

CREDIT APPLICATION

TERMS AND CONDITIONS OF SALE

BUSINESS NAME : _____

TRADING NAME : _____

REGISTERED ADDRESS : _____

STATE : _____ POST CODE : _____

POSTAL ADDRESS : _____

STATE : _____ POST CODE : _____

TELEPHONE NO : () _____ FAX NO : () _____

A.C.N. : _____

A.B.N. : _____

BUSINESS STRUCTURE (Please tick):

PRIVATE COMPANY () PUBLIC COMPANY () PARTNERSHIP () SOLE TRADER ()

FULL NAMES & PRIVATE ADDRESSES OF DIRECTORS/PARTNERS/SOLE TRADER

1. _____

2. _____

3. _____

4. _____

TRADE REFERENCES (3)

1. _____ Ph () _____ Fax () _____

2. _____ Ph () _____ Fax () _____

3. _____ Ph () _____ Fax () _____

GENERAL INFORMATION

BANK : _____ BRANCH: _____ A/C NO.: _____

MONTHLY TURNOVER: \$ _____ DATE COMMENCED BUSINESS : _____

PURCHASE OFFICER : _____ PH () _____

ACCOUNTS CONTACT: _____ PH () _____

CREDIT LIMIT REQUIRED: \$ _____

HAS ANY PARTNER/DIRECTOR/SOLE TRADER EVER BEEN DECLARED BANKRUPT WHETHER DISCHARGED OR NOT

NO () YES () IF YES, PLEASE PROVIDE FULL DETAILS: _____

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**SAMSUNG (AUST.) PTY LTD (ACN 001 380 589)
(hereinafter referred to as "Samsung")**

TERMS AND CONDITIONS OF SALE

In respect of the purchase of any and all goods (hereinafter referred to as the "Goods") from Samsung, the applicant of this Credit Application (hereinafter referred to as the "Purchaser") is deemed to purchase and accept delivery of the Goods upon the following terms and conditions.

1. DEFINITIONS

In these terms and conditions:

"Contract" means a contract to sell Goods arising on Samsung's acceptance of a Purchase Order placed by the Purchaser for Goods;

"Due Date" means the due date for payments by the Purchaser as specified on an Invoice or otherwise;

"Event of Default" means any event specified in clause 10;

"Invoice" means the invoice issued by Samsung under a Contract setting out certain terms of the Contract, including the Purchase Price payable for the Goods;

"Purchase Order" means any offer made by the Purchaser to Samsung to purchase Goods from Samsung in accordance with these terms and conditions; and

"Purchase Price" means the purchase price payable for the Goods set out in the Invoice.

2. THE CONTRACT

(a) The terms of each Contract are these terms and conditions and the Invoice which together constitute the entire agreement between Samsung and the Purchaser.

- (b) These terms and conditions apply to all sales of Goods to the Purchaser and override any other terms or conditions, express or implied that would otherwise apply including:
 - (1) any terms or conditions set out or referred to in any Purchase Order, delivery, receipt or other document of the Purchaser; or
 - (2) any inconsistent terms in an Invoice.
- (c) Samsung may vary these terms and conditions at any time after giving at least 14 days notice to the Purchaser.
- (d) These terms and conditions as varied will not apply to any Contract already in existence.
- (e) By accepting a delivery of Goods supplied in response to a Purchase Order, the Purchaser accepts these terms and conditions.

3. TERMS OF PAYMENT

- (a) Samsung's payment terms are strictly 30 days from Month end.
- (b) Samsung reserves the right at all times, without prior notice and at Samsung's absolute discretion to:
 - (1) refuse to grant credit;
 - (2) withdraw credit;
 - (3) stop supply of Goods, whether paid for or not, if the Purchaser 's credit account is overdue;
 - (4) require new credit application/personal guarantee; or
 - (5) charge interest on overdue amounts at the highest rate of interest charged to Samsung on Samsung's bank overdraft account on the relevant Due Date.
- (c) In case of a disputed Invoice, all other Invoices remain due according to these terms and conditions.

4. CREDIT LIMITS

Credit limits shall be established by Samsung (at Samsung's sole discretion) and shall be confirmed to the Purchaser in writing prior to commencement of trade.

