

Just In Time Packaging
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3/93 Abbott Road
Hallam 3803, Victoria



Application for Credit Form and Terms & Conditions of Sale

By completing this form the Applicant is requesting credit terms 30 days after the month of delivery subject to the Terms and Conditions stated on this form. Please complete this form and return by mail, fax or e mail to Just In Time Packaging. We will advise you the outcome usually within two workdays.

- Part A To be completed by all applicants.
- Part B To be completed by partnerships, sole traders and proprietors of business names.
- Part C To be completed by companies.
- Part D To be completed by all applicants.
- Part E The Personal Guarantee is required for each Director.

PART A – TO BE COMPLETED BY ALL APPLICANTS

Applicant : ABN
number :

Full trading name :
.....
.....

Trading address :
.....
.....

Postal address :
.....
.....

Type of business : Date established :
.....

Phone number : Fax number : E Mail :
.....

Credit limit required \$

Trade References:

1 Name : Contact :
..... Phone :

2 Name : Contact :
..... Phone :

3 Name : Contact :
..... Phone :

PART B – TO BE COMPLETED BY PARTNERSHIPS, SOLE TRADERS AND PROPRIETORS OF BUSINESS NAMES

Full trading name :

Full name of sole trader :

Partner details 1 Name : Driver Licence
No :

Address :

2 Name : Driver Licence
No :

Address :

PART C – TO BE COMPLETED BY COMPANIES

Full company name :

Date incorporated : ABN number :

Director(s) name & addresses :

1

2

3

PART D – TO BE COMPLETED BY ALL APPLICANTS

Signed by all directors, partners, or sole traders as appropriate. Date :

Name : Signature : Position :

Name : Signature : Position :

Name : Signature : Position :

PART E – THE PERSONAL GUARANTEE IS REQUIRED FOR EACH DIRECTOR

In consideration of the Company having agreed at the Guarantor’s request to supply or continue to supply the Applicant (being the Applicant identified in the accompanying Application for credit account) with goods and services on credit, the person identified below as guarantor (“the Guarantor”) agrees with the Company as follows:-

1. The Guarantor:-

1.1 Guarantees the due and punctual payment to the Company of all amounts which the Applicant does now or may at any time in the future owe to the Company;

1.2 Guarantees the punctual and correct compliance of all obligations set out in the accompanying Terms and Conditions (including payment obligations) which the Applicant owes now or may in the future owe to the Company;

1.3 Indemnifies the Company against any loss it may suffer if the Applicant does not meet any of its obligations set out in the accompanying Terms and Conditions.

2. This Guarantee and Indemnity creates a principal obligation from the Guarantor to the Company and it is in addition to any security which the Company holds from the Applicant. This Guarantee and Indemnity may be enforced without the Company having to take any steps against the Applicant or any security.

3. This Guarantee and Indemnity is a continuing guarantee and indemnity and is not wholly or partially discharged until all credit arrangements between the Company and the Applicant are ended, all amounts owing to the Company by the Applicant are paid, and all obligations of the Applicant to the Company are complied with in full and the Guarantee and Indemnity has been discharged in writing by the Company.

4. This Guarantee and Indemnity is not affected and is still enforceable notwithstanding:

4.1 Any amount owing to the Company by the Applicant not being recoverable by the Company for any reason at all;

4.2 The Company not complying with any law or any agreement with the Applicant;

4.3 The Company granting any time, release or any other concession to the Applicant or the Guarantors or any one or more of the Guarantors. Notice of the granting of any time, release or other concession to the Applicant need not be given to the Guarantor;

4.4 One or more of the Guarantors or any other party not executing this Guarantee and Indemnity;

4.5 The death, incapacity, administration, bankruptcy, liquidation, receivership or insolvency of the Applicant or of the Guarantor;

4.6 A payment by the Applicant or by any Guarantor to the Company being set aside in bankruptcy, liquidation, litigation or official management of the Applicant or of any Guarantor;

4.7 A Guarantor ceasing to be director of or be involved with the Applicant or the change in status or structure of the Applicant;

4.8 The Company in its absolute discretion and without notice to the Guarantor, refusing or limiting further credit or supplies of goods or services to the Applicant.

