis of any attempt or attempts to recover from the Customer or any Guarantor and whether successful or not or whether frustrated by the Customer or Guarantor or by operation of law and including costs ordered by a court to be paid by Unicrate to the Customer or to any Guarantor including the costs of lodging and withdrawing caveats and/or obtaining injunctions and enforcing any security over real and personal property given to Unicrate.
- This guarantee and indemnity 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 Unicrate to the credit of any account of the Customer or the Guarantors, or deemed to be held on trust by the Customer for Unicrate, and will be available as a Guarantee and Indemnity for the whole of the sums referred to in clauses 3 and 4 of this guarantee and indemnity.
- Where two or more persons execute this guarantee and indemnity, the guarantees, covenants and obligations in this guarantee and indemnity given or undertaken by the Guarantors will be deemed to bind the Guarantors jointly and each of the Guarantors severally and Unicrate will be entitled to seek payment in full from any one or more of the Guarantors without seeking payment from the other Guarantors.
- Unicrate will have the right to proceed against the Guarantors under the Guarantee and Indemnity, irrespective of default of the Customer to pay and with or without notice to the Customer, as if the primary liability for any money owing was the Guarantors' own. Further, Unicrate will have the right to proceed against the Guarantors notwithstanding any other rights it may have in relation to the recovery of the amounts hereby guaranteed.
- This guarantee and indemnity will continue in force until such time as Unicrate releases the Guarantors in writing, and notwithstanding the fact that the Guarantors are no longer directors, shareholders or owners of the Customer.
- This guarantee and indemnity is without prejudice to and will not be affected by nor will the rights or remedies of Unicrate against the Guarantors or any of the Guarantors be in any way prejudiced or affected by:
  - any other security taken by Unicrate from the Customer or from any other person;
  - any waiver or indulgence, whether as to time or otherwise, given to the Customer or to the Guarantors or any one or more of the Guarantors;
  - by any other act, matter or thing which under the law relating to sureties would or might but for this provision release the Guarantors or any of the Guarantors from all or any part of the Guarantors obligations contained in this guarantee and indemnity; or
  - any person named in this guarantee and indemnity as Guarantor failing to execute this guarantee and indemnity or failing or ceasing to be bound by the terms of this guarantee and indemnity.

**Right of subrogation**

- In the event of the Guarantors and/or the other Guarantors making any payment in respect to an obligation of the Customer whether under a guarantee or indemnity or otherwise, the Guarantors will not exercise any rights of subrogation against any other Guarantors or the Customer unless and until Unicrate has been paid in full.
- In the event of the Customer going into liquidation, the Guarantors will be prohibited from proving in competition with the Customer unless and until Unicrate has been paid in full.

**Insolvency of Customer**

- No sum of money which the Customer pays to Unicrate and Unicrate later pays, is obliged to pay, allows in account or is obliged to allow in account to a liquidator, administrator, receiver or trustee

in bankruptcy of the Customer by reason of the *Corporations Act 2001*, *Bankruptcy Act 1966* or otherwise will, for the purpose of this guarantee and indemnity, be considered as discharging or diminishing the Guarantors' liability and this guarantee and indemnity will continue to apply as if the said sum(s) had at all times remained owing by the Customer.

**Costs**

- Unicrate is at liberty from time to time to charge the account of the Customer with all costs, charges and expenses, legal or otherwise that Unicrate incurs in connection with:
  - the account of the Customer;
  - this guarantee and indemnity;
  - any other security in respect of the indebtedness of the Customer to Unicrate;
  - the preparation, completion and stamping of this deed; or
  - the exercise or attempted exercise of any right, power or remedy conferred on Unicrate under or by virtue of this deed;
 and the same will be part of the monies secured by this deed.

- The Guarantors agree to pay Unicrate's costs and disbursements incurred in recovering monies secured by this deed, including debt recovery agency fees and legal costs on an indemnity basis.
- The Guarantors appoint as their duly constituted attorney Unicrate's company secretary from time to time to execute in the Guarantors' names and as the Guarantors' act and deed any real property mortgage, bill of sale or consent to any caveat Unicrate may choose to lodge against real property that the Guarantors may own in any Land Titles Office in any state or territory of Australia, even though the Guarantors may not have defaulted in carrying out their obligations hereunder.

**Variation**

- The Guarantors authorise Unicrate to give time or any other indulgence or consideration to the Customer in respect of compliance with its obligations to Unicrate, even if giving time or any other indulgence or consideration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.
- The Guarantors agree that this guarantee and indemnity will not be avoided, released or affected by Unicrate making any variation or alteration in the terms of its agreement(s) with the Customer, even if such variation or alteration has the effect of increasing the Guarantors' liability under this guarantee and indemnity.

**Severance**

- If any provision of this guarantee and indemnity is not enforceable in accordance with its terms, other provisions which are self-sustaining are and continue to be enforceable in accordance with their terms.

**Security/charge**

- The Guarantors charge in favour of Unicrate all of their estate and interest in any real property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
- The Guarantors charge in favour of Unicrate all of their estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Guarantors own at present and in the future with the amount of their indebtedness hereunder until discharged, such indebtedness to include all amounts referred to in clauses 3 and 4.
- This guarantee and indemnity secures the repayment of all monies owed by the Customer whatsoever, and this deed constitutes the entire guarantee.
- Where the Guarantors have previously entered into an agreement with Unicrate by which the Guarantors have granted a charge, mortgage or other security over real or personal property, those charges, mortgages or other security interests will continue and co-exist with the obligations and security interests created in this deed and will secure all indebtedness and obligations of the Guarantors under this deed. Unicrate may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.

**Personal Property Securities Act**

- For the avoidance of any doubt, the security interest(s) created by this instrument in favour of Unicrate constitutes security interests pursuant to the *Personal Property Securities Act 2009*.
- The Guarantors waive any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

**Service of notices**

- The Guarantors agree to accept service of any document required to be served, including any notice under this agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to Unicrate by the Guarantors or the Guarantors' authorised representative.

**Privacy Act**

- The Guarantors agree to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* (as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.

**Dated**

<b>Signed, sealed and delivered by the guarantor</b>	<b>Signature</b>	
	<b>Name (print)</b>	
	<b>Position</b>	
	<b>Witness signature</b>	
	<b>Name (print)</b>	
<b>Signed, sealed and delivered by the guarantor</b>	<b>Signature</b>	
	<b>Name (print)</b>	
	<b>Position</b>	
	<b>Witness signature</b>	
	<b>Name (print)</b>	