

**Confidential**

**HINKLER BOOKS PTY LTD**

**Application for Credit  
Terms of Trade  
Guarantee  
Privacy Consent**

45-55 Fairchild Street, Heatherton, Victoria 3202  
Telephone: (03) 9552 1333  
Orders Fax: (03) 9558 2566

Hinkler Books Pty Ltd  
ABN 22 202 061 875  
ACN. 061 321 766

# How to Complete these Forms

## 1. Please read all documents carefully

- Credit Application
- Terms and Conditions of Trade
- Personal Guarantee
- Privacy Act Consent Form and Warranties and Acknowledgments

## 2. Signing Requirements

**IMPORTANT: To have your Application considered, you must sign the Forms in each box**

In EACH place requiring a signature, the following applies:

- If you are a sole trader, **you** must sign
- If you are applying as a partnership, **all** partners must sign
- If you are applying for your company, **all** directors must sign or someone authorised to sign on behalf of the company
- If you are applying as individual trustee, **all** individual trustees must sign
- If you are applying for a company trustee, **all** directors must sign or someone authorised to sign on behalf of the company

For the Guarantee Form 3

- If you are a sole trader or partnership, you need not sign this form
- For more than 2 Guarantors, **all** additional Guarantors must sign a **copy of the form**
- **Each** signature must be witnessed by an independent witness

## 3. When finished

- When all parts (if needed) have been signed, please return **BY MAIL** all parts, except the Terms and Conditions of Trade, to the following postal address:

Accounts Receivable Department  
Hinkler Books Pty Ltd  
45-55 Fairchild Street  
Heatherton, Victoria, 3202

- For any queries about this application please contact Hinkler Books on (03) 9552 1333

Before returning these forms, have you:

- |  |                              |
|--|------------------------------|
| • Completed and signed the Application for Credit?                 | <input type="checkbox"/> Yes |
| • Read the Terms and Conditions of Trade?                          | <input type="checkbox"/> Yes |
| • Completed and Signed the Guarantee?                              | <input type="checkbox"/> Yes |
| • Signed Privacy Act Consent Forms and Acknowledgment and Warranty | <input type="checkbox"/> Yes |

**As with any legal documents, you should seek independent legal and/or financial advice in relation to this Application**

**Thank you for your Application and completing these forms.**

**HINKLER BOOKS PTY LTD**  
**FORM 1: CREDIT APPLICATION**

**1. THE APPLICANT**

Customer Name: \_\_\_\_\_ ABN/ACN: \_\_\_\_\_  
Trading Name (if different from customer): \_\_\_\_\_ Date business commenced: \_\_\_\_\_  
Principal business address: \_\_\_\_\_ Postcode \_\_\_\_\_  
Delivery Address (if different from business address): \_\_\_\_\_ Postcode \_\_\_\_\_  
Address for correspondence: \_\_\_\_\_ Postcode \_\_\_\_\_  
Registered Address: \_\_\_\_\_ Postcode \_\_\_\_\_  
Accounts Payable Contact: \_\_\_\_\_ Position: \_\_\_\_\_  
Tel No: \_\_\_\_\_ Fax No: \_\_\_\_\_ E-mail: \_\_\_\_\_

**2. OPERATING STRUCTURE**

*tick appropriate*

Pty. Ltd.                       Sole Trader                       Corporation as Trustee  
 Public Co. (Annual Report required)     Partnership                       Individual(s) as Trustee                       Other \_\_\_\_\_

*If a company, partnership or trustee, please complete part 4*

**3. INDIVIDUAL / SOLE TRADER DETAILS**

Full Name: \_\_\_\_\_ Date of Birth: \_\_\_\_\_  
Drivers License Number: \_\_\_\_\_  Copy of Drivers License Attached

*If a company, partnership or trustee please complete part 4*

**4. DIRECTOR, PARTNER AND INDIVIDUAL TRUSTEE DETAILS**

*provide details of all directors (for company or corporate trustee), partners or individual trustees*

Name	Address	D.O.B	Phone Number
_____	_____	___/___/___	_____
_____	_____	___/___/___	_____
_____	_____	___/___/___	_____