4.9 Any other thing occurring which could otherwise limit the effect of this Guarantee and indemnity;

5. Where there are two or more Guarantors their obligations are joint and several and none of them shall be discharged from their obligations under this Guarantee and Indemnity if:

2.1 These Conditions shall apply to and govern any Contract between the Seller and the Buyer to the exclusion of any other terms or conditions contained on or in any order form, letter, purchase order, confirmation of order, specification, receipt, acknowledgement, or other document emanating from the Buyer. No variation of these Conditions shall be effective unless expressly agreed by the Seller in writing and signed by an individual who is a director or the company secretary of the Seller.

2.2 Each order or acceptance of a quotation for Goods by the Buyer shall be deemed to be an offer by the Buyer to purchase Goods from the Seller subject to these Conditions. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate. No order placed by the Buyer shall be deemed to be accepted by the Seller until an acknowledgement of order is given by the Seller, either in writing or verbally, or (if earlier) the Seller delivers the Goods to the Buyer.

2.3 No quotation given by the Seller shall constitute an offer for sale nor any representation that the Goods referred to in the quotation shall be available for sale.

3. PRICES

3.1 All price quotations are calculated from costs available at the date of such quotation and do not include delivery, unless otherwise agreed in writing, are exclusive of GST and, in the case of palletised deliveries, those charges which may be payable in terms of clause 4.10, for which the Buyer is additionally liable. If there is an increase in such costs to the Seller between the date of quotation and the date of acknowledgement of the order, then the Seller may increase the quoted price accordingly.

3.2 Where applicable, artwork, stereo and/or forme costs will be detailed separately in any price quotation, all of which are additionally payable by the Buyer.

4. DELIVERY

4.1 Unless otherwise agreed in writing by the Seller the Goods shall be delivered, carriage paid, to the Delivery Point and the Buyer shall be bound to accept the Goods ordered by him.

4.2 If the Buyer fails to take delivery at the time required by the Contract, the Seller shall be entitled without prejudice to any other rights it may have to either treat the Contract as at an end and to resell the Goods, or to invoice the Buyer for the Goods whereupon payment in full shall become due forthwith and, in either case, to charge at rates giving an economic return for the handling and storage of Goods from the invoice date to the eventual date of delivery to the Buyer or disposal elsewhere, as the case may be. The Buyer shall be liable to pay any premium in respect of the insurance of such Goods from the date of delivery.

4.3 If Goods are contracted to be delivered by instalments late delivery or non delivery of one instalment shall not entitle the Buyer to reject any other instalment under the Contract.

4.4 The Seller shall use all reasonable endeavours to deliver the Goods to the Buyer in accordance with any delivery date agreed in writing with the Buyer. Time of delivery shall not be of the essence or capable of being made of the essence by notice from either party. In the absence of any agreed delivery date, any date of delivery given by the Seller to the Buyer shall be an estimate only. Subject to the other provisions of these conditions the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 90 days. Without prejudice to the generality of the foregoing the Seller shall not be liable for late delivery or failure to deliver through any cause which is beyond the control of the Seller.

4.5 The Buyer will provide at its own expense at the Delivery Point adequate and appropriate equipment and manual labour for unloading the Goods.

4.6 If the Seller delivers to the Buyer a quantity of Goods of up to 10% more or less than that ordered by the Buyer, the Buyer shall not be entitled to reject the Goods or any of them by reason of the surplus or shortfall, and shall pay for such Goods at the pro rata rate for the Contract.

4.7 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can prove otherwise.

4.8 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless written notice is given to the Seller within five (5) days of the date when the Goods would in the ordinary course of events have been received.

4.9 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

4.10 Where palletised deliveries are requested or necessary, pallets and other packaging and delivery materials may be charged as an extra expense at the Seller's standard rates, which the Buyer shall pay in addition to the price for the Goods.

4.11 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.12 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. RISK

All Goods shall be at the Buyer's risk from when delivery takes place at the Delivery Point in accordance with Condition 4.1 above or, if the Buyer fails to take delivery of the Goods or delivery is prevented by an act or omission of the Buyer, the time when the Seller has tendered delivery of the Goods.

6. RETENTION OF TITLE

6.1 Goods shall remain the property of the Seller as legal and equitable owner until payment of all sums due to the Seller from the Buyer in respect of the Contract have been received in full by the Seller in cleared funds

6.2 Notwithstanding condition 6.1, Goods shall remain the property of the Seller as legal and equitable owner until payment of all sums due to the Seller from the Buyer on any account have been received in full by the seller in cleared funds.

