



Divine Group Pty Ltd
ABN 54 614 459 102
159 Allen St
Leichhardt NSW 2140
E: sales@divinefw.com.au
Ph: 02 9568 2230

CREDIT APPLICATION & SECURITY AGREEMENT

Registered Company Name: _____

Trading Name: _____

ABN: _____

ACN: _____

Physical Address: _____

Postal Address: _____

Please Indicate: Company ☐ Partnership ☐ Sole Prop ☐ Trustee Co ** ☐

Business Ph: _____

Mobile No: _____

Email: _____

Contact: _____

Nature of Business: _____

Date Commenced Trading: _____

Liquor License No.: _____

Licensee/ Nominee: _____

License Transfer Date: _____

Has a Liquor License been held previously: YES ☐ NO ☐

If Yes, name previous Licensed Premises held by Applicant: _____

Order Number Required: ☐ ☐ WET Exempt: ☐ ☐
Yes No (Attach copy of Certificate) Yes No

Full name and residential addresses of all the Directors/Partners/Proprietors: *(Please attach a separate page if insufficient space)*

Name	Residential Address	Driver's License No.	Date of Birth

Please provide a minimum of three trade credit references:

Company Name	Contact Name	Telephone No.
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

Estimated amount of credit facility required (monthly): \$ _____

This agreement constitutes a Security Agreement pursuant to the Personal Property Security Act 2009 (PPSA)

- Completing a Credit Application does not infer that credit will be granted.
- The document must be completed in full with no alterations or deletions. Any such alterations or deletions will void the application and a new form will have to be completed.
- The Company reserves the right to refuse credit to any Applicant without explanation.
- The Company reserves the right to suspend or withdraw credit facilities at any time without notice.
- Special Note: if the Company acts as, or is part of, a Trust/Nominee company then the provision of personal guarantee/s from the Trust Beneficiary/Beneficiaries is required to process this application.

General Terms and Conditions and Security Agreement

IN CONSIDERATION OF Divine Group Pty Ltd trading as Divine Food & Wine, ABN 54 614 459 102, (hereinafter jointly and severally referred to as "the Company") providing commercial credit facilities to the party completing the application (**hereinafter referred to as "the Customer"**) annexed to these conditions:-

- (i) The Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of Goods by the Company and that these General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Customer. Any request from the Customer to the Company for the supply of Goods shall constitute acceptance of these general terms and conditions.
- (ii) The Customer hereby charges in favour of the Company all its estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which it now has any legal or beneficial interest or in which it later acquires any such interest with payment of all monies owed by the Customer and consents to the lodging by the Company of a caveat or caveats which note its interest in or over any such land or other caveatable property;
- (iii) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

TERMS

These terms and conditions, including any Credit Limits set by the Company, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by the Company by any means. Unless or except specifically excluded herein, the company and the Customer retain any rights and remedies available to them in any prior or pre-existing agreement.

"Price" shall mean the cost of the Collateral as referred to in the Company's price lists and / or arrangements and shall be subject to change from time to time without notice.

"Collateral" and/or "Goods" shall mean all goods and/or services supplied by the Company to the Customer, or ordered by the Customer but not yet supplied, and includes goods described on any quotation, invoice, purchase order or any other document including any recommendations and advice and over which the Company may intend to register a Security Interest.

1. Jurisdiction

- a. This agreement shall be construed in accordance with laws of the **State of New South Wales** and, where applicable, The Commonwealth of Australia and the Customer submits to the non-exclusive jurisdiction of the courts of **New South Wales**.
- b. The Company shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

2. Personal Property Securities Act 2009 (PPSA)

- a. The Customer grants and the Company may register on the Personal Property Securities Register, a security interest in all and any sale of Goods under this agreement, including but not limited to intellectual property and all other present or after-acquired property.
- b. The Customer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the Consumer Credit Act will not apply.
- c. The Customer and the Company agree to contract-out of the PPSA in accordance with section 115 of the PPSA to the extent that the section applies for the benefit of, and does not impose a burden on, the Company. The Customer waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by the Company in respect of the security interest created by these terms and conditions.
- d. The Customer agrees to execute any documents, provide all relevant information and co-operate fully with the Company to ensure that the Company has a perfected security interest in the personal property charged and, if applicable, a Purchase Money Security Interest (PMSI).
- e. The Customer agrees to notify you of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship **7 days prior** to any such change taking effect.
- f. The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other Security Interest in the Collateral.
- g. The Customer agrees to reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to registering, maintaining or releasing any financing statement or any other document in respect of any security interest under this agreement.

