PURCHASING FACILITY APPLICATION (INCORPORATING TERMS & CONDITIONS & GUARANTEE)

BIDFOOD (PTY) LTD

Trading as Food Trucks

Reg. No. 1964/002063/07 | Vat. No. 4560266209

(hereinafter "the Seller")

Purchaser's Registered/Legal Name: _____ (hereinafter "the Purchaser")

Type of Business: Registered Company Reg No.: _____ VAT No.: _____

All Trading Names: _____ Liquor License No.: _____

Physical Address *(Domicilium Address)*: _____

Postal Address: _____ Postal Code: _____ Telephone No: _____

Fax No: _____ Email Address: _____ Cell No: _____

Delivery Addresses: _____

Name of Business Unit: Delivery Address:

1. _____ _____

2. _____ _____

Name of: Members Nature of Business: _____

Name:	Home Physical Address:	ID Number:	Tel. No:	Married ANC/COP

Name of Holding Company: _____

Estimated Monthly Spend: R _____ (For assessment purposes only and does not form part of this contract)

Does the Purchaser use Purchase Order Numbers: _____

Business Premises: If leased - name and telephone number of Landlord: _____

Auditors: _____ Year Purchaser commenced Business: _____

BANK DETAILS: Bank: _____ Branch Code: _____ Account No.: _____

Trade Reference:

Business Name:	Contact Name:	Tel. No:

Person responsible for paying accounts: _____ Tel: _____ Email: _____

Person responsible for ordering: _____ Tel: _____ Email: _____

Have any of the directors or shareholders ever been a shareholder or director of a business that was previously sequestrated, liquidated or are any Parties cited herein subject to any Debt Re-arrangement in terms of the National Credit Act? _____

If Yes: please list details below:

Director/Shareholder Name:	Company/CC Name:	Company/CC Reg No:

Asset Value of Purchaser: R _____ Annual Turnover of Purchaser: R _____
By answering the above as being above R2 000 000 and between R1 000 000 and R2 000 000, the Purchaser warrants to the Seller that the Asset Value and / or the Turnover of the Purchaser, as the case may be, exceeds R1 000 000 per annum.

The Purchaser agrees that any security previously given by the Purchaser to the Seller pursuant to any Purchasing Facility Application or otherwise shall remain of full force and effect from the date such security was provided and the execution by the Purchaser of this Purchasing Facility Application, Standard Terms and Conditions and Guarantee shall not in any way affect the rights of the Purchaser in terms of any such security.

The Purchaser agrees that the Seller shall be entitled, at any time to cede all or any of its rights and/or delegate all or any of its obligations in terms of this Purchasing Facility Application, to any other subsidiary of BID CORPORATION LIMITED(registration number 1995/008615/06).

The Purchaser agrees to the standard terms and conditions contained herein and which terms and conditions incorporate a deed of cession.

THE SIGNATORIES WARRANT THAT THEY ARE AUTHORISED TO SIGN THIS DOCUMENT (INCLUDING WITHOUT LIMITATION THE STANDARD TERMS AND CONDITIONS CONTAINED HEREIN AND WHICH TERMS AND CONDITIONS INCORPORATE A DEED OF CESSION) ON BEHALF OF THE PURCHASER AND THAT THE INFORMATION DISCLOSED IN THIS APPLICATION IS TRUE AND CORRECT.

