

PO Box 4048
Richmond East Vic 3121

The applicant(s) apply to Pacific Brands for credit on the terms and conditions set out below.

1. You warrant that all information given to us is true and correct.
2. You agree to notify us within 7 days of any change affecting your legal entity, structure, management or control.
3. You agree that:
 - (a) the attached terms and conditions of sale or, subject to us giving you at least 30 days' prior notice, such other terms and conditions as we may adopt from time to time, apply to the supply of goods by us to you to the exclusion of all other terms and conditions of sale or purchase;
 - (b) no variation to our terms and conditions of sale will be of any effect unless agreed to by us in writing;
 - (c) the goods supplied by Pacific Brands secure the payment of the purchase price of those goods and of any other goods supplied by Pacific Brands;
 - (d) you will do all the things necessary including providing all information we require to register a financing statement or financing charge statement on the Personal Properties Securities Register (PPSR) pursuant to the *Personal Properties Securities Act 2009*;
 - (e) you will not change your name, ACN or ABN or any other details required on the PPSR without first notifying us;
 - (f) you waive your rights to receive a verification statement in respect of any financing statement or financing charge statement in respect of the security interest created pursuant to this application and our terms and conditions of sale.
4. You acknowledge that a separate credit limit authorisation is required from each of our trading divisions.
5. You acknowledge that we may:
 - (a) refuse your application for credit facilities;
 - (b) withdraw or vary credit facilities by trading division or otherwise at our absolute discretion without prior notice;
 - (c) withhold supply by trading division or otherwise irrespective of whether an order has been accepted or not if for any reason we determine in our absolute discretion that no further credit is to be extended to you.
6. You consent and agree that:
 - (a) we may:
 - (i) obtain a credit report from credit reporting agencies or other credit providers for the purpose of assessing this and any other application which you make for commercial credit;
 - (ii) obtain information from any other credit providers from time to time for the purpose of reviewing and assessing your commercial credit worthiness;
 - (iii) disclose to or discuss with any credit providers or any credit reporting agencies, any prospective guarantor and any person or body agreeing or considering whether to agree to be liable for any credit to be made available to you, any information maintained or in our possession relating to your application and the administration of your credit facilities; and
 - (iv) collect and use any personal information as defined in the *Privacy Act 1988* ("the Act") for the purposes referred to in paragraphs 6(a)(i) to (iii) above;
 - (b) the consents referred to in paragraph 6(a) above will continue to remain in full force and effect until all credit facilities cease to be made available to you by us.
7. Pacific Brands is bound by the Act and the National Privacy Principles set out in the Act. A written policy outlining how Pacific Brands manages personal information may be obtained from:

The Privacy Officer c/- Pacific Brands, PO Box 4048 Richmond East Vic 3121
Telephone (03) 8803 1000 Fax (03) 8803 1310
8. This application is made to Pacific Brands. For the purposes of this application, our terms and conditions of sale and any guarantee of the applicant's obligations pursuant to the same, the expression "Pacific Brands" means, whether severally or jointly and severally, Pacific Brands Holdings Pty Ltd (ABN 56 098 704 646) and each of its related bodies corporate (as that term is defined in the *Corporations Act 2001*) and whether such body corporate is trading under the relevant company name or under any trading or business name.
9. The signatory warrants that where there is more than one applicant, or the applicant is a corporation that he or she is authorised to sign on behalf of all applicants or the corporation as appropriate.

TERMS AND CONDITIONS OF SALE

PACIFIC BRANDS, shall only supply goods to you on the following terms and conditions unless we agree, in writing, to vary these terms and conditions.

1. Payment

- 1.1. All invoices are due and payable in full on the last banking day of the month following the date of invoice.
- 1.2. We reserve the right, to charge a fee for overdue payments, credit card payments, cancellation of orders, manual processing of payments, and to pass on bank fees imposed on payments.
- 1.3. Should you fail to pay your invoices by the due date then:
 - (a) we may charge interest on any overdue invoices at the penalty rate fixed under the *Penalty Interests Rates Act 1983* (Victoria), calculated and payable daily, compounded from the due date until the invoice is paid in full;
 - (b) you shall pay all our costs and expenses (including legal costs determined as between solicitor/own client and mercantile agents fees) which may be incurred in the recovery or attempted recovery of the overdue amounts from you.

