

# BUSINESS APPLICATION FORM & TERMS OF TRADE

Application is hereby made to open a trading account with Austwide Consumer Products Pty Ltd ACN 009 438 153 ("Company"). The Customer declares that all information provided is true and correct and that no information which might affect the decision by the Company to supply goods to the Customer under this agreement has been withheld. The Customer shall notify the Company of any changes within 10 business days.

1. Full names of person(s) or company owning the business ("Customer") \_\_\_\_\_

2. Company ACN: \_\_\_\_\_ ABN: \_\_\_\_\_

3. Trading as: \_\_\_\_\_ (business/trading name)

4. If the Customer is the trustee of a Trading Trust, as trustee for \_\_\_\_\_ (the "Trust")

5. Full Business Address: \_\_\_\_\_

Email Address: \_\_\_\_\_ Mobile Phone: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Fax No: \_\_\_\_\_

6. Postal Address (if different to above): \_\_\_\_\_

7. Business Type (e.g. Public Company/Private Company/Trustee Company/Partnership/Sole Trader): \_\_\_\_\_

8. Details of Directors/Partners/Proprietors/Trustees ("Guarantors"):

Name: \_\_\_\_\_  M  F

Home Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Drivers License No: \_\_\_\_\_

Name: \_\_\_\_\_  M  F

Home Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Drivers License No: \_\_\_\_\_

Name: \_\_\_\_\_  M  F

Home Address: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Drivers License No: \_\_\_\_\_

9. Type of Business (e.g. Discount Store/Pet Shop/Newsagency): \_\_\_\_\_

10. Date Established: \_\_\_\_\_

11. Value of Estimated monthly purchases from Austwide: \_\_\_\_\_

12. Trade References:	Referee 1	Referee 2	Referee 3
<b>Company</b>			
<b>Contact</b>			
<b>Telephone No</b>			
<b>Credit Given</b>			

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*The Customer and Guarantors acknowledge they have read, understood and agree to these Terms.*

**NB. The Directors/Partners/Proprietors/Trustees sign on the Customer's behalf and as Guarantors of the Customer's obligations and in the case of a company, sign with authority of the Customer's directors and pursuant to s.127 Corporations Act 2001**

Signature: \_\_\_\_\_

Print Full Name & Position: \_\_\_\_\_

Witness's Signature: \_\_\_\_\_

Witness's Full Name: \_\_\_\_\_

Witness's Full Address: \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signature: \_\_\_\_\_

Print Full Name & Position: \_\_\_\_\_

Witness's Signature: \_\_\_\_\_

Witness's Full Name: \_\_\_\_\_

Witness's Full Address: \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

Signature: \_\_\_\_\_

Print Full Name & Position: \_\_\_\_\_

Witness's Signature: \_\_\_\_\_

Witness's Full Name: \_\_\_\_\_

Witness's Full Address: \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

# BUSINESS APPLICATION FORM & TERMS OF TRADE

## 1. Terms

- 1.1 These Terms:
- (a) supersede any previous agreements or understandings of any kind between the Company and the Customer with effect from the date of this agreement;
  - (b) govern all transactions and apply to all sales of goods by the Company to, or at the direction of, the Customer ("**Goods**"), except as otherwise agreed in writing; and
  - (c) may be varied by 30 days' written notice to the Customer.

## 2. Purchase Orders

- 2.1 The Customer agrees that the Company will not be bound by any terms attached to the Customer's purchase orders unless the Company agrees to those terms in writing.
- 2.2 The Company may accept or reject any purchase order for any reason and may withdraw credit at any time for any reason.
- 2.3 The Company will not be liable for any:
- (a) failure to fulfill any order, or part thereof, for any reason; or
  - (b) delay in the supply or delivery of Goods.
- 2.4 The Customer must advise the Company in writing of any claims for shortages or rejection of Goods within 14 days of the date of delivery of the Goods, otherwise the Customer is deemed to have waived such claims or right to reject Goods.
- 2.5 In the case of oversupply or damaged Goods, the Customer may return the Goods to the Company for credit, provided the Company has been notified in writing within 14 days of delivery of the Goods, quoting the original invoice number and invoice date. At the Company's discretion, the Customer may be required to contribute towards the costs of returning the Goods.
- 2.6 The Company will not accept returned Goods that:
- (a) are not in their original containers/packing; and/or
  - (b) bear the Customer's price stickers; and/or
  - (c) were initially supplied to the Customer expressly on a no return basis.
- 2.7 Whether the Goods are damaged or soiled will be determined by the Company in its sole discretion reasonably exercised.
- 2.8 Goods may be supplied in cartons or inners. The Company may supply sufficient cartons or inners to satisfy the customer's order. The Company is not obliged to split inners. The Customer must accept all Goods so delivered.

