



SUPPLY AGREEMENT

DATE: [insert date]

PARTIES

- 1 [INSERT], ABN [insert] (Customer)
- 2 JACOBS DOUWE EGBERTS AU PTY LTD, ABN 82051278409 (JDE)
- 3 [insert name of Guarantor] of [insert address] (Guarantor)

SECTION A: AGREEMENT AND KEY DETAILS

AGREEMENT

JDE agrees to provide Products, Equipment and Services on the terms of this Agreement, and the Customer agrees to those terms.

The Customer agrees to complete and execute at the same time as this Agreement a credit application provided by JDE.

The Guarantor being a [director/shareholder] of the Customer, acknowledges that it will benefit from the supply of Products, Equipment and Services to the Customer by JDE under this Agreement, and agrees to guarantee the performance by the Customer of the Customer's obligations under this Agreement in accordance with the terms set out in the Schedule.

This Agreement comprises:

- Section A (Agreement and Key Details, including this cover page);
- Section B (General Terms and the Schedule);
- the Commercial Terms; and [NB: The Commercial Terms are commercially sensitive and therefore confidential. These will be provided separately to Successful Applicants once they have been Short-Listed. For the avoidance of doubt, the Commercial Terms make it clear that in the initial 12 month period, Harris will be providing free Beans and Cups. The amount will be capped at a negotiated volume. Any amount above this agreed volume will be sold to the Successful Applicant on the agreed prices]
- the Conditions of Sale.

KEY DETAILS

Item	Details
Delivery Address	[insert].
Commencement Date	[insert date, month and year].



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Term	Minimum Term: 36 months from the Commencement Date.
Basis of provision of Equipment	For the first 12 months from the Commencement Date, Equipment will be provided on a free on loan basis. After the first 12 months, Equipment will be provided on the basis set out in the Commercial Terms.

SIGNED

SIGNED for and on behalf of **THE CUSTOMER** by:

Authorised signatory's full name:

SIGNED for and on behalf of **JACOBS DOUWE EGBERTS AU PTY LTD** by:

Authorised signatory's full name:

SIGNED by **THE GUARANTOR** by:

Authorised signatory's full name:

Authorised signatory's full name:



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SECTION B: GENERAL TERMS

1 INTERPRETATION

1.1 **Meaning:** In this Agreement, the following terms have the stated meaning:

Agreement: Section A (Agreement and Key Details, including the cover page and signature clauses), Section B (Terms and the Schedule), the Commercial Terms and Conditions of Sale.

Commercial Terms: a document entitled *Commercial Terms* that references this Agreement and is signed by both parties.

Conditions of Sale: JDEs terms and conditions of sale available at <https://www.jacobsdouweegbertsprofessional.com.au/terms-and-conditions>, as amended from time to time by JDE in writing.

Equipment: the equipment provided to the Customer as set out in the Commercial Terms.

Key Details: the Key Details section set out on the cover page of this Agreement.

Minimum Cross-sell Requirements: the minimum cross-sell requirements set out in the Commercial Terms. **[NB: there are no mandatory cross-sell requirements other than the cups/lids which are free in the first 12 months (subject to negotiated amount)]**

Minimum Term: the minimum term (if any) forming part of the Term as set out in the Key Details.

Minimum Volume Throughput: the minimum volume throughput set out in the Commercial Terms.

Price: the price for the Products, Equipment and Services as set out in the Commercial Terms.

Products: coffee, tea and other related products listed in the Commercial Terms.

Services: the services to be performed by JDE set out in the Commercial Terms and includes any barista training services that JDE may provide to the Customer.

Commencement Date: the commencement date set out in the Key Details, if no commencement date is set out then the date that both parties sign this Agreement.

Term: the term set out in the Key Details.

General Terms: this Section B of this Agreement, including the Schedule.

Year: a 12-month period from the Commencement Date or an anniversary of that date.

1.2 **Guide:**

- a No term of this Agreement is to be read against a party because the term was first proposed or drafted by that party.

- b The singular includes the plural and *vice versa*.

- c A reference to:

- i a **party** to this Agreement includes that party's permitted assigns;
- ii **personnel** includes all employees, contractors, agents and officers of a party. A reference to the JDEs personnel excludes the Customer; and
- iii **including, e.g.** and similar words do not imply any limit.