Signed and Dated at _____ this the _____ day of _____ 20_____

Signatory's Name: _____ Witness's Name: _____

Signature: _____ Signature: _____

Designation: _____ Signed on behalf of the **Purchaser** _____

STANDARD TERMS AND CONDITIONS

DEFINITIONS

1. In these Standard Terms and Conditions, including the annexures to these Standard Terms and Conditions, unless a contrary intention clearly appears, the following terms shall have the meanings assigned to them in this clause and cognate expressions shall have corresponding meanings –
1.1. "Business Day" means any day in the Republic of South Africa other than a Saturday, Sunday or public holiday;
1.2. "Credit Event" means, in relation to any person or entity, the occurrence of any of the following events –
1.2.1. an order or declaration is made or a meeting of the directors or shareholders or trustees of such person is convened to consider the passing of a resolution for, or a resolution is passed for, the administration, custodianship, bankruptcy, liquidation, sequestration, winding-up, dissolution or placing under supervision for business rescue proceedings (and whether provisional or final) of it or its estate; or
1.2.2. it is unable (or admits inability) to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its debts or proposes or seeks to make or makes a general assignment or any arrangement or composition or compromise with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness; or
1.2.3. it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step; or
1.2.4. any receiver, administrative receiver, judicial receiver, administrator, compulsory manager, judicial custodian, trustee in bankruptcy, liquidator, business rescue practitioner, or the like is appointed in respect of it or any material part of its assets or it requests any such appointment; or
1.2.5. any act which, if such act was committed by an individual, would be an act of insolvency within the meaning of Section 8 of the Insolvency Act or any equivalent legislation in any jurisdiction to which such person is subject; or
1.2.6. it ceases to carry on business contemplated in its constitutional documents; or
1.2.7. it fails after any judgment awarded against it;
1.2.8. to satisfy such judgment within 5 (five) Business Days after becoming aware of such judgment; or ii) if such judgment is appealable or reviewable, to appeal or commence review proceedings, as the case may be, against such judgment within the time limits prescribed by law or fails diligently to prosecute an appeal lodged or ultimately fails in such appeal or review and then fails to satisfy the judgment within 3 (three) Business Days; or iii. if such judgment is a default judgment, to apply for the rescission of such default judgment within the time limits prescribed by law (or in any event within 5 (five) Business Days of becoming aware of such default judgment) or fails diligently to prosecute such application for rescission of such default judgment or ultimately fails in such application and then fails to satisfy the judgment within 3 (three) Business Days; or
1.2.9. it fails to pay the Seller any amount owing by the Purchaser to the Seller on the due date for payment thereof.
1.3 "Personal Information" means personal information as defined in POPIA relating to the Purchaser, which includes but is not limited to, any information relating to the Purchaser's identity/registration number, gender, sex, race, marital status, age, education, physical or mental health, religion, biometric information, financial and/or employment history, email addresses, physical addresses and/or correspondence sent by the Purchaser that is implicitly or explicitly of a private or confidential nature;
1.4 POPIA" means the Protection of Personal Information Act 4 of 2013, as amended;
1.5 "Processing" means processing as defined in POPIA which includes but is not limited to, any operation or activity (whether or not performed by automatic means) concerning Personal Information relating to the collection, distribution, dissemination, use, alteration, storage and/or destruction of Personal Information and the term "Process" shall bear a corresponding meaning;
1.6 "The Insolvency Act" means the Insolvency Act 24 of 1936, as amended.
1.7 "The Magistrates Court Act" means the Magistrates Court Act 32 of 1944, as amended.
1.8 "The National Credit Act" means the National Credit Act 34 of 2005, as amended.
1.9 "The Seller" means Bidfood (Proprietary) Limited (registration number 1964/002063/07)
2. In these Standard Terms and Conditions, where any provision is qualified by the words "to the extent permitted by law" the Seller and the Purchaser agree that such provision shall only apply to the extent that the laws of the Republic of South Africa allow same to apply, on the basis that if the Seller is precluded from applying –
2.1. any such provision then the terms of such provision which the Seller is precluded from applying shall not apply; or
2.2. the full terms of any provision then such provision shall not apply and shall be severed from these Standard
2.3. Terms and Conditions, and the remaining provisions hereof shall be of full force and effect.
3. The Purchaser does hereby apply to purchase goods and be provided with services from the Seller and in consideration thereof the Purchaser does hereby accept to be bound by the terms and conditions set out herein.
4. These Standard Terms and Conditions shall apply to all contracts of sale of goods and/or supply of services by the Seller to the Purchaser and no terms or conditions appearing in any of the Purchaser's documents, including the Purchaser's buying order, which are at variance with these conditions shall be binding on the Seller unless specifically agreed to in writing by the Seller.
5. Should any order be given to the Seller on an order form reflecting the Purchaser's name as the entity from which the order emanates, such order shall be deemed to have emanated from the Purchaser, notwithstanding the fact that such order may have been given or signed by a person not authorised by the Purchaser and such order will be deemed to constitute a valid order.
6. Unless otherwise agreed in writing by the Seller, payment shall be made by the Purchaser to the Seller without deduction or demand and free of all bank and exchange charges, set off and any other deduction of any nature whatever. The Purchaser acknowledges that it is aware of fraudulent activities which are perpetrated whereby a change of banking details is advised on the Seller's letterhead or by other means. The Purchaser agrees that any payment made to any other bank account shall not constitute a valid discharge of the Purchaser's obligation to make such payment. The Purchaser shall be obliged to notify the Seller of any receipt by it of a notification of change of banking details and shall only give effect thereto if same is confirmed telephonically and in writing by the Financial Director of the Seller. All loss suffered as a result of any amounts being paid by the Purchaser into any bank account other than the account of the Seller due to any error on the part of the Purchaser or any of its employees or as a result of the Purchaser or its employees not complying with the aforegoing provisions of this clause or otherwise shall be borne solely by the Purchaser.
7. Should the Purchaser become subject to a Credit Event the whole balance outstanding by the Purchaser to the Seller will immediately become due and payable. Notwithstanding anything contained herein, in the event of the Seller granting credit terms to the Purchaser, the Seller reserves the right to withdraw such credit terms at its sole discretion if it believes that the Purchaser's financial position has deteriorated after the date that the credit terms were granted.
8. Should the Purchaser not make payment on or before the due date for payment for any goods purchased or services provided then the Purchaser shall be obliged to pay the Seller interest thereon at the Prime Rate plus 2% calculated from the due date until payment (both dates inclusive)