3. Payment Terms & Overdue Accounts

- a. At the Company's sole discretion, a deposit may be required prior to any supply.
- b. Credit Account Customers are required to pay **all amounts for purchases in full no more than 14 days after the invoice date** during which any given purchase is made or as otherwise agreed and confirmed in writing by the Company.
- c. In the event of a dispute, **the complete undisputed portion of the account must be paid in accordance with the Payment Terms**.
- d. Should it be considered necessary by the Company to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses. The Customer acknowledges that those expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency.
- e. Amounts received by the Company may be applied first against interest, charges and expenses.
- f. Interest on overdue amounts may be charged at a rate of 1.50 % per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- g. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- h. The Customer shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Company) for all costs incurred as a result of any cheque or electronic banking transaction being dishonored for whatever reason.

4. The Competition & Consumer Act 2010

- a. The warranties, rights and remedies of the Customer as outlined in the Competition & Consumer Act 2010 are not intended to be compromised as a result of anything contained in these terms and conditions, except to the degree permitted by the Act.

5. Delivery

- a. The Company shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver goods, either whole or in part, due to circumstances beyond its control.
- b. The Company's obligation to deliver shall be discharged on arrival of the Goods at the Customer's nominated delivery destination or nominated agent or carrier. If the Customer is unable or unwilling to accept physical delivery of the Goods when the Goods are ready for delivery, the Company shall be entitled to charge a fee for any delay suffered, or to arrange for storage of the Goods at the risk and cost of the Customer including all transportation, storage and other consequential costs.

6. Defects

- a. The Customer shall inspect the Goods upon delivery and will, within 48 hours, notify the Company of any defects, short deliveries or any failure to fulfill any quotation or order.
- b. The Customer will, within a reasonable time following delivery, grant the Company access to the Goods in order to inspect for any alleged defects.
- c. Should the Customer fail to notify the Company within the specified period then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

7. Method of Payment

- a. Credit Card (Visa or Mastercard), Direct Deposit (EFT), Cheque or Cash. Please Note; **All Card Payments** will incur a merchant fee.

8. Warranty

- a. The Company warrants that Goods supplied shall be of merchantable quality.
b. The Company does not warrant that the Goods are fit for a particular purpose and, except or unless otherwise stated herein, warranties relating to title, defects or conformity of the Goods are expressly excluded.
c. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

9. Retention of Title

- a. Title in all the Collateral supplied shall remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and / or legal costs incurred, have been paid in full. Until title passes to the Customer, the Customer acknowledges that these conditions create, in the Company's favour, a PPSA purchase money security interest in the Collateral and any proceeds of their sale.
b. The Company shall retain an equitable interest in the Collateral, whether separate or co-mingled or accessioned, which shall be stored in such a manner as to be clearly identifiable as the property of the Company, until title has passed to the Customer and further, upon re-sale of the Collateral by the Customer, the Company shall have the right to trace any proceeds of sale to the extent that they relate to its Collateral which are incorporated.
c. If payment has not been received, the Customer will transfer to the Company all of its rights in respect of the sale price.
d. The Company may demand at any time until title has passed to the Customer that the Customer returns the Collateral or any part of them.
e. In the event that the Customer defaults in the payment of any monies owing, the Company and its employees or agents shall have the right to enter without notice upon the Customer's premises or any other premises where the Goods are known to be stored to repossess the Goods and for this purpose the Customer shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession.

10. Risk

- a. Notwithstanding Retention of Title provisions as per clause 8 hereof, the risk in Collateral purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer.
b. If any of the Goods are damaged or destroyed prior to the title in them passing to the Customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

11 Cancellation

- a. The Company may cancel the delivery of Collateral at any time before delivery by giving notice to the Customer by any means.
b. The Company shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.
c. The Customer may cancel the delivery of Collateral at any time before delivery by giving notice to the Company by any means.
d. In the event that the Customer cancels delivery of Collateral, the Customer shall be liable for any costs incurred by the Company up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by the Company.

12. Limitation of Liability

- a. The liability of the Company to the Customer for any reason related to the performance of Goods under this agreement shall be limited to the replacement or repair of the Goods or the amount paid or payable by the Customer in respect of the particular Goods.

13 General

- a. The Company accepts no responsibility for changes in any law which may affect the supply of Goods.
b. Neither the Company nor the Customer shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.
c. The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.

The Company is committed to protecting your privacy. Its policy is to comply with the National Privacy Principles for the handling of personal information as set out in the Privacy Act, 1988. In accordance with those principles, and with the Company's Privacy Policy, persons will be given access to their personal information upon request. The Company uses the types of personal information collected, to enable it to supply customers with its products and services and for assessing Applications for Commercial Credit, managing accounts and, if necessary, assessing its risk in, and collecting debts. This information may be disclosed to the Company's associated or related entities, parties related to the Customer's employment (e.g. referees and others as set out in the Privacy Policy) contractors, other credit providers, whether or not an account is overdue and, if necessary, its risk insurers, debt collectors and credit reporting agencies. If all or part of the information requested is not provided, the Company may not be able to consider any application or to provide credit facilities. Customers who have any concerns about the Privacy Policy are requested to direct them to **The Manager, Divine Group Pty Ltd, U13/30 Heathcote Rd, Moorebank, NSW, 2170.**