*if more than 3 please attach details*

*If a trustee, please complete part 5*

**5. TRUST DETAILS**

Name of Trust: \_\_\_\_\_ ABN \_\_\_\_\_

Type of trust:             Family/Discretionary             Unit             Other (*Details* \_\_\_\_\_)

*If a unit trust, please provide details of all unit holders*

Name: \_\_\_\_\_ Address \_\_\_\_\_

Name: \_\_\_\_\_ Address \_\_\_\_\_

Name: \_\_\_\_\_ Address \_\_\_\_\_

*if more than 3 please attach details*

**6. APPLICANT'S FINANCIAL DETAILS**

Estimated Monthly purchases \$ \_\_\_\_\_ Credit required: \$ \_\_\_\_\_

Bank: \_\_\_\_\_ Branch: \_\_\_\_\_

Bank Contact: \_\_\_\_\_ Tel: \_\_\_\_\_

Business Premises:             Owned             Leased

If leased, from whom : (Name & address): \_\_\_\_\_ (Tel. number): \_\_\_\_\_

Details of security (eg. Mortgages, Debentures, Bill of Sale provided by Applicant over its business or property to third parties)

Type of security \_\_\_\_\_ provided to: \_\_\_\_\_

Type of security \_\_\_\_\_ provided to: \_\_\_\_\_

## 7. BUSINESS HISTORY

Type of business: \_\_\_\_\_ Commenced operating: \_\_\_\_\_

How long has current owner been operating? \_\_\_\_\_ Government Instrumentality?

For all of the directors, partners, individual trustees or sole trader:

Have any been declared bankrupt?  Yes  No If yes, details: \_\_\_\_\_

Have any been involved in business that have failed or been liquidated  Yes  No If yes, details: \_\_\_\_\_

Names of related or subsidiary companies or partnerships: \_\_\_\_\_

## 8. TRADE/BUSINESS REFERENCES

4 trade or business references must be provided from current major suppliers that are providers of commercial credit

1. Name \_\_\_\_\_ Address \_\_\_\_\_

Contact \_\_\_\_\_ Tel \_\_\_\_\_ Fax \_\_\_\_\_

2. Name \_\_\_\_\_ Address \_\_\_\_\_

Contact \_\_\_\_\_ Tel \_\_\_\_\_ Fax \_\_\_\_\_

3. Name \_\_\_\_\_ Address \_\_\_\_\_

Contact \_\_\_\_\_ Tel \_\_\_\_\_ Fax \_\_\_\_\_

4. Name \_\_\_\_\_ Address \_\_\_\_\_

Contact \_\_\_\_\_ Tel \_\_\_\_\_ Fax \_\_\_\_\_

## 9. PERSON COMPLETING APPLICATION

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Address (private) \_\_\_\_\_ Postcode \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

The person completing this Application on behalf of the Applicant HEREBY REPRESENTS & WARRANTS that the information contained in this Application is true and correct and they are duly authorised to sign this Application on behalf of the Applicant and ACKNOWLEDGES that Hinkler will rely upon and be induced thereby to grant credit and/or deal with the Applicant.

## 10. TERMS OF CREDIT

Credit will not be provided until Hinkler Books Pty Ltd ("Hinkler") accepts this application and has provided written confirmation to the Applicant.

If Hinkler accepts this application, the provision of goods and services and credit facilities to the Applicant are subject to the Terms and Conditions of Trade attached.

## 11. EXECUTION

By signing this application for credit, the Applicant:

- Acknowledges having been provided with Terms and Conditions of Trade and having read and understood them
- Agrees that the Terms and Conditions of Trade apply to the provision of goods and services to it by Hinkler.