1.3 **Conflict:** If there is any conflict between the documents forming part of this Agreement, the document listed before another document prevails in the following list:

- a the Commercial Terms;
- b the General Terms; and
- c the Conditions of Sale.

2 ORDERS

2.1 **Placing orders:** If the Customer wishes to purchase any Products from JDE, the Customer must place an order with JDE. The order must contain product names, [product codes], the quantities of each type of Product it wishes to purchase, preferred delivery date and any other information reasonably required by JDE.

2.2 **Accepting orders:**

- a An order for any Products, Equipment or Services is not binding on JDE until JDE has accepted that order in writing.
- b Any orders for Products, Equipment or Services made by the Customer and accepted by JDE will be governed by, and form part of, this Agreement.

2.3 **Substitutions:** JDE may, for reasons of availability, substitute alternative Products to that specified in an order, provided that such substitution is a reasonable substitute for the ordered Product.

3 RELATIONSHIP

3.1 **Exclusivity:** The Customer agrees to purchase the Products exclusively from JDE in accordance with the terms and conditions of this Agreement.

3.2 **Customer restraint:** The Customer must not, without the prior written approval of JDE, sell, manufacture, distribute or promote any goods or products which compete with, or are similar to, the Products during the term of this Agreement.

4 CUSTOMER REQUIREMENTS

The Customer at all times must:

- a maintain or exceed the Minimum Volume Throughput;
- b meet the Minimum Cross-sell Requirements;

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- c not do or act in way that puts JDE or its Products into disrepute or otherwise harms JDEs goodwill and reputation in the Products; and
- d comply with any brand and promotional guidelines that JDE may supply to the Customer from time to time.

5 PRICE AND PAYMENT

- 5.1 **Price:** The Customer must pay the Price to JDE.
- 5.2 **Invoicing and payment:** Unless otherwise agreed between the parties:
 - a For the initial 12 months of the Term, the Customer must pay all amounts set out in an invoice issued by JDE, including GST and any other taxes payable, without set off or deduction and by direct debit and within 14 days of the date of the relevant invoice; [NB: This is only relevant if the Customer purchases Product that is more than the agreed free amount of beans and cups.]
 - b After the initial 12 months of the Term:
 - i the Customer must pay all amounts set out in an invoice issued by JDE, including GST and any other taxes payable, without set off or deduction by the due date specified in the invoice; and
 - ii where no date for payment is specified, payment must be made within 14 days of the date of the relevant invoice.

- 5.3 **Default:** If the Customer fails to pay the Price or becomes bankrupt, insolvent, has a liquidator or receiver and manager appointed, then the Price will become immediately due and payable by the Customer.
- 5.4 **Adjustment:** JDE may, from time to time and with 30 days' prior written notice to the Customer, increase the price of Products, Equipment or Services in accordance with the Commercial Terms.

6 RISK AND TITLE

- 6.1 **Title:** Title to the Products passes to the Customer on payment in full of all amounts owed and due to JDE.
- 6.2 **Charge:** The Customer charges all its legal and/or equitable rights, title and interest in any real or personal property now or in the future to secure all amounts owed and due to JDE.

7 EQUIPMENT INSTALLATION

- 7.1 **Title:** Any Equipment provided to the Customer by JDE remains, at all times, the property of JDE and must be immediately delivered up to JDE upon demand by JDE or at the expiration or termination of this Agreement, whichever occurs earlier.
- 7.2 **Location and possession:** The Customer must not:
 - a change the location at which the Equipment was first installed without prior written consent of JDE; or

- b purport to, alter, sell, part with possession, transfer, mortgage, charge or encumber the Equipment in any way.

7.3 **Repossession:** JDE may, at any time and at its absolute discretion, enter any premises where the Equipment is located and exercise its rights to recover such Equipment without notice.

7.4 **Loan arrangement:** JDE may provide, at its sole discretion, the Customer with Equipment, as set out in the Commercial Terms on a free on loan or rental basis.

7.5 **Conditions:** The Equipment is supplied on condition that the Customer must:

- a remain in compliance with all terms and conditions of this Agreement;
- b purchase all Products under this Agreement or agreed from time to time;
- c maintain or exceed the Minimum Volume Throughput (if applicable); and
- d maintain the Equipment in accordance with clause 8.