5. RISK

- (a) If it is the responsibility of Samsung to deliver Goods to the premises of the Purchaser or such other premises as specified by the Purchaser, risk of loss and/or damage to the Goods passes to the Purchaser when the Goods are delivered to such premises.
- (b) If it is the responsibility of the Purchaser to take delivery of the Goods from Samsung's premises or such other premises at which the Goods may be located, risk of loss and/or damage to the Goods passes to the Purchaser when the Goods are loaded for dispatch from Samsung's premises or such other premises at which the Goods may be located for delivery to the Purchaser even if Samsung arranges or agrees to pay for the carriage or insurance of the Goods in transit.

6. PROPERTY

- (a) Notwithstanding clause 5, title to and property in the Goods shall not pass from Samsung to the Purchaser and full legal and beneficial ownership of the Goods shall remain with Samsung so long as and until the Purchaser has paid the Purchase Price for the Goods in full, together with all other sums owing by the Purchaser to Samsung on any other account whatsoever.
- (b) Until the title to and property in the Goods has passed to the Purchaser in accordance with clause 6(a), without prejudice to Samsung's other rights:
 - (1) the Purchaser holds Samsung's Goods as fiduciary and as bailee for Samsung;
 - (2) the Purchaser must store the Goods separately from those belonging to any other person to show clearly that they belong to Samsung;
 - (3) if the Purchaser sells all or any part of a delivery of Goods to a third party, the proceeds of such sale of Goods shall be held by the Purchaser as trustee for Samsung (to the extent that such proceeds do not exceed the Purchase Price for the Goods in full, together with all other sums owing by the Purchaser to

Samsung on any other account whatsoever) and the Purchaser must account to Samsung for those sums; and

- (4) the Purchaser agrees not to combine the Goods with any other goods in such a way as to make it impossible to separate the Goods from the other goods.
- (c) The Purchaser shall indemnify Samsung against, and pay to Samsung, immediately upon demand, all and any loss, damage, cost charge, or expense or other liability (including but not limited to consequential loss, loss of profits and legal costs) whatsoever and howsoever incurred or sustained by Samsung, as a result of or in relation to the exercise by Samsung of its rights under this clause 6 on a full indemnity basis.
- (d) Where a sub-clause, or a part of a sub-clause, of this clause 6 is void, invalid, or unenforceable, it may be severed without affecting the enforceability of any other sub-clause or part of a sub-clause of this clause 6.

7. DELIVERY

- (a) Samsung can arrange freight on behalf of the Purchaser. Freight charges will be charged to the Purchaser at current rates charged to Samsung by its freight carrier.
- (b) Purchasers using their own freight carrier are liable for their own freight and insurance. It is the responsibility of the Purchaser to arrange pick up from Samsung's warehouse.
- (c) Any time quoted by Samsung for delivery of Goods is an estimate only. The Purchaser is not relieved of any obligation to accept or pay for Goods because of a delay in a delivery or any part of a delivery.
- (d) If an event occurs beyond the control of Samsung that affects the manufacture or delivery of Goods, Samsung is entitled to deliver part only of a Purchase Order, suspend a delivery, extend the time for delivery or cancel the Purchase Order.

8. WARRANTY

- (a) All Goods supplied are covered by such warranty as specified in writing by Samsung.
- (b) Subject to clauses 8(a) and 11:
 - (1) Samsung makes no representation and gives no guarantee in respect of any Goods;
 - (2) all conditions and warranties whether statutory or otherwise are excluded in so far as they may be lawfully excluded by agreement between the parties; and
 - (3) Samsung is not liable in respect of any claim of any nature for any injury, loss or damage to any person or property caused by or arising out of the Goods, the delivery of the Goods or the use of the Goods except in so far as liability may be imposed upon Samsung or implied into the transaction by any statute, the provisions of which cannot be excluded by these terms and conditions.
- (c) The Purchaser shall notify Samsung immediately in writing upon discovery of any defects or damage to the Goods.
- (d) In the event that the Purchaser considers that Samsung has delivered Goods incorrectly, the Purchaser shall notify Samsung in writing within three (3) days of receipt of Goods.
- (e) Samsung reserves the right to withhold warranty service whilst the Purchaser's credit account is in arrears.
- (f) All warranty repairs are on a return to Samsung basis at the Purchaser's expense. Samsung will return the Goods under warranty to the Purchaser at Samsung's own expense.
- (g) The liability of Samsung for breach of any warranty, condition or obligation does not extend to liability for financial or consequential loss unless the liability of Samsung cannot be so limited.