*if company or corporate trustee – signed for and on behalf of the Applicant*

Name of authorised person: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*if sole trader, partnership or individual(s) as trustee*  
*if partnership or individual(s) as trustee - all partners and individuals must sign*

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Signature: \_\_\_\_\_ Date: \_\_\_\_\_

*If more than 3 directors or individuals, please have additional directors/individuals sign a copy of this page*

**HINKLER BOOKS PTY LTD**  
**FORM 2: TERMS AND CONDITIONS OF TRADE**

**1. Definitions**

In these Terms:

**"ACL"** means the Australian Consumer Law Schedule of the Competition and Consumer Act;

**"Agreement"** means any agreement for the provision of goods or services by the Seller to the Customer;

**"Terms"** means these Terms and Conditions of Trade;

**"consumer"** is as defined in the ACL and in determining if the Customer is a consumer, the determination is made if the Customer is a consumer under the Agreement;

**"Copyright Material"** means any copyright work produced by or on behalf of the Seller in the provision of the goods or services;

**"Customer"** means a person, jointly and severally if more than one, acquiring goods or services from the Seller;

**"goods"** means goods supplied by the Seller to the Customer;

**"GST"** means the Goods and Services tax as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended;

**"Intellectual Property"** means all copyright, patents, trade marks, names, formulae, specifications, confidential information and all modifications, improvements and enhancements (whether registrable or not) owned by or licensed to the Seller in respect of the goods;

**"PPSA"** means the *Personal Property Securities Act 2009* as amended;

**"Seller"** means Hinkler Books Pty Ltd (ABN 22 202 061 875);

**"services"** means services supplied by the Seller to the Customer;

**"Terms"** means these Terms and Conditions of Trade.

**2. Basis of Agreement**

2.1 Unless otherwise agreed by the Seller in writing, the Terms apply exclusively to every Agreement and cannot be varied or replaced by any other condition, including the Customer's terms and conditions of purchase (if any).

2.2 Any quotation provided by the Seller to the Customer for the proposed supply of goods or services is:

- (a) valid for 30 days;
- (b) an invitation to treat only; and
- (c) only valid if in writing.

2.3 The Terms may include additional terms in the Seller's quotation, which are not inconsistent with the Terms.

2.4 An Agreement is accepted by the Seller when the Seller accepts, in writing or electronic means, an offer from the Customer or provides the Customer with the goods or services ordered.

2.5 The Seller in its absolute discretion may refuse to accept any offer.

2.6 The Seller may vary or amend these Terms by written notice to the Customer at any time. Any variations or amendments will apply to orders placed after the notice date.

**3. Pricing**

3.1 Prices quoted for the supply of goods and services exclude GST and any other taxes or duties imposed on or in relation to the goods and services unless

expressly stated otherwise. In addition to payment of the price of goods and services, the Customer must pay any GST and any other taxes or duties imposed in relation to the goods and services unless stated otherwise.

3.2 Any suggested or recommended retail prices contained in any price list of the Seller or any other document are an invitation to treat only, and are not binding on the Seller.

3.3 If the Customer requests any variation to an Agreement, the Seller may increase the price to account for the variation.

3.3 Where there is any change in the costs incurred by the Seller in relation to the goods or services, the Seller may vary its price for the goods or services in order to take account of any such change, by notifying the Customer.

**4. Payment**

4.1 Unless otherwise agreed in writing:

(a) Subject to clause 4.1(b), payment for the goods or services must be made in full in cash, cheque, bank cheque or EFT within 30 days from the end of month in which the invoice was issued;

(b) The Seller reserves the right to require payment in full on delivery of the goods or completion of the services.

4.2 Payment by cheque is not deemed made until the proceeds of the cheque have cleared.

4.3 Payment must be made to the address shown on the invoice or statement.

4.4 Payment terms may be revoked or amended at the Seller's sole discretion immediately upon giving the Customer written notice.

4.5 The time for payment is of the essence.

**5. Payment Default**

5.1 If the Customer defaults in payment by the due date of any amount payable to the Seller, then all money which would become payable by the Customer to the Seller at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Customer, and the Seller may, without prejudice to any of its other accrued or contingent rights:

(a) charge the Customer interest on any sum due at the prevailing rate pursuant to the *Penalty Interest Rates Act 1983 (Vic)* plus 4 per cent for the period from the due date until the date of payment in full;

(b) charge the Customer for, and the Customer must indemnify the Seller from, all costs and expenses (including without limitation all legal costs and expenses) incurred by it resulting from the default or in taking action to enforce compliance with the Agreement or to recover any goods;

(c) cease or suspend for such period supply of any further goods or services to the Customer;

(d) by written notice to the Customer, terminate any uncompleted contract with the Customer.