7.6 **Insurance:** The Customer shall insure, and keep insured for the Term or the period during which the Customer is in possession of the Equipment (whichever is longer), the Equipment against fire, accident and theft and for such other risks and to such levels as are commercially prudent but not less than the market value of the Equipment.

7.7 **Purchase:** JDE may also, at its sole discretion, agree that the Customer purchase any or all of the Equipment.

7.8 **Failure to comply:** If the Customer fails to comply with the conditions contained in this clause 7, without limitation to any other rights, JDE may:

- a if the Equipment is free on loan, charge rent based on JDEs standard rental model on the Equipment supplied;
- b if the Equipment is on a rental basis, charge interest on unpaid rent; or
- c failing that may collect the Equipment with 14 days' notice.

8 EQUIPMENT MAINTENANCE

8.1 **Customer requirements:** The Customer will:

- a at all times use the Equipment in accordance with the directions for use of the Equipment and must only use products supplied by JDE in the Equipment;
- b ensure that all name plates, numbering/badging identifying the Equipment and placed thereon by JDE are strictly protected and not altered, defaced or removed; and
- c at its own expense clean and maintain the Equipment in good working order, subject to fair wear and tear.

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8.2 Repair and replacement:

- a JDE may, on reasonable notice by the Customer, service or replace the Equipment in the event that there is any malfunction or breakage of the Equipment which occurs during the proper usage in the normal course and with use of the Products.
- b The Customer acknowledges that any replacement Equipment JDE provides may not be the same make and model of the Equipment it is replacing.
- c All servicing and repair of the Equipment may only be performed by a repairer engaged by JDE.
- d The Customer will allow and assist employees or agents of JDE to inspect the Equipment at all reasonable times.

8.3 **Costs:** The Customer is responsible for the cost of maintaining or replacing malfunctioning or broken Equipment (including applicable service call out fees, spare parts and other related materials required for repairs) if the malfunction or breakage is caused by an act or omission of the Customer or its employees, agents or contractors or when items other than the Products are used in the Equipment.

9 PERSONAL PROPERTY SECURITIES REGISTRATION

9.1 **Security interests:** If this Agreement or any transaction connected with it contains a security interest for the purpose of the Personal Property Securities Act 2009 (Cth), the Customer agrees to do anything, upon request that is necessary for the purpose of ensuring that the security interest is enforceable, perfected and effective.

9.2 **Further assurances:** The Customer also agrees to do anything that enables JDE to apply for registration, give any notification and to exercise any rights in connection with the security interest.

9.3 **No other security interests:** The Customer must not grant any other security interest which would rank equally with, or in priority to, a security interest granted to JDE by or pursuant to this Agreement without written consent of JDE.

10 TRAINING

If requested by the Customer, JDE may, at its sole discretion provide training to the Customer's staff.

11 WARRANTIES AND LIABILITY

11.1 **Consumer law:** The Customer agrees and represents that it is acquiring the Products, Equipment and Services, and entering into this Agreement, for the purposes of trade. The parties agree that:

- a to the maximum extent permissible by law, Part 3-2 of the Australian Consumer Law (ACL) and any other applicable consumer protection legislation does not apply to the supply of the Products, Equipment and Services or this Agreement; and

- b it is fair and reasonable that the parties are bound by this clause 11.1.

11.2 **Warranties:** To the maximum extent permitted by law (including ACL), JDEs warranties are limited to those set out in this Agreement and all other conditions, guarantees or warranties whether expressed or implied by statute or otherwise (including any warranty under ACL) are expressly excluded and, to the extent that they cannot be excluded, liability for them is limited to, at JDEs option to:

- a supplying equivalent Products or Equipment;
- b resupplying the Services; or
- c providing the Customer a credit for the Price paid or payable for the Product, Equipment or Service.

11.3 **Customer indemnity:** The Customer indemnifies JDE against all expenses, losses, damages and costs that JDE may sustain or incur as a direct or indirect result of any loss of or damage to or destruction of the Equipment arising from the Customer's negligence or the use, operation or storage of the Equipment.

