

Business Name _____

ABN _____ Industry _____

Mailing Address _____

_____ Post Code _____ State _____

Shipping Address _____

_____ Post Code _____ State _____

Contact Name _____

Email Address _____

Phone Number _____ Mobile _____

Type of Trading Sole Trader Company Partnership

Brief description of business activities and length of time in present business

Credit Limit Required _____ Estimate spend per month _____

Full Name and address of Director, Partner or Sole Trader

Business References; (3 to be provided)

1. Name of Business _____
Address _____
Contact Person _____
Phone Number _____
Email Address _____

2. Name of Business _____
Address _____
Contact Person _____
Phone Number _____
Email Address _____

3. Name of Business _____
Address _____
Contact Person _____
Phone Number _____
Email Address _____

The Applicant warrants to the Company that:

(a) The above information is true and correct in every particular; and

(b) Where the Customer is a company, the person signing the Credit Application is duly authorised to sign the Credit Application on behalf of the Customer and to bind the credit of the Customer.

I/We agree to be bound by the Terms & Conditions of Trade **attached**.

EXECUTED by _____ in accordance with s127(1) of the *Corporations Act 2001*

Director – Signature _____ Director or Secretary – Signature _____

Director – Printed Name _____ Director or Secretary – Printed Name _____

Date ____/____/____ Date ____/____/____

OR

SIGNED SEALED AND DELIVERED by _____ in the presence of:

Witness – Signature _____

Witness – Printed Name _____ Date ____/____/____

Please complete, sign and email form to admin@leffler.com.au

Office Use Only
Customer Code _____ ALPHA Code _____ Webportal _____ Staff Member _____

H. LEFFLER & SON PTY LTD TERMS AND CONDITIONS OF TRADE

1. GENERAL

This agreement sets out the terms and conditions on which H Leffler & Son Pty Ltd (ACN 005 222300) (**the Company**) is willing to extend credit terms and supply goods to you (**the Customer**). By ordering goods from the Company, the Customer shall be deemed to have accepted the credit account application, any guarantee and indemnity and these terms and conditions to the exclusion of all others.

2. PAYMENT TERMS

(a) Terms of payment are 30 days from End Of Month. (b) Failure by the Customer to comply with the Company's terms of payment shall immediately entitle the Company to suspend any further orders placed and accepted by the Company until all outstanding amounts have been paid by the Customer. However, the Company reserves the right thereafter not to supply the Customer any further, or to convert the Customer's account to a cash transaction basis only.

3. CREDIT TERMS

- (a) Credit terms will only be available, at the Company's absolute discretion, upon approval of a written credit application for this purpose.
- (b) The Company may in its absolute discretion determine the credit limit whereby the Customer shall make payments when required to ensure the amount outstanding remains within the credit limit.
- (c) The Company may at any time without notice terminate any extension of credit to the Customer and require immediate payment of all amounts owing by the Customer to the Company.
- (d) The Customer shall not be entitled to retain any amount owing to the Company at any time notwithstanding any default or alleged default of the Company of these terms and conditions.
- (e) The Company may at any time require the Customer to provide directors' guarantees to the value of the credit facility provided.

4. USE OF PERSONAL INFORMATION

- (a) The Customer agrees that for the purposes of processing its application for credit facilities the Company may:
 - (i) seek consumer credit information (Section 18K (1) (b) *Privacy Act 1988*).
 - (ii) obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to commercial credit; and/or
 - (iii) exchange information with other credit providers (Section 18N (1) (b) *Privacy Act 1988*).
- (b) The Customer agrees to the Company obtaining personal information about the Customer from other credit providers, whose names the Customer may have provided for the Company or that may be named in a credit report, for the purpose of assessing the Customer's application for commercial credit.
- (c) The Customer agrees that the Company may disclose the Customer's personal information to persons within the Company's organisation and to third parties including but not limited to courier companies and credit reporting agencies.

5. ORDERS

The Company reserves the right to accept in whole or in part any order placed on it or to refuse such order entirely.

6. DELIVERY AND RISK

- (a) Delivery of goods shall be effected by the Company to the Customer:
 - (i) subject to availability; and
 - (ii) without any liability on behalf of the Company for any delays.
- (b) Risk and possession in the goods shall pass to the Customer upon delivery to the Customer or where a third party is designated to perform the delivery of the goods to the Customer, upon delivery to that third party.