which interest shall be calculated daily and compounded monthly in arrears on the last day of each month. The "Prime Rate" shall mean the rate publicly quoted by The Standard Bank of South Africa Limited, from time to time, as being its prime rate (expressed as a nominal annual compounded monthly in arrear rate), calculated on a 365 day a year factor, irrespective as to whether or not the year is a leap year and prima facie proven, in the event of there being a dispute in relation thereto, by a certificate signed by any manager of the aforesaid bank (whose appointment, qualification or authority need not be proven).

9. To the extent permitted by law, the Seller shall incur no liability in respect of the non-delivery or late delivery of any goods ordered by the Purchaser. NOTE: This clause 9 limits and excludes the rights and remedies of the Purchaser and places various risks liabilities, obligations and legal responsibilities on the Purchaser.
10. Signature by the Purchaser or by any authorised representative or other employee of the Purchaser of the Seller's delivery note shall be regarded as acceptance by the Purchaser that the goods reflected in such delivery note have been properly and completely delivered. Goods that are posted or are to be transported by a carrier according to the Purchaser's instructions shall be deemed to have been delivered to the Purchaser on receipt of the goods by the Post Office or Carrier, as the case may be. NOTE: This clause 10 limits and excludes the rights and remedies of the Purchaser and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.
11. Risk in and to the goods shall pass to the Purchaser on delivery.
12. Notwithstanding the delivery of any goods to the Purchaser ownership thereof shall not pass until the Seller has received payment of the full purchase price. The Seller shall in its own discretion be entitled to take back possession of any of the goods which have not been paid for and in respect of which payment is overdue.
13. The Purchaser shall not permit or allow the goods or any portion thereof to become subject to any landlord's lien or hypothec until the price payable therefor has been settled in full, on the basis that the Purchaser shall be obliged to inform the landlord of the premises at which the goods are stored from time to time (to the extent that such premises are not owned by the Purchaser), in writing, of the Seller's ownership of the goods and to provide the Seller on request with an acknowledgement of receipt from the aforesaid landlord of such notification.
14. Where the Seller does not transport the goods, the Seller accepts no liability for goods damaged or lost in transit.
15. To the extent permitted by law, the Purchaser shall have no claim for short delivery unless the Purchaser has specified on the Seller's delivery note and/or invoice the quantity of the short delivery. NOTE: This clause 15 limits and excludes the rights and remedies of the Purchaser and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.
16. To the extent permitted by law, the Seller shall be exempted from and shall not be liable under any circumstances whatsoever for any direct or indirect loss or damages of any nature (including without limitation consequential loss) or any loss of profit which the Purchaser may suffer as a result of any breach by the Seller of any of its obligations or arising out of the use of the goods, except where such loss is attributable to gross negligence on the part of the Seller or its servants or agents. NOTE: This clause 16 limits and excludes the rights and remedies of the Purchaser and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.
17. To the extent permitted by law, the Seller shall have no liability in respect of any claim –
17.1. based on defective goods where such defect arose directly or indirectly as a result of the Purchaser failing to comply with generally accepted storage conditions applicable for such product and/or the Seller's specific instructions for the storage of the goods, where applicable, or where such defect is directly attributable to the negligence of the Purchaser;
17.2. in respect of any defect in any perishable goods unless the Purchaser inspects such goods at the time of delivery thereof to the Purchaser and notifies the Seller in writing of any such defects forthwith on delivery;
17.3. in respect of any goods in circumstances where the outer packaging thereof has been altered or broken by the Purchaser; and/or
17.4. in respect of any goods (other than perishable goods) unless the Purchaser notifies the Seller thereof, in writing, within five days after delivery thereof to the Seller. NOTE: Clause 17 limits and excludes the Purchaser's rights and remedies.
18. To the extent permitted by law, the Purchaser hereby agrees to indemnify the Seller against all claims of whatsoever nature which may be made against the Seller by any third party arising out of the use of the goods sold by the Seller to the Purchaser and/or the services provided by the Seller to the Purchaser, unless such claims arise out of gross negligence of the Seller. NOTE: This clause 18 limits and excludes the Purchaser's rights and remedies and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.
19. The Purchaser acknowledges that it is aware that the Seller is only a distributor of the goods and is not in any way involved in the manufacture of the goods. The Purchaser accordingly, to the extent permitted by law, hereby waives all claims of every nature whatever which it may have against the Seller in respect any loss of any nature whatever suffered by the Purchaser due to any of the goods being defective (including without limitation due to any defect in the goods, the goods constituting an unsafe product, there being any failure, defect or hazard in any of the goods or inadequate instructions or warnings being provided pertaining to any hazard arising from or associated with the use of the goods as envisaged in section 60 of the Consumer Protection Act, Act 68 of 2008, as amended). NOTE: This clause 19 limits and excludes the rights and remedies of the Purchaser and places various risks, liabilities, obligations and legal responsibilities on the Purchaser.
