

7/2 Stoddart Road, PROSPECT NSW 2148

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CREDIT APPLICATION, TRADING TERMS & SECURITY AGREEMENT

(Please complete and return duly signed document by secure post. Document may be emailed/faxed to expedite proceedings.
However, credit will not be granted until **original signed document** is received in its entirety.)

Registered Business Name: _____

Trading Name: _____

** Name of Trustee (if a trust entity) _____

ABN/ACN: _____

Address of Retail Premises: _____

Postal Address: ☐ Same as above _____Please Indicate: Company ☐ Partnership ☐ Sole Prop ☐ Trust/Trustee Co ☐ * Owned Business for.....

* If a Trust/Trustee Company, please indicate name of trust; _____

Telephone: _____ Facsimile: _____ Mobile Phone: _____

Email: _____ Web address: _____

Occasionally we send our retailers promotional emails relating to new products, special offers and other industry information.
We will never share your email address with other parties. You can unsubscribe from our emails at any time using the link provided
in the footer of every Kurt Jacob & Co email.

If you **DO NOT** wish to receive our emails containing **PRICE UPDATES, NEWS and SPECIAL OFFERS**, please tick this box ☐

Accounts Contact Name: _____ Email: _____

Order number required? YES ☐ NO ☐

Full name and residential addresses of all the Directors/Partners/Proprietors: (Please attach a separate page if insufficient space)

1. Director's Name: _____ Date of Birth: _____ Driver's License #: _____

Residential Address: _____

2. Director's Name: _____ Date of Birth: _____ Driver's License #: _____

Residential Address: _____

Please provide a minimum of three (3) credit references:

Company Name: _____ Contact: _____ Email: _____

1. _____

2. _____

3. _____

Notice of Disclosure of Your Credit Information to a Credit Reporting Agency

The Company is committed to protecting its Customers' privacy. The Company's policy is to comply with the National Privacy Principles for the collection, handling, of personal information as set out in the Privacy Act 1988. In accordance these principles and with the company's Privacy Policy, persons will be given access to their personal information upon request. The personal information collected by the Company is limited to identity particulars, the fact that the Customer has applied for credit (including the amount of credit). The Company collects and uses the personal information collected about the Customer to enable it to supply the Customer with its products and services and for assessing applications for commercial credit (including to obtain a commercial credit report about the Customer and/or to allow a credit reporting agency to create or maintain a credit information file about the Customer), managing accounts and, if necessary, assessing its risks and collecting debts. The personal information collected by the Company may be disclosed to the Company's associated or related entities and other organisations including organisations that assist the Company with the provision of its products and services and/or administrative requirements, other credit providers, whether or not an account is overdue and, if necessary, the Company's risk insurers and debt collectors, including external debt collecting agencies. If all or part of the personal information requested is not provided by the Customer, the Company may not be able to consider any application for commercial credit or provide credit facilities to the Customer. Customers who have any concerns about their personal information are requested to direct them to:

The Credit Manager, Kurt Jacob & Co Pty Ltd, 7/2 Stoddart Rd, PROSPECT NSW 2148

30th July, 2019

The Directors/Partners/Proprietors acknowledge and give consent to the Company making enquiries as to the credit and financial situation of any of them and further consent to the use and disclosure of any personal information obtained as a result of those enquiries, including information disclosed in this Credit Application and Security Agreement, 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 (including an external debt collection agency);
- obtaining further personal information, including consumer and/or commercial credit information, relating to any of them (including a consumer credit report) from another body for any use reasonably connected with the provision of credit or the collection of debt subject to the provisions of the Privacy Act 1988

The Directors/Partners/Proprietors further acknowledge that the consent hereby given shall remain in force until all monies owing have been paid in full and the Customer no longer has an open account with the Company.

