



Hydrofarm Co Pty Ltd t/as The Tree Co Farm
ABN 29 625 636 697

c/- Lobby 1, Level 2, 76 Sky Ring Tce, Newstead, Brisbane, QLD, 4006

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Email: accounts@thetreeco.com.au

Website: <https://thetreeco.com.au>

NEW CREDIT ACCOUNT APPLICATION

THIS APPLICATION is made by the Applicant to Hydrofarm Co Pty Ltd **t/as The Tree Co Farm** (“**Supplier**”) 29 625 636 697 for the provision of credit to support the supply of goods to the Applicant in accordance with the Terms and Conditions of Supply set out in Annexure A to this Application.

APPLICANT PARTICULARS

Applicant – Business Details (to be completed if the Applicant is a company)	ABN/ACN: Company Name: Trading Name: (if different to Company Name): Registered Office: (the Applicant)	Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text.
Applicant – Business Details (to be completed if the Applicant is a sole trader or partnership)	Trading Name: Postal Address: Street Address: ABN (if applicable): (the Applicant) Proprietor 1 ABN (if applicable): Registered Business Name (if applicable): Name: Residential Address: Date of Birth: Phone Number: Drivers Licence No:	Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text.



	Previous Occupation:	Click or tap here to enter text.
	Length of Service:	Click or tap here to enter text.
	Length of Service with	
	Applicant:	Click or tap here to enter text.
	Proprietor 2	
	ABN (if applicable):	Click or tap here to enter text.
	Registered Business Name	
	(if applicable):	Click or tap here to enter text.
	Name:	Click or tap here to enter text.
	Residential Address:	Click or tap here to enter text.
	Date of Birth:	Click or tap here to enter text.
	Phone Number:	Click or tap here to enter text.
	Drivers Licence No:	Click or tap here to enter text.
	Previous Occupation:	Click or tap here to enter text.
	Length of Service:	Click or tap here to enter text.
Length of Service with		
Applicant:	Click or tap here to enter text.	
(the Applicant)		
Company / Business Profile	Nature of Business:	Click or tap here to enter text.
	Date commenced operations:	Click or tap here to enter text.
	No. of Employees:	Click or tap here to enter text.
Bank Details	Name of Bank:	Click or tap here to enter text.
	Account Name:	Click or tap here to enter text.
	BSB:	Click or tap here to enter text.
	Address:	Click or tap here to enter text.
Amount of Credit Required	AU \$	Click or tap here to enter text.
Payment Terms	30 days from the date of the invoice issued by the Supplier.	



Accounts Payable Contact	Accounts Payable Contact Contact Name: Phone Number: Email Address:	Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text.
Trade Reference	Trade Reference 1 Business Name: Phone Number: Contact Name: Phone/Email: Trade Reference 2 Business Name: Phone Number: Contact Name: Phone/Email: Trade Reference 3 Business Name: Phone Number: Contact Name: Phone/Email:	Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text. Click or tap here to enter text.
Bankruptcy	Have any of the owners of the business or in the case of a company, any Directors of the company ever been bankrupt or a party to an arrangement under the <i>Bankruptcy Act 1966</i> (Cth): ☐ Yes ☐ No If yes, please provide details: Click or tap here to enter text.	
Guarantor details	Each individual proprietor of an Applicant (if not a Company), and each Director of the Applicant (if a Company) must provide a guarantee of the applicant's (the Buyer's) obligations under this Credit Application and the Terms and Conditions of Supply. Name: Click or tap here to enter text. Address: Click or tap here to enter text.	



	Name: Click or tap here to enter text.
	Address: Click or tap here to enter text.
	Name: Click or tap here to enter text.
	Address: Click or tap here to enter text.

1 Acknowledgements and declarations by Applicant

- 1.1 I/We hereby declare that the information provided in this credit application is true and correct to the best of my/our knowledge. Further, authorisation is hereby given to confirm and exchange credit information relating to this application from any source.
- 1.2 I/We agree and acknowledge that all goods supplied by the Supplier are subject to the attached Terms and Conditions of Supply as may be varied from time to time.
- 1.3 I/We warrant that I/we have read and understood the attached Terms and Conditions of Supply and that I/we have the authority to bind the Applicant.
- 1.4 I/We agree that the Applicant may obtain consumer and/or commercial information from and provide consumer /commercial information to a credit reporting agency regarding my application for commercial credit.