20. Notwithstanding the amount which may at any time be owing by the Purchaser to the Seller, the Purchaser does hereby consent to the extent permitted by law, in terms of Section 45 of the Magistrates Court Act (as amended), to the jurisdiction of the Magistrate's Court having jurisdiction for the determination of any action or proceeding otherwise beyond the jurisdiction of the said court which may be brought by the Seller against the Purchaser arising out of any transaction between the parties, it being recorded that the Seller shall be entitled, but not obliged, to bring any action or proceeding in the said court and that all costs incurred in any action against the Purchaser in any competent court including costs on an attorney/client scale and attorney's collection commission will be paid by the Purchaser. The Purchaser and the Seller agree that the laws of South Africa will govern any dispute between the parties.
21. Save as otherwise provided herein, should any dispute arise between the Seller and the Purchaser in connection with the formation or existence of, the implementation of, the interpretation or application of the provisions of, the parties' respective rights and obligations in terms of or arising out of the conclusion, breach or termination of, the validity, enforceability, rectification, termination or cancellation, whether in whole or in part of and/or any documents furnished by the parties pursuant to the provisions of, these Standard Terms and Conditions or which relates in any way to any matter affecting the interests of the parties in terms of these Standard Terms and Conditions, such dispute shall if required by the Seller and unless resolved amongst the parties, be referred to and be determined by arbitration in terms of the Rules of the Arbitration Foundation of Southern Africa ("AFSA") and failing any such rules, shall be governed by the arbitration laws in force in the Republic of South Africa from time to time, on the basis that –
21.1. the Seller may demand that a dispute be determined in terms of this clause 21 by written notice given to the Purchaser;
21.2. this clause 21 shall not preclude any party from obtaining interim relief by way of motion proceedings on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator;
21.3. the parties hereby consent to the arbitration being dealt with in terms of the expedited Rules of Arbitration of AFSA;
21.4. the arbitrator shall be, if the matter in dispute is principally –
21.4.1. a legal matter, a practising advocate or attorney or retired judge of Gauteng of at least fifteen years standing nominated by the Seller;
21.4.2. an accounting matter, a practising chartered accountant of Gauteng of at least fifteen years standing nominated by the Seller; or
21.4.3. any other matter, any independent person nominated by the Seller;
21.5. should the parties fail to agree whether the dispute is principally a legal, accounting or other matter within seven days after the arbitration is demanded, the matter shall be deemed to be a legal matter;
21.6. the arbitration shall take place in Gauteng or in such other place as is mutually agreed to by the parties, with only the parties and their representatives being present;
21.7. the arbitration shall be determined in accordance with the provisions of South African law and the parties submit to South African jurisdiction for the purpose of this arbitration;
21.8. the decision of the arbitrator shall be final and binding on the parties and may be made an order of the court referred to in clause 21.9 at the instance of either of the parties;
21.9. the parties hereby consent to the non-exclusion jurisdiction of the South Gauteng High Court of South Africa, Johannesburg in respect of the proceedings referred to in clause 21.2 and/or clause 21.8;
21.10. the parties agree to keep the arbitration including the subject-matter of the arbitration and the evidence heard during the arbitration confidential and not disclose it to anyone except for purposes of an order to be made in terms of clauses 21.2 and 21.8;
21.11. the provisions of this clause 21 –
21.11.1. constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party shall be entitled to withdraw there from or claim at any such proceedings that it is not bound by such provisions; and
21.11.2. are severable from the rest of these Standard Terms and Conditions and shall remain in effect despite the termination of or invalidity for any reason of these Standard Terms and Conditions; and
21.12. the parties agree that the written demand by the Seller in terms of clause 21.1 that the dispute be submitted to arbitration, is deemed to be a legal process for the purpose of interruption of extinctive prescription in terms of the Prescription Act, Act 68 of 1969, as amended.
22. The Purchaser hereby chooses as its *Domicilium Citandi et Executandi* for all purposes arising out of these Standard Terms and Conditions the address as completed in the online application form completed by and on behalf of the purchaser.
23. Although the Purchaser applies for a purchasing facility to be opened at his/hers/its chosen *domicilium citandi et executandi* / principal place of business / registered address, the parties hereby agree that the approval of such purchasing facility is at the sole discretion of Bidfood Corporate's offices being at 60 Saturn Road, Linbro Park, Sandton, Gauteng. Should the Purchaser's application be successful, the parties hereby agree that the application was approved, and the agreement was concluded and entered into at 60 Saturn Road, Linbro Park, Sandton, Gauteng.
24. Unless the context otherwise requires, the words importing the singular shall include the plural and vice versa, a natural person shall include an artificial person and vice versa and the one gender shall include the other gender and vice versa.
25. The Purchaser undertakes to notify the Seller, in writing, within seven days of any change in ownership of the Purchaser's business, or should the Purchaser be a company or close corporation, of any share transaction or change of members interest whereby the majority shareholding or members interest, as the case may be, of the Purchaser is affected, failing which notice the entire balance of all amounts owing by the Purchaser to the Seller, whether due or not, will immediately be deemed to be due and payable by the Purchaser. In addition to the aforegoing, the Purchaser acknowledges that immediately upon any change as aforesaid occurring any outstanding amount whether due or not shall be deemed to be forthwith payable by the Purchaser to the Seller.