5.2 Clauses 5.1(c) and (d) may also be relied upon, at the option of the Seller:

(a) where the Customer is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of creditors or any class of creditors generally; or

- (b) where the Customer is a corporation and, it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver or manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Customer.
- 6. Passing of Property**
- 6.1 Until the Seller receives full payment in cleared funds for all goods and services supplied by it to the Customer, as well as all other amounts owing to the Seller by the Customer:
- (a) title and property in all goods remain vested in the Seller and do not pass to the Customer;
- (b) the Customer must hold the goods as fiduciary bailee and agent for the Seller;
- (c) the Customer must keep the goods separate from its goods and maintain the Seller's labelling and packaging;
- (d) the Customer must hold the proceeds of sale of the goods on trust for the Seller in a separate account with a bank to whom the Customer has not given security, however, failure to do so will not affect the Customer's obligation as trustee; and
- (e) the Seller may without notice, enter any premises where it suspects the goods are and remove them, notwithstanding that they may have been attached to other goods not the property of the Seller, and for this purpose the Customer irrevocably licences the Seller to enter such premises and also indemnifies the Seller from and against all costs, claims, demands or actions by any party arising from such action.
- 7. Personal Properties Securities Act**
- 7.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 7.2 For the purposes of the PPSA:
- (a) terms used in clause 7 that are defined in the PPSA have the same meaning as in the PPSA;
- (b) these Terms are a security agreement and the Seller has a Purchase Money Security Interest in all present and future goods supplied by the Seller to the Customer and the proceeds of the goods;
- (c) the Seller has rights to register a security interest in relation to the property, assets and undertakings of the Customer's business;
- (d) The security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Customer at any particular time; and
- (e) the Customer must do whatever is necessary in order to give a valid security interest over the goods which is able to be registered by the Seller on the Personal Property Securities Register.
- 7.3 The security interest arising under this clause 7 attaches to the goods when the goods are collected or dispatched from the Seller's premises and not at any later time.
- 7.4 Where permitted by the PPSA, the Customer waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 7.5 To the extent permitted by the PPSA, the Customer agrees that:
- (a) the provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Seller will apply only to the extent that they are mandatory or the Seller agrees to their application in writing; and
- (b) where the Seller has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 7.6 The Customer must immediately upon the Seller's request:
- (a) do all things and execute all documents necessary to give effect to the security interest created under this Agreement; and
- (b) procure from any person considered by the Seller to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Seller may at any time require.
- 7.7 The Seller may allocate amounts received from the Customer in any manner the Seller determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Seller.
- 8. Risk and Insurance**
- 8.1 The risk in the goods and all insurance responsibility for theft, damage or otherwise will pass to the Customer immediately on the goods being delivered to the Customer's premises or collected from the Seller's premises.
- 8.2 The Customer assumes all risk and liability for loss, damage or injury to persons or to property of the Customer, or third parties arising out of the use or possession of any of the goods sold by the Seller, whether such goods are used singularly, or in combination with other substances or processes, unless recoverable from the Seller on the failure of any statutory guarantee under the ACL.
- 9. Acknowledgments**
- 9.1 The Customer acknowledges that:
- (a) it has not relied on any service involving skill and judgement, or on any advice, recommendation, information or assistance provided by the Seller in relation to the goods or services or their use, fitness for purpose or application;
- (b) it has not made known, either expressly or by implication, to the Seller any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services are suitable for the use of the Customer or any contemplated use by the Customer, whether or not such use is known by the Seller and meet with all relevant applicable standards and regulatory bodies before use or on-sale.
- 10. Performance of Agreement**
- 10.1 Any period or date for delivery of goods or provision of services stated by the Seller is an estimate only and not a contractual commitment.
- 10.2 The Seller will use its reasonable endeavours to meet any estimated dates for delivery of the goods but will not be liable for any loss or damage suffered by the Customer or any third party for failure to meet any estimated date.