Executed as a deed and delivered on _____.

Supplier's execution

Signed and sealed as a deed for and on behalf of
Hydrofarm Co Pty Ltd ACN 625 636 697
by its authorised representative in
accordance with section 126 of the *Corporations*
Act 2001:

.....
Signature of authorised representative

CLICK OR TAP HERE TO ENTER TEXT.

.....
Name of authorised representative
(BLOCK LETTERS)

Applicant's execution

Where Applicant is a Company:

Executed by **the Applicant** in accordance with
section 127 of the *Corporations Act 2001*:

.....
Director/company secretary

CLICK OR TAP HERE TO ENTER TEXT.

.....
Name of director/company secretary
(BLOCK LETTERS)

.....
Director

CLICK OR TAP HERE TO ENTER TEXT.

.....
Name of director
(BLOCK LETTERS)

Where Applicant is an individual:

Signed sealed and delivered by **Applicant**:

.....
Signed sealed and delivered by **Applicant**:

Guarantor's execution

.....
as Guarantor:
Signed sealed and delivered by

.....
as Guarantor:
Signed sealed and delivered by

ANNEXURE A - TERMS AND CONDITIONS OF SUPPLY

1 Essential Terms of Sale of Product

The Parties acknowledge and agree that these Terms form part of every sale of Goods by the Buyer to the Supplier.

2 Purchase Orders

- 2.1 The Buyer may place orders for the Goods by submitting a Purchase Order to the Supplier.
- 2.2 A Purchase Order is not binding until accepted in writing by the Supplier. If the Supplier accepts the Purchase Order, it will notify the Buyer in writing, and confirm the expected delivery date of the Goods the subject of the Purchase Order.
- 2.3 Once accepted by the Supplier, a Purchase Order may only be amended or cancelled with the written consent of Supplier, such amendment or cancellation to be on such terms as Supplier may specify in its discretion, including that fees may apply.

3 Supply and Delivery

- 3.1 Any time for delivery stated by the Supplier is an estimate only and while the Supplier will use all reasonable endeavours to deliver by any requested delivery date, it does not warrant that such date will be met.
- 3.2 In no case will the Supplier be liable for any loss or damage resulting either directly or indirectly from a failure to deliver by any specific date.

4 Price, invoicing and payments

- 4.1 The price applicable to any Purchase Order will be the price agreed in of the Purchase Order for the Goods.
- 4.2 The Supplier will issue an invoice to the Buyer on or within 7 days of the date of dispatch of the Goods the subject of the relevant Purchase Order.
- 4.3 The Buyer must pay all invoices in full to the Supplier by electronic transfer (or such other method of payment approved by Supplier in advance) in Australian dollars, without deduction, setoff or counterclaim of any kind by the date that is set out in the Application Particulars.
- 4.4 If payment is not made when due, Supplier may, without limiting its rights:
 - (1) vary or withdraw any credit at its discretion;
 - (2) withhold further supply until full payment of all amounts due from the Buyer to the Supplier (whether in connection with a supply under these Terms or pursuant to any other contract between the Supplier and the Buyer);
 - (3) charge interest at the rate of 2% above the Commonwealth Bank of Australia indicator rate from time to time on all monies not paid by the Buyer to Supplier on the due date and such interest will be calculated on daily rates from the due date for payment; and

- (4) require immediate payment in full of all amounts payable to the Supplier.