IN CONSIDERATION OF Kurt Jacob & Co Pty Ltd ABN 56 000 579 582, (hereinafter referred to as “the Company”) providing commercial credit facilities to the party completing the application (hereinafter referred to as “the Customer”) annexed to these conditions:-

- (c) The Customer acknowledges and agrees that the following applies to and forms part of any contract for the supply of Goods and/or Services by the Company and that these General Terms and Conditions take precedence over any terms and conditions which may be contained in any document provided by the Customer. Any request from the Customer to the Company for the supply of Goods and / or Services shall constitute acceptance of these general terms and conditions.
- (ii) The Customer hereby charges in favour of the Company all its estate and interest in any land and in any other assets, whether tangible or intangible, freehold or leasehold, in which it now has any legal or beneficial interest or in which it later acquires any such interest, to secure the payment of all monies owed by the Customer and consents to the lodging by the Company of a caveat or caveats which note its interest in or over any such land or other caveatable property;
- (iii) The Customer acknowledges that where the Customer consists of more than one party or entity, liability shall be joint and several.

TERMS

These terms and conditions, including any Credit Limits set by the Company, are effective from the date of acceptance by the Customer and may be amended or superseded from time to time by notice given by the Company by any means. Unless or except specifically excluded herein, the company and the Customer retain any rights and remedies available to them in any prior or pre-existing agreement.

“Goods” and/or “Collateral” shall mean 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 including any recommendations and advice and over which the Company may intend to register a Security Interest. “Price” shall mean the cost of the Goods as referred to in the Company’s price lists, prepared quotes and/or specific arrangements and shall be subject to change from time to time without notice. All prices/sales are ex Kurt Jacob & Co’s warehouse and do not include freight and insurance charges, which, where applicable will be charged to the customer’s account. Goods will be shipped by the company’s choice of freight provider. However, the Customer is free to request shipment by their preferred freight provider and where possible the Company will accede to this request. In such cases Freight and Insurance charges are to be paid by the Customer and any loss or damage resulting from this use is at the Customer’s own risk.

1. Jurisdiction

- a. This agreement shall be construed in accordance with laws of the **State of New South Wales** and, where applicable the Commonwealth of Australia, and the Customer submits to the non-exclusive jurisdiction of the courts of **New South Wales**.
- b. The Company shall have exclusive right to nominate the Court in which any legal action is to be commenced and conducted.

2. Personal Property Securities Act (2009)

- a. The Customer consents to the Company effecting a registration on the PPSA register (in any manner the Company deems appropriate) in relation to any security interest in the Goods and the proceeds of those Goods arising under or in connection with or contemplated by these terms.
- b. The Customer waives its right to receive notice of a verification statement in relation to any registration by the Company on the register and any other notice required under the PPSA.
- c. The Customer agrees to promptly execute any documents, provide all relevant information, fully cooperate with the Company and do any other act or thing that the Company requires to ensure that any interest created under these terms is perfected and remains continuously perfected, has priority over any other security interests in the Goods or otherwise and any defect in the security interest, including its registration, is overcome.
- d. The Customer must not, without providing prior written notice to the Company, change its name, address, contact details or any other details that would cause any details in a financing statement to be different if the security interest was re-registered.
- e. 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.
- f. The Customer will not register a financing change statement in respect of the security interest without the Company’s prior written consent.
- g. The Customer agrees that the Company may, at its absolute discretion, apply any amounts received from the Customer toward amounts owing to the Company in such order as the Company may determine.
- h. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms, the Customer agrees that the following provisions of the PPSA will not apply to the enforcement of these terms: section 95 (notice of removal of accession), to the extent that it requires the Company to give a notice to the Customer; section 96 (when a person with an interest in the whole may retain an accession); section 117 (security interests in personal property and land); section 118 (enforcement in accordance with land law); section 120 (enforcement of liquid assets – general); subsection 121(4) (enforcement of liquid assets –notice to grantor); section 123 (right to seize collateral); section 125 (obligation to dispose of or retain collateral); section 126 (apparent possession of collateral); section 127 (seizure by higher priority parties); section 128 (disposing of collateral); section 129 (disposal by purchase); section 130 (notice of disposal), to the extent that it requires the Company to give a notice to the Customer; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134 (retention of collateral); section 135 (notice of retention); subsections 136(3) – 136(5) (retaining collateral free of interests); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).
- i. Notices or documents required or permitted to be given to the Company for the purposes of the PPSA must be given in accordance with the PPSA.
- j. The Company agrees with the Customer not to disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-e.
- k. The Customer agrees to reimburse, upon demand, the Company for all costs and/or expenses incurred or payable by the Company in relation to registering or maintaining any financing statement, releasing in whole or in part the Company’s security interest or any other document in respect of any security interest, and for the enforcement of any rights arising out of the Company’s security interest;
- l. In these terms the following words have the respective meanings given to them in the PPSA: accession, commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.