- 10.3 A completed drivers manifest or delivery docket whether signed by the driver or by the Customer or its employee or agent will be proof of delivery of goods.
- 10.4 The Seller reserves the right to sub-contract to any other person the manufacture, supply or delivery of the goods or services or any part of them.
- 10.5 If the Seller cannot complete the services by any estimated date, it will complete the services within a reasonable time.
- 11. Delivery**
- 11.1 Subject to clause 11.6, the Seller will arrange for the delivery of the goods to the Customer.
- 11.2 The Customer will be responsible for all costs associated with delivery, including freight, insurance and other charges arising from the point of dispatch of the goods to the Customer to the point of delivery.
- 11.3 The Customer must provide reasonable and proper access to the location specified for delivery. If delivery is attempted and is unable to be completed, the Customer is deemed to have taken delivery of the goods. The Customer is liable for storage charges payable monthly on demand.
- 11.4 The Seller may make part delivery of the goods or provision of services and the Seller may invoice the Customer for the goods or services provided.
- 11.5 The Customer indemnifies the Seller against any loss or damage suffered by the Seller, its sub-contractors or employees as a result of delivery, except where the Customer is a consumer and the Seller has not used due care and skill.
- 11.6 If agreed that the Customer will collect the goods:
- (a) the Customer must collect the goods within 7 days of being advised they are ready;
  - (b) if the Customer does not collect the goods within time, the Customer is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.
- 12. International Trade**
- 12.1 The United Nations convention on Contracts for the International Sale of Goods or any amendment or modification thereto and any international convention in substitution is hereby excluded from and shall not apply to this Agreement.
- 13. Liability and Indemnity**
- 13.1 Except as the Terms specifically state, the Agreement does not include by implication any other term, condition or warranty in respect of the quality, merchantability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 13.2 If the Customer is a consumer nothing in these Terms restricts, limits or modifies the Customer's rights or remedies against the Seller for failure of a statutory guarantee under the ACL.
- 13.3 If the Customer on-supplies the goods to a person who is a consumer:
- (a) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use of consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Seller's liability to the Customer;
  - (b) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of the Seller's liability to the Customer;
- 13.4 howsoever arising under or in connection with the sale, use of, storage or any other dealings with the goods or services by the Customer or any third party.
- 13.5 If clause 13.2 and 13.3 do not apply, then other than as stated in the Terms the Seller is not liable to the Customer in any way arising under or in connection with the sale, use of or storage or any other dealings with the goods or services by the Customer or any third party.
- 13.6 The Seller is not liable for any indirect or consequential losses or expenses suffered by the Customer or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party except to the extent of any liability imposed under the ACL.
- 13.7 The Seller will not be liable for any loss or damage suffered by the Customer or any third party in relation to goods made from drafts, concepts, materials, drawings and procedures or with materials which are provided or approved (whether in part or fully) by or on behalf of the Customer.
- 13.8 Nothing in the Terms is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the sale of goods or supply of services which cannot be excluded, restricted or modified.
- 14. Cancellation**
- 14.1 If, the Seller is unable to deliver or provision the goods or services, then the Seller may cancel the Customer's order (even if it has been accepted) by written notice to the Customer, without prejudice to the Seller's entitlement to payment of any accrued transport or carrier charges.
- 14.2 No purported cancellation or suspension of an order or any part of it by the Customer is binding on the Seller once the order has been accepted.
- 14.3 The Seller, in its absolute discretion may review, alter or terminate the Customer's credit limit or payment terms without notice.
- 15. Returns and Exchanges**
- 15.1 Subject to clause 15.2 and 15.6, the Seller will not be liable for any shortages, damage or non-compliance with the specifications in an Agreement unless the Customer notifies the Seller with full details within 14 days of delivery otherwise the Customer is deemed to have accepted the goods.
- 15.2 When any shortages, claim for damage or non-compliance with an Agreement's specifications is accepted by the Seller, the Seller may, subject to clause 16.3 and 16.6, in its absolute discretion, replace the goods, or refund/credit the portion of the price affected.
- 15.3 Subject to clause 15.6, the Seller will not under any circumstance accept goods for return that:
- (a) have been specifically produced, imported or acquired to fulfil any contract;
  - (b) have been altered in any way;
  - (c) have been used; or
  - (d) are not in their original condition and packaging.
- 15.4 If goods are accepted for return by the Seller, the Customer will receive a credit for the returned goods equal to the price charged by the Seller.
- 15.5 The return of goods is conditional upon:

