

Full name and residential addresses for all Directors (of Private Companies)/Partners/Proprietors of Applicant (attach details if insufficient space):				
Surname	Given Names	Residential Address	Driver's Licence No.	Date of Birth
Anticipated Monthly Purchases: \$				
Please provide three trade credit references (who may be approached for information regarding the Applicant)				
Company Name		Phone No.	Average value of monthly purchases	

AGREEMENT:

The Applicant named above (**Customer**) applies for a trading account and credit facility (**Facility**) with **SHAW AND SMITH PTY LTD** trading as **SHAW + SMITH (Company)** in connection with the supply of goods by the Company (**goods**) on the trading terms and conditions attached to this application. This application will be granted at the discretion of the Company. An agreement arising from acceptance of this application will constitute a Security Agreement for the purposes of *The Personal Property Securities Act 2009 (As Amended)*.

I/We have read and understood this document and have been advised, and given opportunity, to seek independent legal advice.

In the event that the Customer is an incorporated entity, the person/s signing this agreement warrants that they are authorised to sign on behalf of the Customer and to bind the Customer in contract.

Print Name:

Signature:

Date:

Title:

Witness

Signature:

Date:

Title:

Print Name:

Signature:

Date:

Title:

Witness:

Signature:

Date:

Title:

PLEASE RETURN WITNESSED ORIGINAL TO SHAW + SMITH

TRADING TERMS AND CONDITIONS

ACCEPTANCE OF TERMS

1. The Customer agrees that these terms and conditions apply to and form part of any agreement for the supply of goods by the Company. Any request from the Customer to the Company for the supply of goods will constitute acceptance of these terms and conditions.
2. These terms and conditions may be amended as superseded from time to time by notice given by the Company by any means.

INFORMATION

3. The Customer warrants that the information in this form is true and correct and agrees to notify the Company of any change to the information regarding the Customer in this form within seven (7) days of the change.

PAYMENT TERMS

4. All sums payable to the Company must be paid to the Company in full within thirty (30) days from the end of the month following the month of supply unless otherwise agreed in writing by the Company.
5. The Company may withdraw the Facility at any time without notice and in its absolute discretion.
6. The Customer agrees to pay on demand all sums owed to the Company under the Facility or otherwise in the event that the Facility is withdrawn.
7. The Customer agrees to pay all expenses incurred in collecting or attempting to collect any sums owed to the Company under the Facility or otherwise including but not limited to any debt collectors expenses and lawyers fees (on an indemnity basis), and agrees that if payment is not made within normal terms, the Company is entitled to calculate and charge daily interest at a rate not greater than the maximum interest rate charged by Australia and New Zealand Banking Group Ltd on its credit card accounts from time to time.
8. A surcharge will be levied on all payments made by credit card equivalent to the merchant fee incurred by the Company with the credit card provider.

GENERAL

9. The Facility will be governed by the laws of South Australia and the Customer submits to the non-exclusive jurisdiction of the Courts of South Australia and the Federal Court of Australia.
10. The Customer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the *Consumer Credit Act* do not apply.
11. Each and every delivery of goods supplied by the Company to the Customer will be regarded as a separate contract and failure of any such delivery will not affect the contract relating to any other delivery.

DELIVERY TIMES

12. Whilst every effort is made to comply with the Customer's delivery instruction, the Company is unable to guarantee delivery dates or times.

RISK

13. Risk in all goods supplied by the Company passes to the Customer upon delivery to the Customer or its agent for domestic orders or the Customer's nominated carrier for export orders.
14. If the goods are damaged or destroyed in whole or part prior to title passing to the Customer, the Company is entitled, without affecting any other rights and remedies it may have, to any insurance proceeds payable for the goods.

PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

15. The Customer grants and the Company may register on the Personal Property Securities Register, a Security Interest in all and any goods sold under this agreement, including all present or after-acquired property.
16. The Customer and the Company agree to contract-out of the PPSA in accordance with section 115 of the PPSA to the extent that the section applies for the benefit of, and does not impose a burden on, the Company. The Customer waives its right to receive a copy of any Financing Statement or any Financing Change Statement registered by the Company in respect of the Security Interest created by these terms and conditions.
17. The Customer agrees to execute any documents, provide all relevant information and co-operate fully with the Company to ensure that the Company has a perfected Security Interest in the personal property charged and, if applicable, a Purchase Money Security Interest (**PMSI**).
18. The Customer agrees to notify the Company of any change in the Customer's structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship **7 days prior** to any such change taking effect.
19. The Customer agrees that, until all monies owing to the Company are paid in full, it shall not sell or grant any other Security Interest in the goods.
20. The customer agrees to reimburse the Company for all costs and/or expenses incurred or payable by the Company in relation to registering, maintaining or releasing any Financing Statement or any other document in respect of any Security Interest under this agreement.
21. In this agreement and the attached Guarantee and Indemnity respective meanings given to them in the PPSA: Personal Property Securities Register, Security Interest, Financing Statement, Financing Change Statement and Purchase Money Security Interest.

RETENTION OF TITLE

22. Title in all goods supplied will remain vested in the Company and shall not pass to the Customer until all monies owing to the Company by the Customer together with all collection, repossession and/or legal costs incurred, have been paid in full. Until title passes to the Customer, the Customer acknowledges that these conditions create, in the Company's favor, a PMSI in the goods and any proceeds of their sale.
23. The Company will retain an equitable interest in the goods, whether separate or co-mingled or accessioned, which shall be stored in such a manner as to be clearly identifiable as the property of the Company, until title has passed to the Customer and further, upon re-sale of the goods by the Customer, the Company will have the right to trace any proceeds of sale to the extent that they relate to the goods which are incorporated. If payment has not been received, the Customer will transfer to the Company all of its rights in respect of the sale price.

24. The Company may demand at any time until title has passed to the Customer that the Customer returns the goods or any part of them. In the event that the Customer defaults in the payment of any monies owing, the Company and its employees or agents will have the right to enter without notice upon the Customer's premises or any other premises where the goods are known to be stored to repossess the goods and for this purpose the Customer will grant reasonable access rights and the Company, its employees or agents will be entitled to do all things required to secure repossession.

PRICES

25. Prices charged by the Company are set out in its applicable price list, errors and omissions excepted, and may be altered without notice and any resulting increase will be added to the purchase price. These prices, or prices otherwise quoted for purchases from the Company, are subject to any increase in the amount of GST, wine equalisation tax (**WET**), excise, duty, sales tax, or freight, which amount will be added to the purchase price and be payable by the Customer to the Company.

DELIVERY

26. The cost of delivery within Australia to domestic Customers or to the Adelaide port for export orders will be borne by the Company.
27. Pallets supplied with goods where delivered within Australia will, where the Customer is a LOSCAM LTD account holder, become the property of the Customer and, if the customer is not a LOSCAM LTD account holder a equivalent pallet for pallet exchange is required. Property in pallets exported become the property of the Customer.

CLAIMS

28. The Company shall not be responsible for, nor does it accept any liability for any loss or damage (including consequential loss or damage) for delay or non-delivery of goods supplied by the Company to the Customer and if in any circumstances late delivery is tendered by the Company, the Customer will accept and pay for the same when tendered.
29. The Customer must make any claim in relation to the goods, including in relation to breakages, within 48 hours of delivery, otherwise the Company may refuse the claim. The Company at its option may accept goods returned with freight pre-paid by the Customer. If in the opinion of the Company the goods or any of them are out of condition, the Company will credit the purchase price of them together with the freight charge to the Customer. The goods returned must be in original packaging and purchase invoice number must be quoted. The Company reserves the right to apply earlier prices in cases where invoice numbers are not quoted.

INTERPRETATION

30. These Trading Terms and Conditions contain the whole of the agreement between the Company and the Customer for the supply of goods whether on credit or otherwise and supersedes any representations, conditions or warranties not contained in these terms and conditions.
31. Nothing in this agreement is to be interpreted as having the effect of excluding, restricting or modifying any condition or warranty, or right or liability implied by any applicable legislation into the arrangement between the parties, if such exclusion, restriction or modification would be void or prohibited by the legislation.
32. To the extent that the Company breaches any condition or warranty implied into the arrangement between the Company and the Customer and which cannot be excluded or modified, the Company's liability is limited to, at the Company's discretion, either: (1) replacement of the goods or supply of equivalent goods; (ii) payment of the cost of replacing the goods or acquiring equivalent goods; (iii)

repair of the goods; or (iv) payment of the cost of having the goods repaired; and in the case of services, to: (i) supply of the services again; or (ii) payment of the cost of having the services supplied again.