## 3. Prices & Payment

- 3.1 The Customer must pay the Company's list price for Goods ordered, current at the date of delivery.
- 3.2 The Company's list prices do not include GST, or any other charges, including freight, shipping, handling or insurance. The Customer is liable to pay all such other charges as applicable and as invoiced. All list prices assume 3% ullage.
- 3.3 The Customer must pay all amounts due within 30 days after the end of the month during which delivery was made, without deduction (and notwithstanding any claim whatsoever that the Customer has or may wish to make against the Company).
- 3.4 The Company may withhold dispatch of any part of any order or require pre-payment for any given shipment if the Customer fails to make payments in accordance with the provisions of this agreement.
- 3.5 The Company may correct errors in invoices after issue and the Customer is liable to pay any adjusted amount within 30 days after notification of that adjustment.
- 3.6 The Customer must advise the Company in writing of any disputed invoice or account within 14 days of delivery of the Goods, otherwise the Customer is deemed to have accepted the charges as correct.

## 4. Risk

All risk in the Goods passes to the Customer when the Goods leave the Company's premises.

## 5. Retention of Title

- 5.1 By way of security against future unpaid accounts, whether or not Goods have been paid for in full, ownership of the Goods does not pass to the Customer except as provided in this clause 5, and until such time, the Customer agrees that:
- (a) the Goods are owned by the Company, the Customer holds the Goods as bailee and the Customer owes the Company the duties and liabilities of a bailee;
  - (b) the Goods must be stored in such a way that it is clear that they are the property of the Company; and
  - (c) the Company, its agents or servants, without prejudice to the Company's other rights, may enter the Customer's premises, without the necessity of giving any notice, to repossess the Goods.
- 5.2 The Company authorises the Customer to contract to sell Goods, in the ordinary course of business of the Customer, to independent third parties, in which case ownership in the Goods passes to the Customer immediately prior to the time that title passes to that third party.
- 5.3 The Company may withdraw the authority in clause 5.2 at any time, and that authority is automatically revoked if:
- (a) a liquidator, administrator, receiver or trustee in bankruptcy is appointed in respect of the Customer or a Guarantor;
  - (b) a petition seeking the liquidation or bankruptcy of the Customer or a Guarantor is filed; or
  - (c) the Customer enters into any composition or arrangement with creditors.
- 5.4 If a liquidator, administrator, receiver, or trustee in bankruptcy is appointed in respect of the Customer, none of the Customer, liquidator, administrator, receiver, or trustee may sell any Goods without the Company's written, informed consent.
- 5.5 If any Goods are sold by the Customer, in the ordinary course of business of the Customer, to an independent third party, while the Customer owes money to the Company ("**Outstanding Amount**"), the Customer holds the proceeds of such sale on trust for the Supplier to the extent of the Outstanding Amount.
- 5.6 If the Customer does not pay the Company any amount that the Customer owes to the Company for any Goods when due, the Company may re-take possession of any Goods. The Company may enter any land or premises for the purpose of re-taking possession. If the Company retakes possession of any Goods, it may deal with them as it thinks fit.
- 5.7 The Customer and the Guarantors will be deemed to have accepted the terms of this clause 5 by placing an order for any Goods, taking or accepting delivery of any Goods, or using any Goods whether or not the Customer acknowledges or signs these Terms.

## 6. Personal Property Securities Act

- 6.1 In clause this clause 6:
- (a) **PMSI** means a purchase moneys security interest for the purpose of the PPSA;
  - (b) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
  - (c) words and phrases that have defined meanings in the PPSA have the same meaning as in the PPSA unless the context indicates otherwise.
- 6.2 The Customer grants to the Company a PMSI in the Goods.
- 6.3 If any Goods become an accession to or other property or become part of a product or mass, then:
- (a) the Company's security interest continues in the other property, product or mass; and
  - (b) references to the Goods in clause 5 and this clause 6 include the other property, product, or mass.