26. **CESSION OF BOOK DEBTS:**

26.1. The Purchaser does hereby irrevocably and in rem suam cede and pledge, in *securitatem debiti,* unto and in favour of the Seller, all of its right, title, interest, claim and demand in and to all claims/debts/book debts of whatsoever nature and description and howsoever arising (collectively referred to as "the Debts") which the Purchaser may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever (collectively referred to as "the Purchaser's debtors") without exception as a continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Purchaser to the Seller from whatsoever cause or obligation howsoever arising which the Purchaser may be or become bound to perform in favour of the Seller.
26.2. Should it transpire that the Purchaser at any time entered into prior deeds of cession or pledge or otherwise encumbered any of the right, title and interest in and to any of the Debts which will from time to time be subject to this cession then this cession shall operate as a cession of all the Purchaser's reversionary rights in such Debts.
26.3. Notwithstanding the terms of the aforegoing cession the Purchaser is hereby authorised by the Seller, until such authorisation is revoked by the Seller by notice in writing to the Purchaser to institute action, in its own name, against any of the Purchaser's debtors provided that all sums of money which the Purchaser collects from the Purchaser's debtors shall be collected on the Seller's behalf and provided further that the Seller shall at any time be entitled to terminate the Purchaser's right to collect the Purchaser's debtors.
26.4. The Purchaser agrees that the Seller shall be entitled at any time or times hereafter to give notice of this cession to all or any of the Purchaser's debtors.
26.5. The Purchaser further agrees that the Seller shall, at any time, be entitled to inspect any of the Purchaser's books or records and in addition shall be entitled to take possession of such books and records (of whatsoever nature) to give effect to the terms of this cession.

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26.6. The purchaser acknowledges that –
26.6.1. the Debts ceded by the Purchaser to the Seller in terms hereof are securities which underlie a transaction of a commercial nature and that possession of these securities is vested in the Seller;
26.6.2. the exercise of the Seller's rights in relation to the Debts, in the circumstances described herein, will confer on the Seller certain procedural advantages, which in the light of the commercial nature of the transaction secured hereby are fair, reasonable and necessary to ensure that the Seller does not suffer unfair commercial prejudice by being deprived of these procedural advantages;
26.6.3. if any court of competent jurisdiction to which the Seller may apply in terms hereof refuses to sanction the exercise of the Seller's rights in relation to the Debts, or any of them in terms hereof, then the Seller shall nevertheless be entitled to realise the securities or any of them secured under and in terms hereof by judicial process, or to exercise such other rights as may be available to it at common law, and the refusal to sanction the exercise of the Seller's rights in relation to the Debts shall not render the cession contained herein or any part of it invalid or unenforceable;
26.6.4. the Purchaser appoints the Seller irrevocably and in *rem suam* as its agent to apply for surrender, to realise or otherwise deal with the Debts in its absolute discretion in the event of the Purchaser's failure to pay any amount which it may owe or in which it may be or become indebted to the Seller and to apply the proceeds of such surrender, realisation or other dealings to its aforesaid debt.
27. The Purchaser agrees to procure that, prior to it ordering any goods or services from the Seller, one or more parties acceptable to the Seller ("the Guarantors"), complete and sign the guarantee ("the Guarantee") attached to these Standard Terms and Conditions and as such guarantee all of the obligations of the Purchaser to the Seller from time to time.
28. To the extent permitted by law the Purchaser hereby consents to the cession by the Seller of all or any of its rights in terms hereof and in terms of the Guarantee to any third party without prior notice to the Purchaser.
29. Should the Purchaser at any time be subject to a Credit Event any goods delivered by the Seller to the Purchaser and in respect of which payment has not been made at the date of the Purchaser becoming subject to such Credit Event, (whether payment in respect thereof be due or not) shall immediately be returned to and recoverable by the Seller and the agreement pursuant to which such goods were sold shall be deemed to have been cancelled in respect of the goods so returnable/recoverable.
30. The Purchaser acknowledges that in the event of it being a proprietorship, partnership, a company or a close corporation and converting from a proprietorship, partnership, or company to a close corporation or from a proprietorship, partnership or a close corporation to a company at any time hereafter, as the case may be, any Guarantor shall nevertheless still remain bound as guarantor.
31. The Seller does not appoint the Post Office as its agents for payments by post. Should any payments be mislaid or lost in the post, the Purchaser shall still be liable to the Seller for payment.