- (a) the goods being accompanied by a delivery invoice stating the number of the invoice, the date of the invoice and the reason for return;
  - (b) the Customer obtaining the Seller's prior written approval for the return of the goods; and
  - (c) the Customer paying all freight, packaging and delivery charges associated with the return of the goods.
- 15.6 If the Customer is a consumer, nothing in this clause 15 limits any remedy available for a failure of the guarantees in section 56 and 57 of the ACL
- 16. Intellectual Property**
- 16.1 The Customer acknowledges that it has no proprietary right or interest in the Intellectual Property. The Customer must not at any time create, sell, manufacture or process any goods using or taking advantage of the Intellectual Property.
- 16.2 The Customer acknowledges that any material, industrial or Intellectual Property whether supplied by the Customer or otherwise employed in the preparation for or production of goods will remain the property of the Seller notwithstanding any contribution by the Customer.
- 16.3 The Customer warrants that, where it provides intellectual property for use by the Seller, it is legally entitled to do so.
- 16.4 The Customer indemnifies and agrees to keep indemnified the Seller against all liability, losses or expenses incurred by the Seller in relation to, or in any way directly or indirectly connected with, any breach of any intellectual property rights or actions or defamation in relation to the goods or intellectual property provided by the Customer for the supply of the goods or services.
- 16.5 Ownership of Intellectual Property in the goods will remain the property of the Seller.
- 16.6 Where by virtue of the *Copyright Act 1968*, or any other Act of any Federal or State Parliament copyright in the Copyright Material would vest in the Customer, the Customer hereby assigns such copyright to the Seller.
- 16.7 The Customer must not in any way modify, rewrite or alter the Copyright Material, use the Copyright Material in an unauthorised manner or for unauthorised purposes unless with the written permission of the Seller.
- 17. Customer Restructure**
- 17.1 The Customer must notify the Seller in writing of any change in its structure or management, including any change in director, shareholder or management or change in partnership or trustee within 7 days of the date of any such change. The Customer must also notify the Seller in writing of any change in its name within 7 days of any such change.
- 18. Forward Orders**
- 18.1 The Customer agrees:
- (a) to pay for so much of any order as is from time to time invoiced by the Seller;
  - (b) that no delay or failure to fulfil part of such order will entitle any cancellation or variation of that order or delay or reduce any payment; and
  - (c) to pay any demurrage or other costs and expenses incurred by the Seller in handling or holding any goods once ready for delivery.
- 19. Force Majeure**
- 19.1 The Seller is not liable in any way howsoever arising under the Agreement to the extent that it is prevented from acting by circumstances beyond its reasonable control including, without limitation, by industrial disputes, strikes, lockouts, accident, breakdown, import or export restrictions, acts of God, acts or threats of terrorism or acts of war. If an event of force majeure occurs the Seller may suspend or terminate the Agreement by giving the Customer written notice.
- 20. Miscellaneous**
- 20.1 The laws of Victoria, Australia from time to time governs the Terms. The parties agree to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia, and of courts entitled to hear appeals from those Courts.
- 20.2 The Seller's failure to enforce any of these Terms shall not be construed as a waiver of any of the Seller's rights.
- 20.3 If any Term is unenforceable it shall be read down to be enforceable or, if it cannot be read down, the condition shall be severed from these Terms without affecting the enforceability of the remaining conditions.
- 20.4 A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by prepaid post are deemed to be received upon posting. Notices sent by email or facsimile are deemed received on confirmation of successful transmission.
- 21. Privacy**
- 21.1 The Seller is bound by the *Privacy Act 1988* and takes steps to ensure that all personal information obtained in connection with the Customer will be appropriately collected, stored, used, disclosed and transferred in accordance with the National Privacy Principles. Such information may be accessed by request to the Seller in accordance with the *Privacy Act*.
- 21.2 The Seller requires that the Customer comply with the National Privacy Principles in connection with any personal information supplied to it by the Seller in connection with this Agreement.