- 4.5 Supplier may offset any and all past due payment obligations or other indebtedness of Buyer against any outstanding payment obligations or other indebtedness that Supplier or any of its affiliates may owe Buyer. Buyer agrees to pay all costs of Supplier incurred in collection of past due amounts, including collection agency and/or attorney's fees (whether proceedings are filed or not).
- 4.6 Prices are exclusive of GST and other taxes, duties and other such levies which will be payable by the Buyer.
- 4.7 The Buyer must keep confidential all prices and terms of Purchase Orders agreed with the Supplier.
- 4.8 If at any time the financial condition or prospects of the Buyer or the credit risk to Supplier becomes unsatisfactory to Supplier (in its sole discretion), Supplier may require cash or satisfactory security prior to shipments or deliveries under any Purchase Order; such election will not affect the obligation of the Buyer to take and pay for the Goods.

5 Title and risk

- 5.1 The Parties acknowledge and agree that:
 - (1) title to and ownership of the Goods does not and will not pass to the Buyer but remains and will remain with the Supplier until payment in full of the purchase price for such Goods is received from the Buyer;
 - (2) the Goods which have not been paid for are held by the Buyer as fiduciary agent and bailee; and
 - (3) the Buyer must keep adequate records in relation to the proceeds of sale of any Goods which have been sold and which have not been paid for.
- 5.2 If the Buyer does not pay for any Goods by the due date specified in the relevant invoice, or if an Insolvency Event occurs in relation to the Buyer, and provided Supplier complies with the Buyer's reasonable directions and/or policies in relation to health and safety, Supplier is irrevocably authorised by the Buyer to enter any premises under the control of the Buyer at which the Goods are stored, at Supplier's sole risk. Supplier may use reasonable force to take possession of the Goods and all incidental items and will not be liable for any damage or loss caused by the Supplier's removal of the Goods.
- 5.3 Risk in Goods passes to the Buyer upon delivery of the Goods to the Buyer.
- 5.4 The Buyer must unconditionally ratify any actions taken by Supplier under this clause 5.

6 Personal Properties Security Act

- 6.1 For the purpose of this clause 6:
 - (1) "PPSA" means the *Personal Property Securities Act 2009 (Cth)*, as amended or replaced from time to time;