3. Retention of Title

- a. Property in all the Goods supplied shall 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.
- b. 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.
- c. In the event that the Customer defaults in the payment of any monies owing to the Company, the Company and its employees or agents shall 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 shall grant reasonable access rights and the Company, its employees or agents shall be entitled to do all things required to secure repossession.

4. Payment Terms

- a. At the Company's sole discretion, a deposit may be required prior to any supply.
- b. Credit Account Customers are required to pay all amounts for purchases, in full and with no deduction or set -off, no more than 30 days from the end of the month during which any given purchase is made.
- c. In the event of a dispute, the complete undisputed portion of the account must be paid in accordance with the Payment Terms.
- d. Should it be considered necessary by the Company to incur legal and/or any other expenses, including any such expenses to any debt collection agency, in obtaining, or attempting to obtain, payment for any amount due by the Customer, the Customer shall be liable for all such expenses. The Customer acknowledges that those expenses may be calculated on a commission basis at a percentage rate of up to 25% of the amount due and expressly agrees to pay those expenses irrespective of the amount of work actually performed by the agency.
- e. Amounts received by the Company may be applied first against interest, charges and expenses.
- f. Interest on overdue amounts may be charged at a rate of 1.50% per calendar month or part thereof and the Customer shall be liable for, and expressly undertakes to pay, all such interest.
- g. Any payment made by or on behalf of a Customer which is later avoided by the application of any Statutory Provision shall be deemed not to discharge the Customer's indebtedness and, in such an event, the parties are to be restored to rights which each respectively would have had if the payment had not been made.
- h. The Customer shall be liable for, and expressly undertakes to pay, all fees (including an Administration Fee in an amount to be set from time to time by the Company) for all costs incurred as a result of any cheque or electronic banking transaction being dishonoured for whatever reason.

5. Delivery

- a. The Company shall not be liable for any loss or damage, including consequential loss or damage, arising from delay in delivery or failure to deliver Goods, either whole or in part, due to circumstances beyond its control.

6. Defects

- a. The Customer shall inspect the Goods upon delivery and will, within 48 hours, notify the Company of any defects, short deliveries or any failure to fulfil any quotation or order.
- b. The Customer will, within a reasonable time following delivery, grant the Company access to the Goods in order to inspect for any alleged defects.
- c. Should the Customer fail to notify the Company within the specified period then the Goods shall be deemed to be in compliance with the order and free from any defect whatsoever.

7. Warranty & Returns

- a. Returns will be accepted only if prior arrangements have been made with the Company and charges, including but not limited to re-stocking fees, may apply.
- b. Return Approval and RA Number must be sought from the Company and applied to the RA Form, available from our website, which must be completed and sent with the goods to be returned.
- c. Goods to be returned for credit will only be accepted if they are returned in their original packaging, free of your store labels etc. and with all instruction manuals, brochures and accessories included.
- d. Any costs associated with the return of Goods for the purpose of a warranty claim shall be the responsibility of the Customer.

8. Risk

- a. Notwithstanding Retention of Title provisions as per clause 3 hereof, the risk in Goods purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier nominated by the Customer.
- b. If any of the Goods are damaged or destroyed prior to the title passing to the Customer, the Company is entitled, without affecting any other rights and remedies under any agreement, to any insurance proceeds payable for the Goods.

9. Cancellation

- a. The Company may cancel the delivery of Goods at any time before delivery by giving notice to the Customer by any means.
- b. The Company shall not be liable for any loss or damage, including any consequential loss or damage, arising from such cancellation.
- c. The Customer may cancel the delivery of Goods at any time prior to shipping by giving notice to the Company by any means.
- d. In the event that the Customer cancels delivery of Goods, the Customer shall be liable for any costs incurred by the Company up to the time of the cancellation including, but not limited to, any re-stocking fees incurred by the Company.