**HINKLER BOOKS PTY LTD  
FORM 3: GUARANTEE AND INDEMNITY**

TO: Hinkler Books Pty Ltd (ABN 22 202 061 875) of 45-55 Fairchild Street, Heatherton, Victoria 3202 ("Hinkler")

In consideration of Hinkler at the request of (Name -Director1) \_\_\_\_\_ and

(Name - Director 2) \_\_\_\_\_ as the Guarantor ("Guarantor") agreeing to:

- supply goods or services to (Customer Name) \_\_\_\_\_ as the Purchaser ("Purchaser") or
- provide credit to the Purchaser or
- grant an indulgence outside Hinkler's agreed credit terms

**The Guarantor hereby:**

1. Agrees to guarantee to Hinkler the due and punctual payment of all money presently owing or any money that may be owing in the future by the Purchaser, in respect of the cost of goods or services supplied by Hinkler to the Purchaser and any other sums payable by the Purchaser to Hinkler pursuant to Hinkler's Terms and Conditions of Trade (collectively called "guaranteed money").
2. Agrees as a separate severable and additional covenant and obligation to indemnify and keep indemnified Hinkler from and against all losses costs charges and expenses whatsoever that Hinkler may suffer or incur in relation to the supply of goods or services to the Purchaser and further agrees that each of the provisions hereinafter contained that applies or is capable of application to this Deed when it is construed as an indemnity will apply to the indemnity hereby given by the Guarantor.
3. Covenants, acknowledges and agrees as follows:
  - (a) The Guarantee hereby given is a continuing guarantee, the indemnity hereby given is a continuing indemnity and neither this Deed nor the said guarantee nor the said indemnity will be discharged in any way or be considered or deemed to be discharged in any way by any payment to Hinkler other than the payment to and acceptance by Hinkler of the whole of the guaranteed money.
  - (b) Notwithstanding that as between the Guarantor and the Purchaser the position of the Guarantor is that of surety only nevertheless as between the Guarantor and Hinkler, the Guarantor is liable hereunder as a principal and as a primary debtor for the payment of the guaranteed money.
  - (c) This Deed is valid and enforceable against the Guarantor and the liability hereunder of the Guarantor continues and may be enforced by Hinkler notwithstanding:
    - (i) that no steps or proceedings have been taken against the Purchaser;
    - (ii) any indulgence or extension of time granted by Hinkler to the Purchaser;
    - (iii) the death or bankruptcy or winding up of the Purchaser;
    - (iv) that payment of the guaranteed money by the Purchaser cannot be enforced against the Purchaser.
  - (d) The Guarantor will not compete with Hinkler for any dividend or distribution in the event of the Purchaser being declared bankrupt, going into liquidation or being wound up or entering any deed or scheme of arrangement or assignment or composition in respect of its affairs or its assets and liabilities.
4. The Guarantor hereby acknowledges having given its consent to Hinkler to obtain from a credit reporting agency a consumer credit report containing information about it for the purpose of Hinkler assessing whether to accept the Guarantor as a guarantor for credit that may be applied for by the Purchaser.
5. The term "Hinkler " includes its successors and assigns and the terms "Purchaser" and "Guarantor" include their respective executors, administrators and successors.
6. In this Deed the singular includes the plural and if there is more than one Guarantor to this Guarantee their obligations are joint and several.

**Executed as a Deed**

*if company, corporate trustee or individual(s) as trustee - all directors, individuals must sign*

**Dated :** \_\_\_\_\_

Signed Sealed and Delivered )

by \_\_\_\_\_ ) x

in the presence of \_\_\_\_\_ ) (signature)

Signed Sealed and Delivered )

by \_\_\_\_\_ ) x

in the presence of \_\_\_\_\_ ) (signature)

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**HINKLER BOOKS PTY LTD  
FORM 4A: PRIVACY ACT CONSENT**

**Credit information that may be provided to a credit reporting agency**

Hinkler Books Pty Ltd (ABN 22 202 061 875) ("Hinkler") may give information about me/us to a credit reporting agency before, during or after the provision of credit to me/us for the following purposes:

- to obtain a consumer credit report about me/us, and/or
- to allow the credit reporting agency to create or maintain a credit information file containing information about me/us.