2. Settlement Discount

- 2.1. You may take advantage of a discount for early settlement of accounts at the rates agreed between us from time to time provided:
 - (a) payment in full takes place within the time specified; and
 - (b) you do not have any other invoices outstanding beyond their due date at the time of payment.

3. Prices and Delivery

- 3.1. Our prices are subject to change without notice.
- 3.2. GST at the prevailing rate at the date of invoice will be included in the amount due and payable on the invoice. We state on the face of the invoice whether or not the prices shown on the invoice are inclusive or exclusive of such tax.
- 3.3. Whilst we shall use all reasonable endeavours to comply with your particular delivery requirements and order specifications, you will not be entitled to cancel the whole or part of your order or to claim compensation by reason of our failure to comply with your delivery requirements or minor variations to the goods.

4. Reservation of Title

- 4.1. You acknowledge that the ownership of goods delivered by us to you ("the goods") is only transferred to you when you have paid all sums owing to us on any account whatsoever and that until such time we have the right to call for or recover the goods at our option (for which purposes our employees or agents may enter your premises) and you are obliged to deliver up the goods if so directed by us.
- 4.2. You agree to keep the goods in a fiduciary capacity for us until such time as ownership is transferred to you.
- 4.3. Notwithstanding the foregoing, you may sell the goods to a third party in the ordinary course of business.
- 4.4. You must insure the goods.
- 4.5. You must account to Pacific Brands for all proceeds of the goods including any insurance proceeds.

5. PPSA

- 5.1. You acknowledge and agree that you grant Pacific Brands a Security Interest in the goods and their Proceeds including any Accounts and Accessions by virtue of the retention of title pursuant to Clause 4.
- 5.2. You agree that:
 - (a) these terms and conditions of sale or subject to us giving you at least 30 days' notice, such other terms and conditions as we may adopt from time to time, apply to the supply of goods by us to you to the exclusion of all other terms and conditions of sale or purchase;
 - (b) no variation to our terms and conditions of sale will be of any effect unless agreed to by us in writing;
 - (c) the goods supplied by Pacific Brands secure the payment of the purchase price of those goods and of any other goods supplied by Pacific Brands;
 - (d) you will do all the things necessary including providing all information we require to register a Financing Statement or Financing Change Statement on the Personal Properties Securities Register (PPSR) as a Security Interest and a Purchase Money Security Interest pursuant to the PPSA;
 - (e) you will not change your name, ACN or ABN or other details required on the PPSR, without first notifying us;
 - (f) you waive your rights to receive a verification statement in respect of any Financing Statement or Financing Change Statement in respect of the Security Interest created pursuant to these terms and conditions.

(g) you must pay our costs of any discharge or necessary amendment of any Financing Statement or Financing Change Statement.

- 5.3. To the maximum extent permitted by law, you agree that the following sections of the PPSA will not apply:
 - (a) Section 130;
 - (b) Section 142; and
 - (c) Section 143.
- 5.4. To the maximum extent permitted by law, you waive any rights you may have pursuant to, and hereby contract out the following sections of the PPSA:
 - (a) Section 95;
 - (b) Section 123;
 - (c) Section 129(2);
 - (d) Section 132;
 - (e) Section 134(2); and
 - (f) Section 135.
- 5.5. Unless otherwise defined in these terms and conditions of sale, the terms and expressions used in this Clause have the meanings given to them or by virtue of the PPSA.
- 5.6. "PPSA" means the *Personal Properties Securities Act 2009*.
6. **Risk**
 - 6.1. Notwithstanding the provisions of Clauses 4 and 5 you accept all risk of loss and damage of the goods, whether caused by you or not, following delivery of the goods.