32. **CONSENT**

32.1. The Purchaser understands that the personal information given herein is to be used by the Seller for the purposes of assessing its credit worthiness. The Purchaser confirms that the information given by it is accurate and complete. The Purchaser further agrees to update the information supplied, as and when necessary, in order to ensure the accuracy of the above information, failing which the Seller will not be liable for any inaccuracies.
32.2. The Seller has the Purchaser's consent at all times to contact and request information from any

persons, credit bureaus or businesses, including those mentioned in the online application process completed by and on behalf of the purchaser and to obtain any information relevant to the Purchaser's credit assessment including, but not limited to, information regarding the amounts purchased from supplier's per month, length of time the Purchaser has dealt with such supplier, type of goods or services purchased and manner and time of payment.

32.3. The Purchaser agrees that information given in confidence to the Seller by a third party in respect of the Purchaser will not be disclosed to the Purchaser.

32.4. The Purchaser hereby consents to and authorises the Seller at all times to furnish personal and credit information concerning the Purchaser's dealings with the Seller to a credit bureau and to any third party seeking a trade reference regarding the Purchaser in its dealings with the Seller.

33. The Seller reserves its rights to request further information from time to time as may be required to assess and re-assess the Purchaser's financial position.

34. Any condonation of any breach of any of the provisions hereof or other act or relaxation, indulgence or grace on the part of the Seller shall not in any way operate as or be deemed to be a waiver by the Seller of any rights hereunder or be construed as a novation thereof.

35. Each clause of these Standard Terms and Conditions is severable, the one from the other and if any one or more clauses are found to be invalid or unenforceable, that clause/clauses shall not affect the balance of these Standard Terms and Conditions, which shall remain of full force and effect.

36. This contract contains the entire agreement between the parties and any other terms thereof whether express or implied are excluded herefrom and any variations, cancellations or additions to this contract shall not be of any force or effect unless reduced to writing and signed by the parties or their duly authorised representatives.

37. **CESSION OF RIGHTS AND OBLIGATIONS:**

37.1. The Purchaser agrees that the Seller shall be entitle
or delegate all or any of its obligations in terms of t
of BID CORPORATION LIMITED(registration number 1995/008615/06).

38. **DECLARATION:**

I/We further warrant that I/We have the necessary authority to bind the Applicant/Purchaser to the Standard Terms and Conditions of Bidfood (Pty) Ltd (tick field to accept) ☐

I/We confirm that I/We have read and understand the Standard Terms and Conditions of Bidfood (Pty) Ltd –. (tick field to accept) ☐

I/We accept the Standard Terms and Conditions of Bidfood (Pty) Ltd and confirm that the Applicant/Purchaser is bound thereby. (tick field to accept) ☐

GUARANTEE

1. I / We the undersigned - [insert full name of individual guarantor]

(identity number)of

[insert address of individual guarantor]; and

(reg number) of

(hereinafter individually and collectively referred to as "the Guarantors") do hereby irrevocably and unconditionally guarantee and undertake in favour of BIDFOOD (Proprietary) Limited (registration number 1964/002063/07) (hereinafter referred to as "the Seller"), to pay on demand to the Seller any and all amounts which may be payable and/or hereafter become payable, from time to time, to the Seller by (reg number)

2. Notwithstanding anything to the contrary contained herein

2.1 this Guarantee does not constitute a suretyship but constitutes a primary undertaking giving rise to a

2.2 principal, independent and continuing obligation by the Guarantors in favour of the Seller;
each Guarantor agrees as a separate, additional, primary and continuing obligation to indemnify the Seller, from time to time on first demand, from and against all loss and damage (excluding any consequential damages) incurred by the Seller as a result of and/or pursuant to any of the Obligations being or becoming void, voidable, unenforceable or ineffective for any reason, whether or not known to the Seller, the amount of such loss being the amount which the Seller would otherwise have been entitled to recover from the Purchaser pursuant to the Purchasing facility and/or otherwise;

2.3 each Guarantor agrees that the amount of each Guarantor's indebtedness under this Guarantee is equal to the full amount payable by the Purchaser pursuant to the Purchasing facility and/or otherwise and that each Guarantor's indebtedness under this Guarantee shall not be reduced if the amount payable by the Purchaser pursuant the Purchasing facility and/or otherwise is not payable in full for any reason, including (i) the invalidity, illegality or unenforceability of the Purchasing facility,
(ii) the Purchaser raising a defence under Section 133 of the Companies Act 71 of 2008, as amended from time to time ("the Act"); or (iii) the discharge of any amount owed by the Purchaser under clause 152, clause 154 or any other provision in Chapter 6 of the Act; and 14

2.4 each Guarantor acknowledges having received a copy of the Purchasing facility and confirms that he/she/it is aware of the terms of the Purchasing facility.