11.4 **JDE liability:** To the maximum extent permitted by law:

- a JDE will not be liable to the Customer for any:
 - i delay, inconvenience, liability, damage, expense or cost whatsoever;
 - ii loss of profit, revenue, savings, business, data and/or goodwill; or
 - iii direct or consequential, indirect, incidental or special loss or damage,

caused (in whole or in part) by or arising out of any use of Product or Equipment, any defects in Products or Equipment or any failure, malfunction, breakdown or deterioration of Products or Equipment; and

- b JDEs liability to the Customer for breach of any express provision of this Agreement is limited at JDEs option to:
 - i refund for or replacement of the Product or Equipment in respect of which the breach occurred (and in respect of Services, providing the Services again in respect of which the breach occurred); or
 - ii repair of the Product or Equipment.

11.5 **No reliance:** The Customer warrants that it has not relied on:

- a any statement, representation or warranty by JDE (including any descriptions, illustrations or specifications in any document, catalogue, list, brochure or publicity material produced by JDE and/or supplied to the Customer) other than those expressly set out in this Agreement; and
- b the skill or judgement of JDE or any person purporting to act on behalf of JDE and that it has determined that Products or Equipment being acquired will be fit for the

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purpose for which it is intended to be used. Any description of Products and Equipment are for identification only and will not constitute an agreement for the supply of the Products or Equipment by description.

12 TERMINATION

12.1 Termination rights:

- a Either party may, on 60 days' written notice to the other party, terminate this Agreement.
- b Subject to clause 12.3, if there is a Minimum Term, the earliest date for termination under clause 12.1a will be the expiry of that Minimum Term.
- c Either party may, by notice to the other party, immediately terminate this Agreement if the other party breaches any material provision of this Agreement and the breach is not capable of being remedied.
- d If a breach does not fall within clause 12.1c, either party may terminate this Agreement subject to complying with the following process:
 - i The party suffering the breach (**Innocent Party**) has provided written notice to the other party (**Defaulting Party**) the particulars of the breach.
 - ii If the Defaulting Party has not remedied the breach within 30 days of receiving notice under clause 12.1d, authorised representatives of both parties will meet to determine whether the breach can be rectified and agree to a remedial plan.
 - iii If the parties cannot agree on a remedial plan in clause 12.1dii, the Innocent Party may terminate this Agreement by providing 30 days' written notice to the Defaulting Party.

12.2 **JDEs termination rights:** JDE may, by notice to the Customer, immediately terminate this Agreement if the Customer:

- a in JDEs reasonable opinion, has damaged the reputation or goodwill of JDE;
- b has, or has purported to assign, novate, subcontract or transfer any right or obligation under this Agreement, or has undergone a change of control (as defined in clause 13.2), without JDEs prior written consent; or
- c becomes, or threatens to become, insolvent, bankrupt or the subject of any similar action or administration, or ceases to continue business or trading for any reason.

12.3 **Customer termination right:** If the Customer wishes to terminate this Agreement during the Minimum Term, it may request, by written notice, JDEs consent to termination (such consent not to be unreasonably withheld). JDE will negotiate in good faith with the Customer to agree mutually acceptable terms for termination.

12.4 Consequences of termination:

- a Termination of this Agreement does not affect a party's rights and obligations accrued before the termination date.
- b The Customer must pay for all Products, Equipment and Services provided before the expiry or termination date.
- c Unless agreed otherwise by the parties, all branded items provided to the Customer by JDE must be returned to JDE.

12.5 **Obligations continuing:** Clauses which, by their nature are intended to survive expiry or termination, including clauses 7, 8, 9 and 11 continue in force.

13 SUBCONTRACTING, ASSIGNMENT AND CHANGE OF CONTROL

13.1 **Subcontracting and assignment:** The Customer may not assign, novate, subcontract or transfer any right or obligation under this Agreement without JDEs prior written consent. The Customer remains liable for its obligations under this Agreement despite any approved assignment, subcontracting or transfer. Any assignment, novation, subcontracting or transfer must be in writing.

13.2 **Change of control:** Any change of control of the Customer is deemed to be an assignment for which JDEs prior written consent is required under clause 13.1. In this clause, **change of control** means any transfer of shares or other arrangement affecting the Customer or any member of its group which results in a change in the effective control of the Customer.