33. Subject to clauses 28 and 32, the Company is not liable to the Customer (or to any third party claiming through the Customer) for any loss caused by any act or omission of the Company, its employees or agent, and whether based on negligence or other tort, contract or otherwise.
34. Where there is more than one person named as the Customer, their obligations under the Facility are joint and several.
35. The waiver of any provision or breach of these terms and conditions is not to be construed as a waiver of any other provision or breach, or subsequent breach of the same or any other provision of the contract.
36. If any provision of these terms and conditions is unenforceable or void either in whole or in part for any reason then that provision (or part) is deemed to be deleted without in any way affecting the validity or enforceability of the remainder of this document.
37. The terms and conditions of any purchase order issued by the Customer do not operate to modify or amend these terms and conditions.

PRIVACY

38. I/We acknowledge and give consent that the Company may make enquiries as to the credit and financial situation of the Applicant and any director or guarantor of the Applicant and further consent to the use of any information obtained as a result of those enquiries, including information disclosed in the Application For Trading Account, as the Company reasonably sees fit from time to time, for purposes including but not limited to:
 - passing the information on to a credit reporting agency,
 - passing the information on to a debt collector,
 - obtaining further personal information, including consumer and/or commercial credit information, relating to the Applicant or any director or guarantor of the Applicant from another body for any use reasonably connected with provision of credit or the collection of debt subject to the provisions of the *Privacy Act 1988*.
 - further, that the consent hereby given will remain in force until all monies have been paid in full and the Customer no longer has an open account with the Company.

DEFINITIONS

39. The following words have the following meanings in these terms and conditions, unless the context requires otherwise:

“goods” means all goods and/or services supplied by the Company to the Customer, or ordered by the Customer but not yet supplied and includes goods described on any quotation, invoice, purchase order or any other document and over which the Company may intend to register a Security Interest under PPSA.

“loss” means any loss, liability, damage, expense or cost whatsoever and includes (without limitation) indirect or consequential loss or damage, loss of profits or business opportunity, and damage to equipment or property.

PERSONAL GUARANTEE AND INDEMNITY

IN CONSIDERATION OF Shaw and Smith Pty Ltd ABN 88 008 265 816, (hereinafter referred to as “the Company”) granting the Customer (as named in the Application for Trading Account and which forms a part of this document) trade credit, I/WE, the Guarantors, guarantee payment of all monies and performance of all obligations including any past, present and future indebtedness or obligation by the Customer or any of us arising from any past, present or future dealing with you.

I/WE HEREBY AGREE AND ACKNOWLEDGE:

That this is a continuing guarantee and, to indemnify the Company against all loss and damage arising from any past, present or future dealing with the Customer or any of us; that our liability under this guarantee is joint and several and will not be affected, waived or discharged by the reason of any time or indulgences granted by you or any grant to any of the guarantors of a release whether in whole or in part from any obligation contained in or implied by this guarantee and indemnity;

that our liability under this guarantee will not be affected, waived or discharged by the Customer entering into a Deed of Company Arrangement (DOCA) or by a Company voting in favour of or against, or abstaining from voting, in relation to any proposal by the Customer to enter a DOCA; that this guarantee becomes binding on such of us that sign this guarantee irrespective of whether or not all intended signatories execute this guarantee; that the Company is entitled to recover against a Guarantor without having first taken steps to recover against the Customer or any other Guarantor; that this guarantee may not be unilaterally revoked by us and remains in force until such time as we receive written confirmation from the Company that we are released from our obligations and liabilities under this guarantee; that any payment that is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid; that I/we indemnify the Company against losses or costs that it may suffer as a result of disgorging monies to a liquidator of the Customer; that I/we sign in both our personal capacity and as Trustee of every Trust of which I/we are Trustee and/or a beneficiary and, to notify you of any change in the Customer’s structure or management including any sale or disposition of any part of the business of the Customer, any change in directorships, shareholders or management or change in partnership or trusteeship **7 days prior** to any such change taking effect.

To grant, and that the company may register on the Personal Property Securities Register, a Security Interest in the form of a Purchase Money Security Interest in this guarantee and that such Security Interest shall include all present and after-acquired property.

Date:

Guarantor(s)

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Name of Guarantor

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Signature of Guarantor

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Address

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Name of Witness

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Signature of Witness

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Name of Guarantor

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Name of Witness

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Signature of Guarantor

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Signature of Witness