6.3 Until the property in the Goods is vested in the Buyer, in accordance with Conditions 6.1 and 6.2 above, the Buyer shall not pledge and shall store separately and mark the Goods (at no cost to the Seller) so that they are readily identifiable as the property of the Seller and shall hold the Goods on a fiduciary basis as agent for the Seller.

6.4 Until otherwise notified by the Seller pursuant to Condition 6.5 below, or until the happening of any of the events set out in Condition 6.6 below:-

6.4.1 The Buyer may use the Goods in the normal course of its business;

6.4.2 The Buyer may sell the Goods in the ordinary course of its business, in which event the Buyer shall hold the proceeds of the sale upon trust for the Seller and shall cause such proceeds to be paid into a separate bank account and if within thirty days of such sale the Buyer has not received the proceeds of such sale the Buyer will, if requested to do so, assign to the Seller all rights it may have against the purchaser of such Goods; and

6.4.3 The Buyer shall maintain the Goods in a satisfactory and saleable condition, and at the Buyer's own expense insure the Goods for their full market price against all risks to the reasonable satisfaction of the Seller, to whom the Buyer shall on request exhibit evidence of such insurance.

6.5 The Seller shall be entitled to serve notice on the Buyer indicating its intention to retake possession of its Goods and/or terminating the Buyer's authority to use or sell the Goods under Condition 6.4 above if the Buyer is in breach of the payment terms under this Contract. On receipt of such notice from the Seller or on the happening of any of the events set out in Condition 6.6 below:-

6.5.1 The Buyer's authority to use or sell the Goods shall forthwith cease; and

6.5.2 All Goods which are the property of the Seller shall be immediately delivered to the Seller or to its order, and the Seller by its employees or agents shall have the right to enter upon any land, building or vehicles of the Buyer to inspect or take possession of its Goods, the Buyer shall procure that the Seller by its agents or employees shall have the right to enter upon any land, buildings or vehicles of any third party to take possession of the Goods and any expenses, including legal fees, incurred by the Seller in so taking possession shall be payable by the Buyer.

6.6 The events referred to in Conditions 6.4 and 6.5 above are:-

6.6.1 It comes to the Buyer's attention that a receiver or manager is to be or has been appointed over or if any encumbrancer shall take possession of all or any part of its assets;

6.6.2 It comes to the Buyer's attention that a petition to wind up or other process to liquidate the Buyer is to be or has been presented or issued or that a resolution to wind up the Buyer (save for the purposes of a bona fide reconstruction or amalgamation) has been tabled or passed;

6.6.3 a decision by the Buyer that the Buyer intends to make an arrangement with its creditors or to stop payment or cease or threaten to cease business or a major part thereof;

6.6.4 The Buyer resolving to go into administration or any court making an administration order in respect of the Buyer;

6.6.5 Any distress, execution or other process is levied and enforced upon or sued out against any chattels or property of the Buyer;

6.6.6 The inability of the Buyer to pay its; or

6.6.7 The bankruptcy or sequestration of the Buyer.

6.7 On termination of the Contract, howsoever caused, the Seller's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. LIMITATION OF SELLER'S LIABILITY

7.1 If the Seller is satisfied that there has been under-delivery of Goods (except as provided for in Condition 4.6) or a failure to deliver the Goods or that the Goods have been damaged (whether wholly or in part) prior to delivery the Seller will replace them or (in its discretion) accept their return and credit the Buyer with the price thereof provided that:-

7.1.1 Any complaint by the Buyer of under-delivery of or damage to the Goods shall have been notified in writing to the Seller within three days of receipt of the Goods;

7.1.2 Any complaint by the Buyer of failure to deliver shall have been notified within five days of the receipt by the Buyer of the invoice or advice of delivery of the Goods at the Delivery Point, whichever is the earlier.

7.2 If the Seller is satisfied that when delivered Goods contained some defect in quality or did not correspond with any sample or description expressly agreed by the Seller in writing the Seller may (entirely at the Seller's discretion) assign to the Buyer the benefit of any express guarantee or warranty received by the Seller from the manufacturer or supplier of the Goods, failing which the Seller may (at its sole option):-

7.2.1 Replace the Goods without further charge, or

7.2.2 Accept the return of the Goods and credit the Buyer with the price thereof, or

7.2.3 Make the Buyer an allowance being in the Seller's sole opinion the difference between the cost value of the Goods at the time of the complaint by the Buyer and the invoice price, provided (in any case) that any complaint by the Buyer shall have been notified in writing to the Seller within three days of delivery.

