

AGREEMENT FOR COLD STORAGE

Agreement made this _____ day of _____ 200

BETWEEN **FOODBOSS PTY LIMITED**
ABN 91 106 531 784
Of 24-27 Lambridge Place
PENRITH NSW 2750
("Foodboss")

AND **XYZ PTY LIMITED**
ABN
Of 2 Campbell Street
MELBOURNE VIC 3000
("the Storer")

BACKGROUND

- A. Foodboss Pty Limited operates a cold storage facility ("the Facility") at its premises at 24-27 Lambridge Place Penrith ("the Premises").
- B. Foodboss and the Storer have agreed that Foodboss will provide to the Storer cold storage facilities subject to the terms of this Agreement.

OPERATIVE

1. Term

The term of this Agreement shall be a period of one (1) year ("the Initial Period") commencing from _____ ("the Commencement Date") unless this Agreement is terminated earlier pursuant to the terms of this Agreement.

2. Cost of Storage

- 2.1 Foodboss has provided to the Storer a quotation in writing for the provision of facilities pursuant to this Agreement. The Storer must pay the consideration to Foodboss in accordance with the terms of that quotation by direct debit to Foodboss' bank account or in such other manner as Foodboss may advise.
- 2.2 The Storer must pay to Foodboss the minimum storage fee per month whilst ever the Storer is using the facilities. If the Storer does not use the facilities for a period of 30 consecutive days or more, Foodboss reserves the right to terminate this Agreement by giving 30 days notice in writing to the Storer.

Otherwise Foodboss shall only be entitled to terminate this Agreement where the Storer is in default of one or more of the terms of this Agreement in which case

Foodboss must give to the Storer not less than 60 days written notice of its intention to terminate this Agreement.

- 2.3 After the Initial Period, Foodboss reserves the right to vary its prices. Should this occur, Foodboss must give written notice thereof to the Storer. In the event that the Storer does not agree to the new prices it shall be entitled to terminate this Agreement upon 60 days notice without penalty and the new prices shall not apply during the period of that notice.

3. Delivery of Goods

- 3.1 The Storer warrants to Foodboss that in respect of all goods delivered for storage:
- (a) it is the owner and entitled to possession of the goods;
 - (b) the goods are not dangerous; and
 - (c) that the description of the goods given to Foodboss is accurate.
- 3.2 Foodboss' tally of goods received shall be final and conclusive evidence as to the quantity and description of goods received.
- 3.3 The Storer must notify Foodboss in writing from time to time of any change in its address or ownership of the goods.
- 3.4 Foodboss at its discretion may require the Storer's written instructions relating to the surrender, delivery or disposal of the goods but shall also be entitled to rely upon oral instructions given by the Storer, its servants or agents. In respect of all goods which are delivered by Foodboss in accordance with oral or written instructions of the Storer, the Storer must indemnify Foodboss against all claims whatsoever in respect of the receipt of such goods.
- 3.5 At any time Foodboss may require the Storer to remove the goods from storage and to pay all outstanding storage and other charges up to the time of removal.
- 3.6 Upon re-delivery of the goods by Foodboss to the Storer, the Storer must immediately notify Foodboss in writing of any discrepancy relating to the goods.

4. Insurance

- 4.1 Where the Storer's goods are damaged other than by failure of the refrigeration unit, fire, theft or other damage beyond the reasonable control of Foodboss, Foodboss' liability shall be limited to \$500 per occurrence.
- 4.2 Subject to 4.1, Foodboss shall not be liable for any loss, injury or damage to the goods stored whether by way of destruction or damage by storm, tempest, flood, acts of God, theft, fire or water or however any such loss or injury may occur or for any negligence or alleged negligence or any act or omission of Foodboss or its servants or agents and from any cause whatsoever and without limitation, Foodboss shall not be liable for:

- (a) any injury, damage or loss suffered or caused by non-delivery or delayed delivery of the goods; or
- (b) any injury, damage or loss caused or contributed to by the method of storage of the goods including the storage temperatures, sweating, evaporation, leakage, breakage, shrinkage, deterioration, fermentation, wasting, decay, putrefaction, contamination; or
- (c) any injury, damage or loss caused by or contributed to by strikes, lock-outs, shortage of labour, defects or breakdowns of plant machinery or premises.

4.3 To the extent limited by law Foodboss accepts no responsibility for the goods which are received into storage and stored by Foodboss at the Storer's sole and absolute risk. Foodboss accepts no responsibility and makes no warranty whatsoever.