14 TRUSTS

Where the Customer is a trustee of a trust, it enters into this Agreement in its own capacity and as trustee of the trust, and warrants and declares that:

- a it has the power and authority to execute this Agreement, and that all rights of indemnity which it now has or may have in the future, have not and will not be been modified or excluded as a result of any act, matter, document made or executed by it, or any breach of fiduciary duty or in any other way; and
- b it has not released and shall not release in future or cause or permit to be released, lost or diminished in any manner, any such rights of indemnity.

15 GENERAL PROVISIONS

15.1 **Governing law:** This Agreement is governed by, and must be interpreted in accordance with, the laws of New South Wales, Australia. Each party submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia in relation to any dispute connected with this Agreement.

15.2 **Independent contractor:** JDE is an independent contractor of the Customer. No other relationship (e.g. joint

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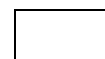
venture, agency, trust or partnership) exists under this Agreement.

15.3 **Severability:** Any illegality, unenforceability or invalidity of a provision of this Agreement does not affect the legality, enforceability or validity of the remaining provisions of this Agreement.

15.4 **Variation:** Subject to clause 5.4, any variation to this Agreement must be in writing and signed by both parties.

15.5 **Entire Agreement:** This Agreement sets out everything agreed by the parties relating to the Products, Equipment and Services and replaces anything discussed, exchanged or agreed prior to the Commencement Date.

15.6 **Counterparts:** This Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter this Agreement by signing and sending (including by facsimile or email) a counterpart copy to the other party.



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SCHEDULE: GUARANTOR GUARANTEES AND INDEMNITY

The Guarantor offers the guarantees and indemnity on the following terms:

- 1 The Guarantor acknowledges that it has read the terms and conditions of the credit application provided to the Customer by JDE at the same time as this Agreement.
- 2 This guarantee is not limited or capped at any credit/other limit applicable to the Customer's account, and extends to all money, and actual/contingent liabilities, owed to JDE by the Customer (**Guaranteed Money**).
- 3 If there is more than one Guarantor, the term *Guarantor* means and refers to each, and their obligations bind them (their successors, executors and assigns), jointly and severally. Obligations of the Guarantors are absolute, irrevocable, unconditional, and remain in force unless terminated in writing by JDE.
- 4 The Guarantors guarantee the due/punctual performance by the Customer of all the Customer's obligations to JDE.
- 5 As a separate and independent obligation, Guarantors each indemnify JDE, and will keep indemnified, from and against all damages, injury, loss, costs and expense (present or future) including mercantile agents fees/commission, and legal costs/disbursements on a full indemnity basis, relating to the failure of the Customer to pay any money due to JDE by the Customer or any breach by the Customer of any obligations owed by it to JDE.
- 6 Should any monies payable by the Customer not be recoverable for any reason, or should an obligation of the Customer or Guarantors be or become void/voidable/unenforceable/invalid, Guarantors shall indemnify JDE against all losses, costs and expenses arising therefrom, and the Guarantors shall as a sole and independent obligation pay to JDE on demand the amount which JDE would otherwise have been able to recover (on a full indemnity basis).
- 7 As between the Guarantors and JDE (but without affecting the obligations of the Customer) the liability of the Guarantors shall be deemed to be the liability of a principal debtor and not of a surety.
- 8 Each Guarantor's obligations are continuing principal obligations and shall not be discharged or affected by:
 - a any variation to JDEs Terms and Conditions of Sale, or any credit terms or agreement as to payment;
 - b any waiver, extension, credit or other indulgence or concession by JDE to the Customer or Guarantors;
 - c anything the Customer may assert to resist making payment of any part of the Guaranteed Money;
 - d any increase in the amount of Guaranteed Money and/or any sale of the Customer's business or assets;
 - e death, incapacity, bankruptcy, administration or liquidation of the Customer or any Guarantor;
 - f anything done/omitted/neglected by JDE in exercise (or not) of its authorities, powers and discretion;
 - g the Guarantors having no financial, beneficial, or other interest in the business of the Customer; and
 - h the Guarantors shall rank and be entitled to enforce any rights as to monies allegedly owed to them by the Customer or the Guarantors only after the Guaranteed Money has been paid to JDE or satisfied.
- 9 The Guarantors each charge all of their legal and equitable rights, title and interest in any real property now or in the further to secure payment of the Guaranteed Money to JDE.

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