- (2) **PPS Law** means the PPSA and any regulations made under the PPS Act, as may be amended or replaced from time to time; and
- (3) collateral, financing statement, financing change statement, proceeds, security interest, security agreement, perfect and register have the meaning given to those terms in the PPS Law.
- 6.2 The Buyer grants to the Supplier a security interest in all Goods supplied to the Buyer under these Terms and their proceeds, as security for all money payable by the Buyer to the Supplier.
- 6.3 The Buyer acknowledges that these Terms constitute a security agreement for the purposes of the PPS Law, and that the Supplier may register its interest in the Goods and any proceeds of the Goods as a security interest on the Personal Property Securities Register in accordance with the PPS Law. The Buyer must provide the Supplier with any information it requires for the purposes of effecting registration.
- 6.4 The Buyer must take any steps the Supplier reasonably requires to perfect or otherwise ensure the enforceability and priority of any security interest granted to the Supplier under these Terms, including signing all further documents and all such further acts which the Supplier may reasonably require to register a financing statement or a financing change statement on the register.
- 6.5 The Supplier is not obliged to give any notices, statements of account or provide copies of any documents under the PPSA Law (including without limitation notice of a verification statement) unless the provision of the notice, document or information is required by law and cannot be excluded. The Buyer consents to the waiver of any of the requirements for notice, copies of the documents or information.
- 6.6 The Supplier retains any rights of enforcement arising under the PPSA, under these Terms or otherwise, including, but not limited to a right to seize collateral under clause 123 of the PPS Act.
- 6.7 If the Buyer sells any of the Goods while they remain the property of the Supplier and receives proceeds of the sale or receives any other proceeds, whether tangible or intangible, direct or indirect, of any dealing with the Goods (including any proceeds from insurance claims), Buyer grants to the Supplier a security interest in every payment to Buyer for the Goods (both as proceeds of the Goods and as original collateral).
- 6.8 Neither party may disclose any information or documents supplied by another party that is not publically available, including:
- (1) information of a kind referred to in clause 275(1) of the PPS Act; or
 - (2) the existence or content of these Terms
- 6.9 If in the opinion of the Supplier:
- (1) a PPS Law applies to these Terms or any transaction contemplated by it; and
 - (2) the PPS Law:
- (a) adversely affects or would adversely affect:
 - (i) the security position of the Supplier; or
 - (ii) the rights and obligations of the Supplier under or in connection with these Terms; or
 - (3) enables or would enable the security position of the Supplier to be improved without adversely affecting, in a material respect, the Buyer,
- the Supplier may, by giving written notice to the Buyer, require the Buyer to do anything, including amending these Terms or executing any document, that is necessary or desirable to ensure that, to the maximum extent possible:
- (4) the security position of the Supplier under these Terms; and
 - (5) the rights and obligations under or in connection with these Terms;
- are not adversely affected as contemplated by clause 6.9(2) (a) or that any adverse effect is overcome, or the security position of the Supplier is improved as contemplated under clause 6.9(3).
- 6.10 The Buyer must comply with the requirements of any notice given in clause 6.9 within the time stated in the notice.
- ## 7 GST
- 7.1 Each amount payable by the Buyer under these Terms in respect of a Taxable Supply by the Supplier is a GST exclusive amount and on receipt of a tax invoice the Buyer must, in addition to that amount and at the same time, pay the GST payable in respect of that supply.
- 7.2 Taxable Supply and GST have the meanings set out in the *New Tax System (Goods and Services Tax) Act 1999* (Cth).
- ## 8 Warranty, liability and indemnity
- 8.1 If the Buyer is a consumer (as defined under the Australian Consumer Law), nothing in this clause 8 is intended to exclude, restrict or modify any of the Customer's rights under the Australian Consumer Law ("**Consumer Rights**").
- 8.2 The only conditions, guarantees and warranties (together referred to as "**Warranties**") that are binding on Supplier in respect of the Goods (including without limitation in relation to the quality, suitability and fitness for purpose) are any Warranties required to be binding by statute. All other Warranties and liability, express or implied, are excluded to the maximum extent permitted by applicable law.
- 8.3 To the extent permitted by applicable law, the Supplier's liability (if any) for a Product that is defective, or breach of any Warranty or this Agreement, which cannot be lawfully excluded but can be lawfully limited, at the Supplier's option, is limited to and completely discharged by the supply (or resupply) or replacement by the Supplier of products which are the equivalent of the Goods or paying the cost of replacing the Goods or of acquiring equivalent Goods.
- 8.4 Subject to the terms of this Agreement and the Buyer's Consumer Rights (if relevant):
- (1) the Supplier has no liability to the Buyer or any other person for any consequential, indirect, or special loss or

damage, or injury to person or property, suffered or incurred by the Buyer, or any person in connection with this Agreement or the Goods; and

- (2) the total extent of any liability the Supplier has to the Buyer will be limited to the price paid for the Goods.

8.5 The Supplier's liability to the Buyer for loss or damage of any kind arising out of this Agreement will be reduced or limited to the extent (if any) to which the Buyer causes or contributes to the loss or damage.

8.6 For the purpose of this clause 8, "**Australian Consumer Law**" means the Australian Consumer Law set out in Schedule 2 to the Competition and Consumer Act 2010 (Cth).

9 Guarantee and Indemnity

9.1 The Guarantor has requested that the Supplier enter into this Agreement with the Buyer and the Supplier does so in consideration of the Guarantor giving this guarantee and indemnity by signing this Agreement under the "Guarantor's Execution".

9.2 The Guarantor irrevocably guarantees to the Supplier prompt performance of all of the obligations of the Buyer contained or implied in this Agreement. If the obligation is to pay money, the Supplier may recover the money from the Guarantor as a liquidated debt.

9.3 In addition to the Guarantor's liability under clause 9.2, the Guarantor irrevocably indemnifies the Supplier against loss incurred because the Buyer is not bound by some or all of its obligations under this Agreement or breaches its obligations under this Agreement.