7. Return of Goods

- 7.1. We will not accept returns for credit without prior authorisation.
- 7.2. Any goods which you return for credit will only be accepted if they are in the original packaging, in pristine order and condition and accompanied by documentation showing:
 - your name, address and account number
 - our invoice number
 - reason for return
 - our authorisation number
- 7.3. If we authorise the return of goods, the goods must be carried by our nominated carrier at your cost.

8. Withholding Supply

- 8.1. We reserve the right, irrespective of whether or not an order has been accepted and without notice to you, to withhold supply to you and we will not be liable for loss or damage resulting directly or indirectly from such action where:
 - (a) we have insufficient goods to fulfil the order;
 - (b) the goods ordered have been discontinued; or
 - (c) we have determined, in our absolute discretion, that credit should no longer be extended to you.

9. Minimum Orders

- 9.1. We reserve the right to specify the minimum order value which we shall accept from time to time and to impose a surcharge should you require delivery of goods having a value less than the minimum order value.

10. Modifications to Labels

- 10.1. You may not, without our written consent, alter, remove or obliterate any labels which we attach to the goods.

11. Intellectual Property Rights

- 11.1. You acknowledge that you do not have any intellectual property rights, whether by way of copyright or registered design or otherwise, in the goods and that we retain ownership of all such intellectual property.

12. Governing Law

- 12.1. The laws of the State of Victoria govern our trading.
- 12.2. You agree with us to submit to the non-exclusive jurisdiction of the Courts of Victoria and the Federal Court of Australia and agree that any legal proceedings may be heard in those courts.

13. Claims

- 13.1. Any claims by you for short delivery must be made within 7 days of the delivery.
- 13.2. Any other claims for adjustment to any invoice for any reason whatsoever must be made in writing within 60 days of delivery.

14. Clerical Errors

- 14.1. We reserve the right to correct clerical errors without notification.

15. Pacific Brands

- 15.1. The expression "Pacific Brands" means, whether severally or jointly and severally, Pacific Brands Holdings Pty Ltd (ABN 56 098 704 646) and each of its related bodies corporate (as that term is defined in the *Corporations Act 2001*) and whether such body corporate is trading under the relevant company name or under any trading or business name.

PERSONAL GUARANTEE AND INDEMNITY

THIS GUARANTEE AND INDEMNITY is given by the person(s) named in the Schedule as the **GUARANTORS** (the "Guarantors", each a "Guarantor") in favour of the parties described in clause 10 as **PACIFIC BRANDS** (each and together "Pacific Brands")

INTRODUCTION

- A. The Guarantors have asked Pacific Brands to supply goods and/or services ("the Supplies") to the person named in the Schedule ("the Customer") and to extend (or continue to extend) credit to the Customer.
- B. Pacific Brands has agreed to the request of the Guarantors in consideration of their agreement as follows.

IT IS AGREED:

1. The Guarantors guarantee to Pacific Brands the punctual payment of the monetary liabilities of the Customer (on any account and in any capacity whatsoever and including liabilities in respect of the Supplies) which are now owing, or may from time to time be owing by the Customer to Pacific Brands ("the Debt"). The Guarantors acknowledge and agree that the Debt includes any legal and other costs and expenses incurred by Pacific Brands in seeking payment from the Customer or in enforcing this Guarantee and Indemnity against the Guarantors.
2. The Guarantors jointly and severally undertake, if the Customer fails to pay any part of the Debt when the same is due and payable, to pay the full amount of the Debt on demand by Pacific Brands and to keep Pacific Brands indemnified against any loss in relation to the Debt and by way of further security hereby charges in favour of Pacific Brands with payment of the Debt all of our estate and interest in any land in which we now or might subsequently acquire a legal or beneficial interest and agree, upon request, to execute a registrable instrument charging such estate or interest in favour of Pacific Brands.
3. The obligations of the Guarantors under this Guarantee and Indemnity are principal obligations and are not affected by:
 - (a) any variation which may be agreed by Pacific Brands and the Customer in respect of the terms on which the Supplies are supplied and paid for;
 - (b) any waiver, extension of time or indulgence given by Pacific Brands to the Customer or the Guarantor;
 - (c) any right or claim which the Customer may assert to resist making payment of any part of the Debt;
 - (d) any increase in the amount of the Debt;
 - (e) any failure or omission by Pacific Brands to give notice to the Guarantors of any default by the Customer; or
 - (f) any act, omission, matter or other thing whatsoever.
4. This Guarantee and Indemnity is a continuing obligation of each Guarantor for the amount of the Debt which may be owing from time to time and, binds the successors and assigns of the Guarantors and will not be affected by:
 - (a) the death, incapacity, bankruptcy, of a Guarantor or the Customer; or
 - (b) a Guarantor or the Customer which is a body corporate becoming an externally administered body corporate pursuant to the Corporations Law.
5. If the obligation of any Guarantor in respect of any part of the Debt is unenforceable, the Guarantor's obligations in respect of the balance of the Debt will not be affected by such unenforceability.
6. If any payment or other transaction relating to or affecting the Debt is:
 - (a) void, voidable or unenforceable in part or in whole; or
 - (b) is claimed to be void, voidable or unenforceable and that claim is upheld, conceded or compromised in whole or in part;the liability of each of the Guarantors is the same as if:
 - (c) that payment or transaction (or the void, voidable or unenforceable part of it); and
 - (d) any release, settlement or discharge made in reliance on anything referred to in paragraph (b) above;has not been made and the Guarantors must immediately take all action and sign all documents necessary or required by Pacific Brands to pay to or restore to Pacific Brands the Debt in full.
7. If all or any of the Debt is:
 - (a) not recoverable from the Customer; or
 - (b) not recoverable from a Guarantor under this Guarantee and Indemnity;each of the Guarantors, as a separate and principal obligation, indemnifies Pacific Brands against any loss, liability, expense or outgoing suffered, paid or incurred by Pacific Brands in relation to such amounts and must pay Pacific Brands an amount equal to such amounts.
8. This Guarantee and Indemnity binds each of the signatories below as Guarantors notwithstanding that one or more of the persons named below may never execute this document.
9. For the avoidance of doubt it is expressly acknowledged by the Guarantors that the Guarantors' obligations extend to and may include debts and other obligations of the Customer which have arisen before or after the date of this Guarantee.
10. The expression "Pacific Brands" means, whether severally or jointly and severally, Pacific Brands Holdings Pty Ltd (ABN 56 098 704 646) and each of its related bodies corporate (as that term is defined in the *Corporations Act 2001*) and whether such body corporate is trading under the relevant company name or under any trading or business name.
- 11.1 The Guarantors consent and agree that Pacific Brands may:
 - (a) obtain a credit report from credit reporting agencies or other credit providers for the purpose of assessing this and any other application which you may make for commercial credit;
 - (b) obtain information from any other credit providers from time to time for the purpose of reviewing and assessing your commercial credit worthiness;
 - (c) disclose to or discuss with any credit providers or any credit reporting agencies, any prospective Guarantor and any person or body agreeing or considering whether to agree to be liable for any credit to be made available to you, any information maintained or in our possession relating to your application and the administration of your credit facilities; and
 - (d) collect and use any personal information as defined in the *Privacy Act 1988* ("the Act") for the purposes referred to in paragraphs 11.1(a) to (c) above.
- 11.2 You acknowledge that the consents referred to in paragraphs 11.1(a) to (d) above will continue to remain in full force and effect until all credit facilities cease to be made available to you by us.
- 11.3 Pacific Brands is bound by the Act and the National Privacy Principles set out in the Act. A written policy outlining how Pacific Brands manages personal information may be obtained from:
The Privacy Officer c/- Pacific Brands PO Box 4048 Richmond East Vic 3121
Telephone (03) 8803 1000 Fax (03) 8803 1310
12. Each of the Guarantors acknowledges having read the terms of this Guarantee and Indemnity and having been:
 - (a) advised to; and
 - (b) given the opportunity to;seek independent legal advice prior to execution.