7. RETURNS

- (a) Returns will not be accepted unless prior written authorisation is received and a "goods return" number issued by an authorised officer of the Company.
- (b) All goods must be returned within 10 days of date of delivery unless agreed to otherwise by the Company in writing and must be freight prepaid and original invoice and authorisation number quoted.

8. OVERDUE ACCOUNTS

- (a) Any amount overdue for payment will at the discretion of the Company bear interest at the rate of 1.5% per month from the date it becomes overdue until payment (including any interest) is paid in full, without prejudice to any other of the Company's rights and remedies.
- (b) Any payment received will be applied first against any interest accrued, secondly in relation to all fees incurred and thirdly against overdue invoices.

9. DEFAULT

- (a) If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all loss and damage in respect of any recovery action including without limitation all solicitors' fees (on an indemnity basis), commercial agents' commission, out of pocket expenses, bank fees, freight, insurance (collectively referred to as fees) and interest.
- (b) If the Customer defaults, the Company may, without prejudice to the Company's own rights, either suspend further deliveries, require payment in advance for all such deliveries or terminate this or any other agreement by written notice to the Customer.

10. TITLE AND PERSONAL PROPERTIES SECURITIES ACT 2009 (CTH) (PPSA)

- (a) Ownership of the goods will remain with the Company until all invoices, interest and fees owing by the Customer to the Company on any account whatsoever (**Amounts Owing**) have been paid in full.
- (b) Until the Amounts Owing have been paid in full, the Customer holds the goods as trustee for the Company.
- (c) Until the Amounts Owing have been paid in full, the Customer has the right to sell the goods, but only as trustee for the Company (and the Customer must not represent to any third parties that it is acting as the Company's agent) and the Customer must hold the proceeds it receives from any such sale as trustee for the Company.
- (d) If the Customer fails to comply with any of these terms and conditions then:
- (i) upon request, the Customer must return all goods in its possession;
 - (ii) the Company may enter the premises and seize possession of the goods; and
 - (iii) the Company may retain, sell or otherwise dispose of those goods.
- (e) The Customer hereby acknowledges that these terms and conditions of trade constitute a Security Agreement which creates a security interest in favour of the Company and in all goods including services previously supplied by the Company to the Customer and all after acquired goods including services supplied to the Customer by the Company to secure the payment from time to time, including any future advances.
- (f) The Customer hereby grants a security interest (by virtue of this clause 10) to the Company and in all goods including services previously supplied by the Company to the Customer.
- (g) The Customer agrees to grant the Company a Purchase Money Security interest (**PMSI**).
- (h) The Customer agrees to do anything that the Company reasonably requires to ensure that the Company has at all times a continuously perfected security interest over all the Customer's present and after-acquired property.
- (i) The Customer consents to the Company effecting a registration on the PPSA register in relation to any security interest contemplated by these terms and conditions. The Customer waives the right to receive notice of a verification statement in relation to any registration on the PPSA register.
- (j) The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the goods without the Company's prior written consent.
- (k) The Customer undertakes to:
- (i) promptly sign any further documents and/or provide any further information which the Company may reasonably require to register a financing statement in relation to a security interest or to register any other document required on the PPSA register;
 - (ii) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement on the PPSA register or releasing any goods charged thereby;
 - (iii) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
 - (iv) not permit to be registered, a financing statement in relation to the goods in favour of a third party; and
 - (v) immediately advise the Company of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.
- (l) If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with these terms and conditions the Customer agrees the following provisions of the PPSA will not apply:
- (i) section 95 (notice of removal of accession), to the extent that it requires the Company to give notice to the Customer;
 - (ii) section 96 (when a person with an interest in the whole may retain an accession);
 - (iii) section 117 (obligations secured by interests in personal property and land);
 - (iv) section 118 (enforcing security interests in accordance with land law decisions);
 - (v) subsection 121(4) (enforcement of liquid assets – notice to grantor);
 - (vi) section 125 (obligation to dispose of or retain collateral);
 - (vii) section 130 (notice of disposal), to the extent that it requires the Company to give notice to the Customer;
 - (viii) paragraph 132(3)(d) (contents of statement of account after disposal);
 - (ix) subsection 132(4) (statement of account if no disposal);
 - (x) section 135 (notice of retention);
 - (xi) section 142 (redemption of collateral); and
 - (xii) section 143 (reinstatement of security agreement)
- (m) The following terms have the respective meanings given to them in the PPSA: account, proceeds, purchase money, register, registration, security interest and verification statement.