9.4 The Guarantor's liability under clauses 9.2 and 9.3 is not affected by:

- (1) the granting of time, forbearance or other concession by the Supplier to the Buyer or any Guarantor;
- (2) an absolute or partial release of the Buyer or any Guarantor or a compromise with the Buyer or any Guarantor;
- (3) a variation of this Agreement;
- (4) the termination of this Agreement for the default of the Buyer;
- (5) the fact that this Agreement is wholly or partially void, voidable or unenforceable;
- (6) the non-execution of this Agreement by 1 or more of the persons named as Guarantor or the unenforceability of the guarantee or indemnity against 1 or more of the Guarantors; or
- (7) the exercise or purported exercise by the Supplier of its rights under this Agreement.

9.5 The Guarantor's liability is not discharged by a payment to the Supplier that is later avoided by Law. If that happens, the Supplier, the Buyer and the Guarantor will be restored to their respective rights

and obligations as if the payment had not been made.

9.6 If a liquidator or trustee in bankruptcy disclaims this Agreement, the Guarantor indemnifies the Supplier against any resulting loss.

9.7 This guarantee and indemnity is given as a deed and the Guarantor's execution (under the "Guarantor's Execution" heading) is execution of this guarantee and indemnity as a deed.

10 Termination

10.1 If Buyer breaches any term of these Terms, Supplier may:

- (1) suspend performance of these Terms and any Purchase Order (including without limitation the supply of Goods,) until Buyer cures its breach; or
- (2) by delivery of written notice to Buyer describing the breach, immediately terminate a Purchase Order (in part or whole) or the Agreement (including but not limited to any Purchase Orders placed by the Buyer prior to or on the date of termination).

10.2 Supplier may terminate the Agreement and all undelivered Purchase Orders immediately without notice if Buyer experiences an Insolvency Event.

10.3 In the event of termination of a Purchase Order or the Agreement, all outstanding payment obligations or other indebtedness of Buyer to Supplier will be due and payable no later than 15 days after delivery of notice of termination.

10.4 No termination will have any effect on any breach of the Agreement occurring prior to the date of termination.

10.5 Supplier may recover the price for each shipment of Goods (or any individual Purchase Order) under this Agreement as a separate transaction, without reference to any other shipment.

11 Force Majeure Events

11.1 The Supplier is not liable for any delay in performance or non-compliance with these Terms if, and to the extent that such non-compliance is attributable to a Force Majeure Event.

11.2 In the case of a Force Majeure Event impacting supply of the Goods, the Supplier may allocate its available supply of the Goods among its purchasers, on such basis as Supplier deems fair and practical, without liability to the Buyer.

11.3 For the purposes of this clause 11, "**Force Majeure Event**" means an event which prevents the performance of any obligations under these Terms and that is beyond the reasonable control of the Supplier and may include any of the following events or circumstances:

- (1) an act of God (including but not limited to fire, earthquake, cyclone, landslide, tsunami, or other natural disaster);
- (2) power or water shortages, labour disputes or inability to obtain any necessary raw materials, labour or transportation;

- (3) accidents or breakdowns of plant, machinery, hardware or communication network;
- (4) civil unrest, conflict, act of terrorism, insurrection, military coup, war (whether declared or not) or other hostilities; and
- (5) disease, epidemic, pandemic (including COVID-19 outbreak), and/or government sanctioned shutdown, workplace closures, quarantine, border closures and travel restrictions.

12 Change of Details

- 12.1 The Buyer must notify the Supplier within 7 days and in writing in the event of a change to the information supplied in the Application, including any changes of ownership.

13 Privacy

- 13.1 The Buyer agrees that information relating to these Terms (including the information provided under the Application Particulars) may be disclosed to a Credit Reporting Body (as defined in the *Privacy Act 1988*). Such information would include, but may not be limited to, items such as the fact that you have applied for credit with Supplier, any overdue payments which are in collection and payments or direct debits that have been dishonoured.
- 13.2 The Buyer agrees that Supplier may request from a Credit Reporting Body, or any financial institutions or credit provider the credit status or information of any person whose names are given to Supplier by the Buyer, whose names are included in a credit report about the Buyer, or credit information about the commercial finances of the Buyer. The Buyer permits and authorises such institutions to provide such information to Supplier. In particular, the Buyer consents to Supplier receiving such information for the purposes of approving the Buyer's application for credit, administering the account or approving any purchases the Buyer may make in the future under this Agreement.
- 13.3 The Buyer understands and agrees that information about the Buyer may be transferred confidentially within Supplier and any of its related or associated corporations worldwide, and that Supplier may be obliged to disclose such information to others. If Supplier is so obliged by law or a government authority, Supplier will use its reasonable efforts to notify the Buyer at its last known address prior to disclosure.