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- 6.4. The Customer consents to the Company perfecting any security interest that it considers this document provides for by registration under the PPSA. The Customer agrees to do anything the Company reasonably asks to ensure that the security interest:
- (a) is enforceable, perfected and otherwise effective; and
  - (b) has priority over all other security interests in respect of the Goods.
- 6.5. To the extent the law permits, the Customer waives its right to receive any notice (including notice of a verification statement) that is required by the PPSA. However, this does not prevent the Company from giving a notice under the PPSA.
- 6.6. The Customer agrees not to exercise its rights to make any request of the Company under section 275 of the PPSA. However this does not limit the Customer's rights to request information other than under section 275.
- 6.7. The Company hereby contracts out of all the provisions referred to in sub-section 115(1) of the PPSA and the Customer may not exercise any rights under any of those provisions.
- 6.8. If the Company exercises a right, power, or remedy in connection with this document or a security interest that it provides for, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Company states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.
- 6.9. Neither the Customer nor the Company will disclose any information of the kind mentioned in section 275(1) of the PPSA, except where disclosure is required by section 275(7). The Customer will not authorise the disclosure of any information under that section or waive any duty of confidence that would otherwise permit non disclosure under that section.
- 6.10. The Customer must notify the Company at least 14 days before it does any of the following, and immediately again if any of the following occurs:
- (a) changes its name; or
  - (b) changes its place of registration or incorporation; or
  - (c) changes or applies for an ACN, ABN, ARBN, or ARSN under which an interest in any of the Goods is or will be held.
- 7. Fees, Charges and Enforcement Expenses**
- 7.1. Overdue accounts will attract simple interest at the rate of 12% per annum from the date payment was due until actual payment.
- 7.2. The Customer is liable for and must reimburse the Company for all expenses incurred by the Company in recovering any overdue accounts, on a full indemnity basis, including the charges of any collection agents or solicitors appointed by the Company.
- 8. The Customer as a Trustee**
- If the Customer is a Trustee, this agreement is binding upon the Customer personally and in the Customer's capacity as trustee of the Trust and the Customer warrants that:
- (a) the Trust is properly established and will continue to be so during the term of this agreement; and
  - (b) the Customer is acting in accordance with the Trust deed.
- 9. The Customer's Representations and Warranties**
- The Customer represents and warrants to the Company that:
- (a) entering this agreement will not cause the Customer to be in breach of any other obligations; and
  - (b) the Customer is not in default of any obligations to any third parties.
- 10. Exclusion of Warranties and Limitation of Liability**
- 10.1. The Customer acknowledges that no promise, representation, warranty or undertaking has been made by any person or company on its behalf, in relation to the Goods.
- 10.2. The Customer takes full responsibility for:
- (a) determining that the Goods are suitable for the purpose for which the Goods are required; and
  - (b) carefully examining the Goods for defects that a careful examination ought to reveal.
- 10.3. Save and except to any rights and warranties not permitted to be excluded by law, the liability of the Company, at the Company's option, is limited to either:
- (a) re-provision of the Goods and/or supply of equivalent Goods; or
  - (b) payment of the cost to have the Goods repaired or replaced.
- 10.4. Subject to the law, the Company is not liable for any consequential damage that may result from a breach of this agreement or as a result of a breach of duty or negligence arising at law, including but not limited to loss of profit, goodwill, other losses or anticipated savings.
- 11. Guarantee and Indemnity**
- In consideration of the Company, at the request of the Guarantors, entering into this agreement, the Guarantors jointly and severally:
- (a) guarantee to the Company the performance by the Customer of all the Customer's obligation under this agreement; and
  - (b) indemnify the Company from all actions, claims, demands, notices, losses, damages, costs and expenses, of any nature whatsoever, suffered or incurred by the Company by reason of any breach by the Customer of this agreement.
- 12. Privacy**
- The Guarantors' personal details are covered by the Company's privacy policy which is available on request.
- 13. Miscellaneous Provisions**
- 13.1. This agreement is governed by the laws of Western Australia and the parties submit to the exclusive jurisdiction of the Courts of Western Australia.
- 13.2. If any part of this agreement becomes void or unenforceable then that part is severed from this agreement and the remainder is not affected.
- 13.3. If the Customer comprises more than one person, each person is jointly and severally liable for the Customer's obligations under this agreement, and one of those persons can bind the other persons making up the Customer.