3. Guarantors' liability in terms hereof, the Guarantors undertake to pay the amount of all costs, charges and expenses of whatever nature including, but without derogating from the generality of the aforegoing, legal costs and collection commission as between attorney and own client incurred by the Seller in securing or endeavouring to secure payment of the Obligations and/or in securing or endeavouring to secure fulfilment of the Guarantors' obligations.

4. The Guarantors agree to pay the Seller any amount claimed by it as being due by the Purchaser forthwith against receipt by the Guarantors of a written demand from the Seller therefor stating that such amount is due and payable by the Purchaser to the Seller, notwithstanding that the Guarantors and/or the Purchaser may dispute the amount claimed and/or the Purchaser's liability to make such payment. All payments made by the Guarantors in terms hereof shall be made, without set off or deduction of any nature whatever, into the bank account stipulated by the Seller in writing for this purpose.

5. Demands for payment by the Seller under this Guarantee may be made from time to time, and the Guarantors' liability and obligations under this Guarantee may be enforced, irrespective of whether any demands, steps and/or proceedings are being or have been made or taken against the Purchaser and/or any other third party.

6. The rights of the Seller under this Guarantee shall in no way be affected or diminished if the Seller at any time obtains additional guarantees, suretyships, securities or indemnities in connection with the obligations of the Purchaser.

7. The Guarantors undertake to the Seller that, from the date of signature of this Guarantee and until all the Obligations have been unconditionally and irrevocably discharged, the Guarantors shall not, without first obtaining the Seller's prior written consent, claim, prove or accept any payment in any composition by, or any winding-up or liquidation of the Purchaser.

8. The Guarantors' payment obligations under this Guarantee are absolute and unconditional and accordingly, but without limitation, the Guarantors shall have no right to defer, withhold or adjust any payment which is due and payable to the Seller arising out of this Guarantee, nor to obtain the deferment of any judgment for any such payment or part thereof nor to obtain deferment of execution of any judgment.

9. The Seller shall be entitled at any time and without the consent of the Guarantors to cede all or any of its rights and delegate all or any of its obligations in terms of this Guarantee to any person or entity. The Guarantors hereby unconditionally and irrevocably consent to the splitting of any claims against the Guarantors which may result arising from or pursuant to or in consequence of the cession and/or delegation by the Seller in terms of this Guarantee.

10. The Guarantors hereby agrees that the Guarantors shall not be entitled to cede any of their rights or delegate any of their obligations in terms of this Guarantee to any person whomsoever.

11. This Guarantee shall remain in full force and effect notwithstanding

11.1 any fluctuation in or temporary extinction for any period whatever of the Obligations; or

11.2 the death of any of the Guarantors or the sequestration of any of the Guarantors or any of the Guarantors suffering legal disability, until such time as the Obligations have been discharged in full and the Seller has agreed in writing to release the Guarantors from the provisions of this Guarantee on the basis that the Seller shall not withhold such release where all the Obligations have been discharged in full.

12. No alteration or variation of any present or future agreement between the Purchaser and the Seller shall in any way release the Guarantors from their liability hereunder.

13. The Seller shall be entitled, whether before or after the due dates for payment of the Obligations, without reference or notification to the Guarantors and without affecting its rights hereunder, to -

13.1 release any other guarantors, sureties and securities;

13.2 grant the Purchaser extensions of time for payment;

13.3 compound or to make any other arrangements with the Purchaser for the discharge of its indebtedness.

14. The Guarantors agree that the rights of the Seller under this Guarantee and the obligation to pay the Seller on demand as set out herein shall in no way be affected or diminished should the Purchaser undergo business rescue proceedings as contemplated in Chapter 6 of the Act. As such should the due date for payment of any amount owing by the Purchaser to the Seller be suspended by virtue of any business rescue proceedings referred to aforesaid, the obligation of the Guarantors to pay the Seller such amount shall not be suspended and the Guarantors shall be liable to pay the Seller such amount upon demand made therefor by the Seller. Notwithstanding the aforegoing should the Purchaser undergo business rescue proceedings as contemplated in Chapter 6 of the Act, then the Guarantors agree to forthwith pay the Seller such amount/s as may be necessary to extinguish the Purchaser's total indebtedness to the Seller notwithstanding that such indebtedness may or may not be due for payment as at such date.