9. RETURN OF GOODS

- (a) Samsung does not accept the return of goods that have been correctly supplied.
- (b) Faulty or incorrectly delivered Goods will not be accepted unless a Return Authorisation Number (RA No) has been issued by Samsung. Such issuance of RA No shall be at the sole discretion of Samsung.
- (c) All goods returned must be accompanied by a copy of the Invoice and be in a merchandisable condition.
- (d) Issue of an RA No is under no circumstances suggesting that Samsung has agreed to a credit for the returned goods. In the event that Samsung does agree to credit the returned goods, a credit note will be issued to the Purchaser's account.

10. DEFAULT

- (a) It is an Event of Default if:
- (1) the Purchaser breaches any term of a Contract;
 - (2) the Purchaser fails to pay any indebtedness to Samsung when due;
 - (3) the Purchaser suspends payment of its debts generally;
 - (4) the Purchaser ceases to carry on business;
 - (5) the Purchaser's financial condition makes it unlikely in Samsung's opinion that the Purchaser will perform its obligations under the Contract or under any other contract with Samsung;
 - (6) any asset of the Purchaser or any of the Goods in the possession of the Purchaser which have not been paid in full are seized under legal process issued against the Purchaser;
 - (7) the Purchaser fails to satisfy any judgment against it within 7 days after the date of the judgment;
 - (8) a receiver, receiver and manager, provisional liquidator, liquidator, administrator, trustee, official manager or similar official is appointed over any of the assets or undertaking of the Purchaser;
 - (9) the Purchaser is or is deemed by law to be unable to pay its debts;
 - (10) the Purchaser makes any arrangement, composition or compromise with or assignment for the benefit of, its creditors or members or with any class of its creditors or members;
 - (11) where the Purchaser is a corporation, an application or order is made for the winding up of the Purchaser; or
 - (12) where the Purchaser is a natural person, the Purchaser:
 - (A) is charged with any indictable offence; or
 - (B) dies or becomes incapable or of unsound mind or becomes liable to be dealt with under any law relating to mental health.
- (b) At any time after an Event of Default occurs, Samsung may do all or any of the following:
- (1) go onto the Purchaser's premises, re-take possession of any Goods which remain the property of Samsung and sell those Goods to any other person;
 - (2) require the Purchaser to pay interest on any overdue payment from the Due Date up to the date of actual payment, compounded each quarter, at the highest rate of interest charged to Samsung on Samsung's bank overdraft account on the Due Date;
 - (3) declare all sums outstanding or which become outstanding after the Due Date from the Purchaser to Samsung immediately due and payable, or where no Invoice has been submitted, will become immediately due and payable on presentation of an Invoice; and
 - (4) cancel any outstanding Purchase Orders.

11. LIMITATION OF LIABILITY

- (a) Where Samsung is permitted by the Trade Practices Act 1974 (Cth) and the equivalent provisions of any state Act to limit its liability for the breach of a condition or warranty which is implied into these conditions by the Trade Practices Act 1974 (Cth) or a state Act, Samsung's liability is limited, at the option of Samsung, to any one or more of the following:
- (1) the repair of the Goods;
 - (2) the replacement of the Goods or the supply of equivalent Goods;
 - (3) the payment of the cost of replacing the Goods or of acquiring equivalent Goods; and
 - (4) the payment of the cost of having the Goods repaired.
- (b) Subject to clause 11(a) these terms and conditions do not exclude, restrict, modify or derogate from in any manner whatsoever:
- (1) the rights and remedies of consumers and others;
 - (2) the exercise by consumers of rights and remedies;
 - (3) any mandatory condition or warranty in favour of consumers; or
 - (4) any liability of Samsung for breach of a mandatory condition or warranty in favour of consumers,

conferred or implied by those Commonwealth, state or territory laws that cannot be lawfully excluded, restricted or modified.

12. GENERAL

- (a) These terms and conditions are governed by the laws of New South Wales.
- (b) No waiver or alteration of these terms and conditions shall be binding upon Samsung unless a duly authorised officer of Samsung assents to the same in writing.
- (c) The rights, duties and remedies granted or imposed under these terms and conditions operate to the extent not excluded by law.

I/We the applicant for the credit account hereby declare that I/we have completed the application fully and honestly to the best of my/our ability.

Further, I/we declare to have read and understood all the terms and conditions of sale as set out in this application and agree to abide by the same.

This application must be signed below and initialled on every page by a Director, Partner or the Sole Trader in the presence of a witness.

Signature: _____
Name: _____
Position: _____
Date: _____

Witness:
Signature: _____
Name: _____
Date: _____