10. General

- a. The Company accepts no responsibility for changes in any law which may affect supply.
- b. Neither the Company nor the Customer shall be liable for any breach of any provision of any contract between them arising from an act of their respective God, natural disaster, terrorism, war or any other, specified or un-specified, occurrence beyond the control of either party.
- c. The invalidity or unenforceability of any provision of these General Terms and Conditions shall not affect the validity or enforceability of the remaining provisions.
- d. The Customer acknowledges that all purchases are made relying solely upon the Customer's own skill and judgment.
- e. The Customer warrants that all purchases under this agreement are for commercial purposes only and, accordingly, the provisions of the Consumer Credit Act will not apply.

NOTICE OF DISCLOSURE

- I/we have read and understood this document and have been advised, and given a reasonable opportunity, to seek independent legal advice.
- I/we warrant by signature below that the information given in support of this application is true and correct.
- I/we further warrant that I/we am/are authorised to sign on behalf of the Customer and to bind the Customer in contract.

DIRECTOR'S NAME: (Please Print)

Signature:

Date:

TITLE:

DIRECTOR'S NAME: (Please Print)

Signature:

Date:

TITLE:

- Completing a Credit Application does not infer that credit will be granted.
- The document must be completed in full with no alterations or deletions. Any such alterations or deletions will void the application and a new form will have to be completed.
- The Company reserves the right to refuse credit to any Applicant without explanation.
- The Company reserves the right to suspend or withdraw credit facilities at any time without notice.
- Special Note: if the Customer acts as, or is part of, a Trust/Nominee company then the provision of personal guarantee/s from the Trust Beneficiary/Beneficiaries are required to process this application.

IN CONSIDERATION OF KURT JACOB & CO PTY LTD, ABN 56 000 579 582 (hereinafter referred to as "the Company") granting the Customer (as named in the Application for Credit and which forms a part of this document) trade credit, I/WE GUARANTEE payment to the Company 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 the Company.

I/WE HEREBY AGREE & ACKNOWLEDGE:

- That this is a continuing guarantee;
- To indemnify the Company against all loss or 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 the Company 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 shall not be affected, waived or discharged by the Customer entering into a Deed of Company Arrangement (DOCA) or by the 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 me or any of us and remains in force until such time as I/we receive written confirmation from the Company that we are released from our obligations and liabilities under this guarantee;
- That any payment which 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.

I/we further agree that this agreement shall be governed by and construed in accordance with the laws of New South Wales and, where applicable, the Commonwealth of Australia, and I/we submit to

I/WE ACKNOELEGGE AND GIVE CONSENT to the Company making enquiries as to the credit and financial situation of any of us and further consent to the use and disclosure of any personal information obtained as a result of those enquiries, including information disclosed in this Credit Application and Security Agreement, as the Company reasonably sees fit from time to time, and for the duration of this agreement, including but not limited to:

- Exchanging references with other credit providers about an individual's credit worthiness;
- Passing the information on to a credit reporting agency;
- Passing the information on to a debt collector (including an external debt collection agency);
- Obtaining further personal information, including consumer and/or commercial credit information, relating to any of us (including a consumer credit report) from another body for any use reasonably connected with provision of credit pursuant to this Credit Application and Security Agreement or the collection of debt subject to the provisions of the NPPs and the CRCC under the Privacy Act 1988.

GENERAL:

"I" and "we" and "us" means each of the Guarantors jointly and severally. "Goods" has the meaning ascribed to them in the Application for 30 Day Credit Account which forms a part of this document. The invalidity or unenforceability of any provision of this Guarantee and Indemnity shall not affect the validity or enforceability of the remaining provisions. Clerical errors are subject to correction and do not bind the Company.

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

GUARANTOR 1

GUARANTOR NAME: _____ **SIGNATURE:** _____ **DATE:** _____
(Print)

Signed in the presence of:

WITNESS: _____ **SIGNATURE:** _____ **DATE:** _____

ADDRESS: _____

GUARANTOR 2

GUARANTOR NAME: _____ **SIGNATURE:** _____ **DATE:** _____
(Print)

Signed in the presence of:

WITNESS: _____ **SIGNATURE:** _____ **DATE:** _____

ADDRESS: _____

IF INSUFFICIENT SPACE FOR ALL INTENDED GUARANTOR SIGNATURES, FURTHER COPIES OF THE GUARANTEE ARE AVAILABLE UPON REQUEST.

30th July, 2019