7.3 Nothing in these conditions excludes or limits the liability of the Seller:

7.3.1 For death or personal injury caused by the Seller's negligence; or

7.3.2 For any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or

7.3.3 for fraud or fraudulent misrepresentation.

7.4 Except as provided for in Conditions 7.1, 7.2 and 7.3, the Seller will not be liable to the Buyer for any loss or damage suffered as a result of the events or for any of the reasons referred to in Conditions 7.1 or 7.2 and, without prejudice to the generality of the foregoing, any implied term, condition or warranty statutory or otherwise as to the quality of the Goods sold or their fitness for any particular purpose or as to their correspondence with any description or sample is hereby excluded to the fullest extent permitted by law.

7.5 The Seller shall not be bound by any statement, promise, warranty or representation given by or made on its behalf unless specifically stated in writing and expressly signed stating it is to be incorporated in the Contract.

7.6 Subject to Conditions 7.1, 7.2 and 7.3, the Seller shall be under no liability if the Goods are not paid for by the due date.

7.7 In any event, the Seller's entire liability shall be limited to the price actually paid by the Buyer under the Contract.

8. CONSEQUENTIAL LOSS

Without prejudice to the terms of Condition 7, the Seller shall not in any event be liable to the Buyer in contract or tort or otherwise for any indirect or consequential loss or damage whenever or howsoever arising, including without limitation loss of profit, loss of revenue, economic loss, depletion of goodwill and pecuniary loss of any kind whatsoever.

9. PAYMENT

9.1 Time of payment shall be of the essence of the Contract. Unless otherwise agreed in writing by the Seller, all sums due to the Seller shall be paid by the 30th day of the month after the month of delivery.

9.2 If the Buyer does not pay the whole sums due, on the due date, the Seller may:-

9.2.1 Suspend delivery of Goods under all or any of the Contracts with the Buyer (in the Seller's sole discretion) and/or;

9.2.2 Charge interest at the rate of 2% above the rate notified by the Commonwealth Bank of Australia from time to time as being that Bank's indicator lending rate on any overdue account from the day following that on which payment was due until payment by way of cleared funds has been received in full.

9.3 No payment shall be deemed to have been received until the Seller has received cleared funds.

9.4 All payments payable to the Seller under the Contract shall become due immediately upon termination of this Contract despite any other provision.

9.5 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

9.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.

10. SELLER'S RIGHT OF RESCISSION

10.1 The Seller shall have the option (without prejudice to any of its other rights against the Buyer) by notice in writing to the Buyer to rescind any Contract between the Seller and the Buyer or to suspend delivery in the following events:-

10.1.1 Should any sum owing by the Buyer to the Seller be overdue whether under the same or any other Contract; or

10.1.2 Should the Buyer be in breach of any term of the same or any other Contract with the Seller; or

10.1.3 Should the Buyer enter into any composition or arrangement with or for the benefit of its creditors, or have a receiving order in bankruptcy made against him or (if a corporate body) should go into liquidation either voluntary or compulsory or under supervision or have a receiver appointed over all or

any of its assets or if the Buyer threatens to cease trading or goes into administration.

11. HEALTH, SAFETY AND DELICATE SUBSTANCES

11.1 The Buyer shall be deemed to have been afforded by the Seller reasonable opportunity for the testing and examination of a sample of Goods or materials prior to the delivery to the Buyer in respect of their safety and any risk to health and the Buyer shall be deemed to have been afforded by the Seller adequate information about the Goods and materials in respect of the use for which they are designed and have been tested and of any conditions necessary to ensure that when put to use they will be safe and without risk to health whether or not the said information has been requested by the Buyer. The Seller shall bear no responsibility or liability for any such risk, and the Buyer agrees to indemnify the Seller and keep the Seller indemnified fully against any and all liability, losses, costs, claims and expenses arising directly or indirectly from any such articles, Goods or materials.