14 Confidential Information

- 14.1 The Buyer acknowledges that any Confidential Information disclosed to it by Supplier is proprietary, confidential or a trade secret of Supplier.
- 14.2 Except as stated in these Terms, neither party may use or disclose, nor permit any of its officers, employees, agents or contractors to use or to disclose to any person any Confidential Information disclosed to it by the other party under these Terms or in connection with the Agreement, without the prior written consent of the other party.
- 14.3 This condition 14 does not apply to any Confidential Information which:

- (1) is generally available to the public (other than as a result of the wrongful disclosure of that Confidential Information); or
- (2) is required to be disclosed by any law.

- 14.4 For the purpose of this clause 14, "**Confidential Information**" means all information including without limitation, information relating to a party, its employees, business dealings, specifications, formulations, performance characteristics, contracts, existing or potential customers, computer operations, marketing, sales and business plans, financial and technological data and other sensitive corporate information:

- (1) belonging to a party relating to its business, business plans, affairs or activities;
- (2) that is treated or designated by the party as confidential; or
- (3) which should reasonably be regarded in all the circumstances as confidential to the party;

including but not limited to the terms of, and existence of, this Agreement.

15 General

- 15.1 The rights and obligations of each party that by their nature or of necessity survive the termination or expiration of a Purchase Order, these Terms or the Agreement will survive such termination or expiration.
- 15.2 The law of Queensland governs these Terms. The parties submit to the non-exclusive jurisdiction of the courts of Queensland and of the Commonwealth of Australia.
- 15.3 Failure of either Party to exercise any right it has under the Agreement on one occasion shall not operate or be construed as a waiver by such Party of the same right on another occasion or any other rights it has; any waiver must be in a writing signed by the waiving Party.
- 15.4 In the event that any provision of the Agreement, including these Terms, are adjudicated to be invalid or unenforceable, the remaining provisions of the Agreement will remain in full force and effect, and the affected provision or portion thereof will be deemed modified so that it is enforceable to the maximum extent permissible.

16 Definitions

In these Terms:

- (1) "**Agreement**" means these Terms and the Buyer's original credit application submitted to the Supplier prior to supply of the Goods;
- (2) "**Application Particulars**" means the particulars provided by the Supplier in the Buyer's original credit application submitted to the Supplier prior to supply of the Goods;
- (3) "**Buyer**" means the Applicant named under the Application Particulars;
- (4) "**Claims**" includes but is not limited to all claims, demands, causes of action, damages, losses, liabilities,



costs, expenses (including reasonable attorneys' fees), penalties, and judgments;

- (5) **"Guarantor"** means the Guarantor/s named under the Application Particulars;
- (6) **"Goods"** means all products ordered from and supplied by Supplier to the Buyer;
- (7) **"Insolvency Event"** means:
 - (a) an order is made or a resolution is passed for the winding up or dissolution of an entity;
 - (b) a receiver or receiver and manager, trustee in bankruptcy, administrator or similar officer is appointed to all or any part of the assets or undertaking of an entity;
 - (c) an application (that is not withdrawn or dismissed within 21 days after being made) is made to a

court for an order, or an order is made, or a meeting is convened or a resolution is passed for the purpose of appointing a person referred to in clause 16.1(7)(b) to an entity or for the winding up of an entity; or

- (d) an entity is unable or deemed to be unable to pay its debts;
- (8) **"Parties"** include the Buyer and the Supplier;
- (9) **"Purchase Order"** means an order for Goods by the Buyer in the form specified by the Supplier from time to time;
- (10) **"Supplier"** means Hydrofarm Co Pty Ltd ACN 625 636 697 t/as The Tree Co Farm; and
- (11) **"Terms"** means these terms and conditions of supply.