I/We acknowledge and give consent that the Company may make enquiries as to the credit and financial situation of me or any of us and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the Credit Application, as the Company reasonably sees fit from time to time, and for the duration of this agreement, for purposes including but not limited to;

- passing the information on to a credit reporting agency,
- passing the information on to a debt collector,
- obtaining further personal information, including consumer and/or commercial credit information, relating to me or any of us from another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the Privacy Act 1988. Further, that the consent hereby given shall remain in force until all monies owing have been paid in full and the Customer no longer has an open account with the Company.

I/We have read and understood this document and have been advised, and given opportunity, to seek independent legal advice.

I/We warrant by signature/s below that the information given in support of this application is true and correct.

In the event that the Customer is an incorporated entity, the person/s signing this agreement warrants that they are authorized to sign on behalf of the Customer and to bind the Customer in contract.

Print Name:

Signature:

Date:

Title:

PERSONAL GUARANTEE, INDEMNITY & SECURITY AGREEMENT

IN CONSIDERATION OF Divine Group Pty Ltd trading as Divine Food & Wine, ABN 54 614 459 102 (**hereinafter referred to as ‘the Company’**) granting the Customer (as named in the Application for Commercial Credit Account and which forms a part of this document) trade credit, **I/WE GUARANTEE** payment to you of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of us arising from any past, present or future dealing with you.

I/WE HEREBY AGREE & ACKNOWLEDGE:

- That this is a continuing guarantee and,
- To indemnify you against all loss or damage arising from any past, present or future dealing with the Customer or any of us,
- That our liability under this guarantee is joint and several and will not be affected, waived or discharged by the reason of any time or indulgences granted by you or any grant to any of the guarantors of a release whether in whole or in part from any obligation contained in or implied by this guarantee and indemnity and,
- That our liability under this guarantee shall not be affected, waived or discharged by the Customer entering into a Deed of Company Arrangement (DOCA) or by the Company voting in favour of or against, or abstaining from voting, in relation to any proposal by the Customer to enter a DOCA and,
- That this guarantee becomes binding on such of us that sign this guarantee irrespective of whether or not all intended signatories execute this guarantee and,
- That the Company is entitled to recover against a Guarantor without having first taken steps to recover against the Customer or any other Guarantor and,
- That this guarantee may not be unilaterally revoked by us and remains in force until such time as we receive written confirmation from the Company that we are released from our obligations and liabilities under this guarantee.
- That any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid and,
- That I/we indemnify the Company against losses or costs that it may suffer as a result of disgorging monies to a liquidator of the Customer and,
- That I/we sign in both our personal capacity and as Trustee of every Trust of which I/we are Trustee and/or a beneficiary and,
- To notify you of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship **7 days prior** to any such change taking effect.
- To grant, and that the company may register on the Personal Property Securities Register, a security interest in the form of a Purchase Money Security Interest in this guarantee and that such security interest shall include all present and after-acquired property of the Guarantor.

I/WE HEREBY CHARGE in your favour all our estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which we now have any legal or beneficial interest or in which we later acquire any such interest, with payment of all monies owed by the Customer or any of us and consent to the lodging by the Company of a caveat or caveats which note your interest in or over any such land or other c aveatable property.

I/WE FURTHER AGREE that this agreement shall be governed by and construed in accordance with the laws of the **State of New South Wales** and, where applicable, the Commonwealth of Australia, and I/WE submit to the non-exclusive jurisdiction of the courts of **New South Wales**.

Notice of Disclosure of Your Credit Information to a Credit Reporting Agency

I/We acknowledge and give consent that the Company may make enquiries as to the credit and financial situation of any of us and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the Credit Application, as the Company reasonably sees fit from time to time, and for the duration of this agreement, including but not limited to;

- passing the information on to a credit reporting agency
- passing the information on to a debt collector
- obtaining further personal information relating to any of us from another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the Privacy Act 1988.

GENERAL:

- “I” and “We” and “us” means each of the Guarantors jointly and severally.
- The invalidity or unenforceability of any provision of this Guarantee and Indemnity shall not affect the validity or enforceability of the remaining provisions.
- Clerical errors are subject to correction and do not bind the Company.

I/We have read and understood this document and have been advised, and given opportunity, to seek independent legal advice.

Guarantor Name (print)	Signature	Date:
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Driver's License Number	Date of Birth
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Witness Name (print)	Signature	Date:
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Guarantor Name (print)	Signature	Date
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Drivers License Number	Date of Birth
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Witness Name (print)	Signature	Date:
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If there are insufficient Guarantor/Witness boxes, copies of the Personal Guarantee & Indemnity document are available from the Company's office.