11.2 Where the Goods supplied consist of containers, wrappers or other articles intended for use in connection with any food, drug or substance of a volatile or delicate nature, the Buyer shall satisfy himself that such food, drug or other substance is not or is not likely to be affected by any material used by the Seller in the manufacturing of or printing of such containers, wrappers or other articles. The Seller shall not be liable to the Buyer in respect of any claim alleging that such food, drug or other substance has been adversely affected and the Buyer shall indemnify and keep indemnified fully the Seller from and against any and all liability, losses, costs, expenses and claims by third parties in respect of any claim that any such food, drug or other substance has been adversely affected and caused the third party loss, damage or expense.

12. QUALITY, DESCRIPTION AND SPECIFICATION

12.1 The quality, description and specification of the Goods shall be as set out in the Seller's quotation or, if one is issued by the Seller, as set out in the Seller's acknowledgement of the Buyer's order. In the event of conflict between the Seller's quotation and such an acknowledgement, the acknowledgement shall prevail.

12.2 All drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract.

12.3 Where the Goods are required for a purpose other than the usual purpose for which such Goods are commonly supplied, then no condition or warranty of fitness for that unusual purpose is granted or shall be implied unless the Buyer has made known to the Seller in writing prior to conclusion of the Contract the exact purpose to which such Goods are intended to be put, and the Seller has expressly acknowledged in writing prior to or on conclusion of the Contract that such Goods shall be fit for such purpose.

12.4 Unless expressly agreed otherwise in writing by the Seller all sizes referred to on the Seller's price lists, estimates or brochures are approximate only.

12.5 Whilst the Seller will take all reasonable steps to try to match ink colour this cannot be guaranteed and the Contract shall be deemed to have been performed by delivery of Goods of the general shade and density of colour stipulated.

12.6 Whilst the Seller will take all reasonable steps to try to match film colours, clarity, haze and slip specifications, this cannot be guaranteed and the Contract shall be deemed to have been performed by delivery of Goods of the general shade, density of colour and the general clarity, haze and slip stipulated.

12.7 Different levels of electrostatic discharge protection are required for different electronic devices. It is the responsibility of the Buyer to determine the suitability of antistatic materials for the intended application and assume all risk and liability, direct or consequential, arising out of the use of such materials.

12.8 No responsibility shall be accepted by the Seller for any errors in proof materials submitted to and approved by the Buyer.

12.9 Where the Goods consist of printed items, alterations from the original copy on or after the first proof, including alterations in style will be charged as an extra expense at the Seller's standard rates, which the Buyer shall pay in addition to the price for the Goods.

13. INTELLECTUAL PROPERTY

13.1 The Buyer shall indemnify the Seller against all claims for infringement or alleged infringement of third party patent, copyright, design right, registered designs, trademarks or other intellectual property rights and all costs and expenses incurred in connection therewith arising from the supply of Goods in accordance with the Buyer's designs, plans or specifications.

13.2 All original drawings and designs produced by or on behalf of the Seller in origination work shall remain the exclusive property of the Seller.

14. WAIVER

14.1 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

14.2 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any

subsequent breach or default and shall in no way affect the other terms of the Contract.

15. FORCE MAJEURE

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials; Provided that, if the event in question continues for a continuous period in excess of ninety days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

16. ASSIGNMENT

16.1 The Buyer shall not be entitled to assign any Contract or any part of any Contract without the express prior consent of the Seller.

16.2 The Seller shall be entitled to assign or sub-contact any Contract or any part of any Contract to any third party, and shall be entitled to perform any obligation under a Contract through its subsidiary, holding company or a subsidiary of such holding company.

17. SEPARATE REMEDIES

Each right or remedy of the Seller under the contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

18. SEVERABILITY

If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19. NOTICES

19.1 All notices between the Buyer and Seller concerning this Contract must be in writing and delivered by hand or sent by pre-paid post or sent by fax:-

19.1.1 (In case of communications to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller; or

19.1.2 (In the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Seller by the Buyer.

19.2 Communications shall be deemed to have been received:-

19.2.1 If sent by pre-paid post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

19.2.2 If delivered by hand, on the day of delivery;

19.2.3 If sent by fax on a work day prior to 4 p.m., at the time of transmission and otherwise on the next work day.

20. GOVERNING LAW AND JURISDICTION

20.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by the laws of the State of Victoria and the Buyer shall submit to the jurisdiction of the Courts of the State of Victoria.