15. The Guarantors hereby irrevocably renounce all legal exceptions (including, without limitation, excussion and division, *non numeratae pecuniae*, revision of accounts and *errore calculi*), benefits or rights which might otherwise serve (or, but for the provisions of this clause 16, have served) to limit, reduce, abate or otherwiserestrict the liability of the Guarantors in terms of this Guarantee and the Guarantors declare themselves to be fully acquainted with the meaning thereof.

16. The Guarantors hereby agree that the Seller shall, at its option, be entitled to institute any legal proceedings which may arise out of or in connection with this Guarantee at the election of the Seller, in -

16.1 any magistrate's court having jurisdiction, notwithstanding the fact that the claim or value of the matter in dispute might exceed the jurisdiction of such magistrate's court; or

16.2 the South Gauteng High Court of South Africa, Johannesburg, to the non-exclusive jurisdiction of which the Guarantors hereby consent.

17. The Guarantors hereby choose *domicilium citandi et executandi* at the address set out in clause 1, at which address all notices and communications may be addressed to the Guarantors and all notices addressed to the Guarantors at the said address and -

17.1 despatched by prepaid registered post shall be deemed to have reached the Guarantors seven days after the date of posting (unless the contrary is proved);

17.2 delivered by hand shall be deemed to have been received on the day of delivery.

18. A certificate under the hand of any chartered accountant nominated by the Seller as to the existence and amount of the indebtedness of the Purchaser and/or of the Guarantors to the Seller at any time, as to the fact that such amount is due and payable, the amount of interest accrued due thereon and the rate of interest applicable thereto and as to any other fact, matter or thing relating to the indebtedness of the Purchaser and of the Guarantors to the Seller shall be prima facie proof of the contents and correctness thereof and the amount of the indebtedness of the Guarantors hereunder for the purpose of provisional sentence or summary judgment or any other proceedings against the Guarantors in any competent court, 16 and shall be valid as a liquid document for those purposes. It shall not be necessary to prove the appointment of the person signing any such certificate.

19. Each provision in this guarantee is severable the one from the other and if any provision is found by any competent court to be defective or unenforceable for any reason whatever, the remaining provisions shall be of full force and effect and continue to be of full force and effect.

20. In this guarantee, unless the context clearly indicates a contrary intention, an expression which denotes the singular includes the plural and vice versa and an expression which denotes a natural person shall include an artificial person and vice versa.

21. Each Guarantor consents to the Seller and/or its agents requesting any information available from any credit bureau regarding that Guarantor.

22. 23. The Guarantors hereby acknowledge that the Guarantors were free to secure independent legal and/or other advice as to the nature and effect of all of the provisions of this Guarantee and that the Guarantors have either taken such advice or dispensed with the necessity of doing so. The Guarantors further acknowledge that all of the provisions of this Guarantee and the restrictions herein contained are fair and reasonable in all the circumstances.

23. Save as otherwise provided herein this Guarantee may not be cancelled or varied in any way without the prior written consent of the Seller.

24. Notwithstanding anything to the contrary contained herein the Seller shall be entitled from time to time and any time to enforce the rights granted to the Seller in terms of this Guarantee against any one or more of the Guarantors in respect of any of the obligations of the Purchaser. Should the Seller enforce its rights in terms of this Guarantee at any time against any of the Guarantors such action shall not preclude the Seller from doing likewise again against the other/s Guarantor/s in respect of the same cause of action or a different cause of action, provided that the aforegoing shall not entitle the Seller to be paid the same amount due to it by the Purchaser from the Guarantors.

25. Each of the Guarantors shall be jointly and severally liable for the fulfilment by the other Guarantors of the obligations of the Guarantors in terms of this Guarantee.

Your attention is drawn to the fact that this Guarantee contains provisions that: impose liability upon you; limit our liability; and exclude certain of your rights, benefits and defences as a Guarantor.

SIGNATURE: _____ PLACE _____ DATE

___/____/ 20___ for and on behalf of:_____

(guarantor) who warrants that he is duly authorized hereto

IF THE GUARANTOR WHO IS A NATURAL PERSON IS MARRIED IN COMMUNITY OF PROPERTY HIS/HER SPOUSE MUST SIGN THIS GUARANTEE IN FRONT OF TWO WITNESSES BEFORE THE GUARANTOR DOES SO.

I, the undersigned _____ [insert name of spouse] with identity number _____ married to

_____[insert name of individual guarantor] in community of property, hereby consent to my spouse binding himself to the terms of this guarantee.

Signed: _____at _____on _____ 20____

Witnesses1._____2._____
We, by our signature hereto, accept all benefits conferred on us in terms of this agreement