4.4 The Storer must make its own arrangements in relation to insurance of the goods.

5. Dangerous Goods

5.1 Goods are considered to be dangerous if they are classified as such either under any Australian Dangerous Goods code or if they might in the reasonable opinion of Foodboss injure or damage people, property or the environment. This will include goods that are or may become poisonous, corrosive, volatile, explosive, flammable or radioactive.

5.2 The Storer must inform Foodboss if goods to be stored are dangerous. Foodboss in its absolute discretion may refuse storage of them.

5.3 The Storer must indemnify Foodboss in respect of all actions, claims, suits and demands and suits whatsoever that arise out of or relate to goods which are dangerous.

6. Deterioration of Goods

6.1 At any time and without notice, and at the expense of the Storer, Foodboss may remove and if it thinks fit, sell or destroy goods or any part thereof which Foodboss at its absolute discretion has determined to be or likely to become contaminated, deteriorated, objectionable or unwholesome or a source of contamination or danger to Foodboss, its servants or agents or to other goods stored by other storers or which the Storer has failed to remove having been given not less than 48 hours notice by Foodboss that the goods may have or be about to be so deteriorated.

7. Handling of Goods

7.1 Foodboss is authorised by the Storer to use such method for the handling of the goods as Foodboss in its absolute discretion deems appropriate from time to time.

7.2 Foodboss will also be entitled to use its own discretion in relation to where, within the cold storage complex the goods are stored and whether the goods need to be stored in bulk, sorted into separate lots, or any other aspect of their storage.

8. Liability to Payment

8.1 The Storer shall be liable for all storage and other charges payable to Foodboss up to and including the day of delivery of goods from storage and payment must be made to Foodboss either before removal of goods or in accordance with arrangements made between Foodboss and the Storer from time to time.

8.2 Storage and other charges payable to Foodboss whether in respect of the subject goods or other goods of the Storer which are held by Foodboss shall be a charge upon such goods as are held by Foodboss from time to time, and it shall have a general lien upon such goods including the right to sell them upon failure on the part of the Storer to comply with a demand for payment made by Foodboss.

9. Force Majeure

9.1 If Foodboss or any of its servants or agents are wholly or partially prevented from performing its obligations under this Agreement by a Force Majeure event, then the obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure event.

9.2 If the Force Majeure event continues for a period longer than seven days from its initial occurrence either party shall be entitled to terminate this agreement by written notice to the other and without prejudice to any rights or obligations that either party may have accrued prior to such termination.

9.3 A **Force Majeure** event affecting a party means anything outside that party's reasonable control including, without limitation, flood, fire, theft, storm, tempest, act of God, war, strike, lockout and shortage of labour.

10. General

10.1 In this Agreement **Storer** means the person or corporation in whose name the goods are for the time being stored but will also include, where the context permits, the beneficial owner or mortgagee/chargee of the goods.

10.2 **Foodboss** means Foodboss Pty Limited who is entitled in its absolute discretion to act upon instructions received from the Storer whether that be the person or company who originally stored the goods, the beneficial owner or the mortgagee/chargee.

10.3 Where the Storer comprises one or more parties, each party has authority to bind the others and in such case liability incurred by the Storer to Foodboss will be taken to be joint and several.

- 10.4 The Storer must pay all tax imposts or other charges which may apply to the storage of the goods from time to time by any governmental or similar authority.
- 10.5 No amendment, variation or modification of this Agreement shall be enforced unless it is in writing and signed by both Foodboss and the Storer.
- 10.6 This Agreement contains the entire agreement between the parties.

11. Notices

- 11.1 Any notice required to be given under these conditions must be in writing and sent to a party's last known address or facsimile number.
- 11.2 A notice will be taken to have been received and served on:
- (a) if delivered by hand on the date of delivery;
 - (b) if sent by post, three working days after posting;
 - (c) if sent by facsimile before 4 pm on a working day, on the date of such transmission or otherwise at 8 am on the next working day following the transmission (but only in the case that the facsimile machine records a successful transmission of the facsimile.)
- 11.3 Notices may not be given by way of email. However the parties agree that email shall be an acceptable method of communication under these conditions for all matters other than the service of notices.

12. Applicable Law

- 12.1 These conditions shall be governed and construed in accordance with the laws of the State of New South Wales and any proceedings which may be brought by the Storer, its servants, agents or representatives must be brought within the State of New South Wales.

Signed for and on behalf of Foodboss Pty Limited _____

Signed for and on behalf of XYZ Pty Limited _____