This information is limited to:

- identity particulars - name, sex, address and the previous two addresses, date of birth, name of employer, and drivers license number
- my/our application for credit or commercial credit - the fact that I/we have applied for credit and the amount
- the fact that Hinkler is a current credit provider to me/us
- loan repayments which are overdue by more than 60 days, and for which debt collection has started
- advice that my/our loan repayments are no longer overdue in respect of any default that has been listed
- information that, in the opinion of Hinkler, I/we have committed a serious credit infringement, that is, acted fraudulently or shown an intention not to comply with my/our credit obligations
- dishonoured cheques - cheques drawn by me/us for \$100 or more which have been dishonoured more than once

**Assessment of Commercial Credit Application**

I/we agree that Hinkler may obtain a consumer credit report containing information about me/us from a credit reporting agency for the purpose of assessing my/our application for commercial credit.

**Disclosure to guarantor**

I/we agree that Hinkler may give to a person who is currently a guarantor, or whom I/we have indicated is considering becoming a guarantor, a credit report containing information about me/us for the purpose of the guarantor deciding whether to act as guarantor, or Hinkler keeping an existing guarantor informed about its guarantee.

I/we understand that the information disclosed can include a credit report and any other information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to disclose under the Privacy Act including a credit report.

**Overdue payments**

I/we agree that Hinkler may obtain a consumer credit report about me/us from a credit reporting agency for the purpose of collecting overdue payments relating to commercial credit owed by me/us.

**Exchange of credit worthiness information**

I/we agree that Hinkler may exchange information about me/us to my/our credit providers including those named in a consumer credit report issued by a credit reporting agency:

- to assess an application by me/us for credit
- to notify other credit providers of a default by me/us
- to exchange information with other credit providers as to the status of my/our credit facility with Hinkler where I/we are in default with other credit providers
- to assess my/our debt worthiness.

I/we understand that the information exchanged can include anything about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act.

**Privacy Amendment (Private Sector) Act 2000**

I/we understand that under the requirements of the *Privacy Amendment (Private Sector) Act 2000*, all credit and personal information obtained about me/us will be appropriately collected, stored, used, disclosed and transferred.

I/we also understand that such information will be made available for viewing or amendment by me/us upon request to Hinkler.

**FORM 4B: WARRANTIES AND ACKNOWLEDGMENTS**

The Applicant understands that Hinkler Books Pty Ltd (ABN 22 202 061 875) (“Hinkler”) will rely on the correctness of information given to support this application. Accordingly, the Applicant and Guarantors:

- Warrant to Hinkler:
  - the truth of all particulars comprised in this application document, or provided separately.
  - that neither the applicant nor any of its subsidiaries is in default under a law, regulation, official directive, instrument, undertaking or obligation affecting any of them or their respective assets.
  - that within the last 3 years neither the applicant nor, in the case of a company, any director or manager of the applicant:
    - Has been the subject of bankruptcy proceedings;
    - Has been associated as a manager, director or partner of a business which has failed or was the subject of a scheme of arrangement, receivership, voluntary administration, liquidation or to which an administrator or controller had been appointed.
  - that there is no pending or threatened action or proceedings affecting the Applicant or any of its subsidiaries or any of their respective assets before a court, government agency, commission or arbitrator.
- Understand that
  - the above warranties are to be correct at the time of making the application and are to remain correct at all times during the applicant’s trading relationship with Hinkler.
  - neither the lodgement of this application nor its execution by the Applicant in any way obligates Hinkler to grant an account to the Applicant.
  - the Guarantors may become personally responsible instead of, or as well as, the Applicant to pay all amounts which the Applicant owes Hinkler as well as Hinkler’ costs and expenses in enforcing the guarantee and interest.
- Acknowledge that:
  - Hinkler has recommended that before signing, the Applicant and Guarantors should seek independent legal and financial advice; and
  - By signing, the Applicant is agreeing to be bound by Hinkler’s Terms and Conditions of Trade.

**Signing**

*if sole trader, partnership or individual(s) as trustee - all individuals and partners must sign  
if company or corporate trustee – all directors must sign or someone authorised to sign on behalf of the Applicant*

Dated: .....	
..... Sole Trader/director/partner/trustee	..... director/partner/trustee
..... director/partner/trustee	..... director/partner/trustee

*If more than 4 directors, partners or individuals, please have additional persons sign a copy of this Form*