11. COMPETITION AND CONSUMER ACT 2010 (CTH) & LIMITATION OF LIABILITY

- (a) The Company acknowledges that the *Competition and Consumer Act 2010* (Cth) (as amended) and other statutes from time to time in force imply or impose statutory guarantees, conditions or warranties into contracts for the supply of goods which cannot be excluded, restricted or modified or can only be restricted or modified to a limited extent (**Non Excludable Terms**). Nothing in these terms and conditions is intended to exclude or restrict the application of the Non Excludable Terms. Other than the Non Excludable Terms and any express written warranty provided by the Company, the Company hereby excludes all conditions, warranties, guarantees, terms and obligations expressed or implied by law in connection with these terms and conditions, or any goods obtained under them.
- (b) Subject to clause 11(a), the Company is not liable to the Customer or any other person for any loss or claim of any kind in connection with these terms and conditions, or any goods them, except to the extent caused directly by the negligence or wilful misconduct of the Company.
- (c) If any Non Excludable Terms apply, then to the extent to which the Company is entitled to do so, its liability under those Non Excludable Terms will be limited at its option to:
- (i) the replacement of the goods or the supply of equivalent goods; or

- (ii) the repair of the goods; or
- (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (iv) the payment of the cost of having the goods repaired.
- (d) The Company will be under no liability to the Customer or any third party in any circumstances for any indirect, special or consequential loss or damage, including but not limited to loss of revenue, loss of production, loss of product, loss of contract or loss of profit howsoever arising and whether in an action in contract, tort, in equity, under statute, or on any other basis.
- (e) Notwithstanding any other provision in these terms and conditions, in no circumstances shall the liability of the Company exceed the price of the goods.

12. PRICES

- (a) All prices are subject to change without notice except that prices will remain firm for orders already placed and accepted by the Company.
- (b) The Company's prices are exclusive of sales tax and any other tax (which, if applicable, shall be for the Customer's account). A Customer seeking to claim an exemption from sales tax must quote its Sales Tax
- (c) Number on each order placed with the Company otherwise the Company shall, as required by law, charge the Customer with the applicable sales tax in respect of such order.
- (d) Prices quoted by the Company are ex-warehouse and do not include freight and other costs associated with delivery of the goods to the Customer, which costs, unless specifically agreed to other wise between the Company and the Customer, shall be for the account of the Customer.

13. DISCOUNTS ETC

Any discounts, settlement allowances, or other rebates must be specifically agreed to by the Company to be valid and effective.

14. PRECEDENCE OF TRADING TERMS

Orders will not be accepted otherwise than subject to these terms and conditions. If the terms of the Customer's order are inconsistent with these terms and conditions, the delivery of the goods to the Customer, or the Customer's agent, shall constitute an offer by the Company to sell the goods to the Customer subject to these terms and conditions, which offer the Customer shall be deemed to accept by retaining the goods.

15. RECOVERY

Should it become necessary for the Company to institute legal action for recovery of any amounts due to it by the Customer, then the Customer specifically acknowledges and agrees that it shall be liable to the Company on demand for all costs incurred by the Company in recovery of such amounts, including all legal costs on a solicitor and own client scale.

16. CHANGE IN OWNERSHIP

The Customer agrees to notify the Company in writing within seven (7) days of any change whatsoever in ownership structure and further indemnify the Company against any loss or damage that may result from the failure of the Customer to notify the Company of any such changes. If there is a change in the Customer's ownership of which the Company in its discretion deems to be material, the Company may suspend or withdraw all credit facilities and require that the Customer submit a new Credit Application.

17. GENERAL

- (a) Any indulgence or extension of time shall in no way be construed as a waiver by the Company to strictly enforce its rights as set out herein.
- (b) These terms and conditions of sale shall be construed in accordance with and be governed by the laws of the State or Territory in which the Company principal office is situated.
- (c) Except in respect of provisions implied by statute, the provisions set out herein contain the whole of the terms and conditions, express or implied, made between the Customer and the Company and no variation or inclusion of any further provisions shall be binding upon the Company unless approved by the Company in writing.
- (d) Should any part of these terms and conditions be held to be void or unlawful, such part is to be read and enforced as if the void or unlawful part had been deleted.
- (e) All trademark, copyright, design right and other intellectual property in any design, specification, process, method of working or other information relating to the goods shall vest for all time in the Company.
- (f) The Customer shall not be entitled to set off against or deduct from the price any sums owed or claimed to be owed to the Customer by the Company.