

## APPLICATION FOR CREDIT ACCOUNT

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**SECTION A – THE APPLICANT:** *(please circle)*

- (a) COMPANY
- (b) PARTNERSHIP
- (c) SOLE TRADER

1. Registered Legal Name: .....
  2. Trading Name: .....
  3. Australian Business Number:.....
  4. Registered Business Address: .....
  5. Delivery Address: .....
  6. Postal Address: .....
  7. Telephone: ( )..... Facsimile: ( )..... Mobile: .....
  8. Contact Name: ..... E-mail Address: .....
  9. Nature of Business: .....
  10. How long has business been established? .....
  11. How long have Proprietor/Directors owned the Business? .....
  12. Maximum monthly credit sought *(please circle)*  
\$2,000    \$5,000    \$10,000    specify if other \$ .....
  13. Full name and addresses of directors/partners/proprietors:
    - (a) Name: .....  
Title: .....  
Home Address: .....  
Home Tel: ( )..... DOB: ..... Drivers Licence No: .....
    - (b) Name: .....  
Title: .....  
Home Address: .....  
Home Tel: ( )..... DOB: ..... Drivers Licence No: .....
    - (c) Name: .....  
Title: .....  
Home Address: .....  
Home Tel: ( )..... DOB: ..... Drivers Licence No: .....
  14. If the Applicant referred to in Section A is a trustee of a trust, please provide full name of the Trust and provide current copies of the Trust Deed and all amending Deeds.  
.....  
.....
  15. Does the trustee have recourse to any trust assets?  
.....  
.....
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**SECTION B – TRADE REFERENCES:**

Please supply three trade references of a similar dollar amount to the credit amount above:

- 1. Name: .....  
 Address: .....  
 Telephone: ( )..... Contact Name: .....  
 Amount spent per month: \$.....
- 2. Name: .....  
 Address: .....  
 Telephone: ( )..... Contact Name: .....  
 Amount spent per month: \$.....
- 3. Name: .....  
 Address: .....  
 Telephone: ( )..... Contact Name: .....  
 Amount spent per month: \$.....

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**SECTION C – TERMS AND CONDITIONS**

United Sports Pty Ltd will hereinafter be referred to as “the company”.

The supply of all goods by the company shall be subject to that Terms and Conditions whether in the past, present or future. These Terms and Conditions shall prevail over any other terms and conditions including those implied by statute to the extent permissible at law. The Applicant acknowledges having read these Terms and Conditions of Sale prior to signing this Application for Credit Account.

**1. PRICES**

Prices are subject to change without prior notice and goods will be invoiced at the price current at date of dispatch.

Any reference to retail prices are recommendations only.

Invoices will include GST and delivery charges where applicable.

**2. CREDIT TERMS**

2.1 The company will only offer credit terms once a completed official Application for Credit Account in this form has been fully completed and approved by the company.

2.2 The company shall consider the Application on the basis of the retail outlet nominated by the Applicant in Section A. Should the Applicant seek to add any other retail outlet, it shall complete a new Application for Credit Account.

2.3 Payment of invoices billed on a current month statement is due in the Company’s head office no later than the 25<sup>th</sup> day of the month following the current statement month.

2.4 Trading discounts may be offered to selected customers by negotiation.

2.5 No trading discounts or any other allowances will be granted to any customer unless payment is received within the time specified for payment in this agreement.

**3. WITHDRAWAL OF CREDIT**

3.1 A customers’ account will be suspended, and supply shall be suspended, if all sums due by the customer are not paid within the 30 days of the statement date.

3.2 Where any proprietor, part owner, shareholder or director of a customer has an interest in or an involvement with another customer, whether a proprietor, part owner, shareholder or director, such customers shall be regarded as interrelated. Failure of any customer to observe trading terms, and all such interrelated accounts will be suspended.

3.3 Where any part of the trading account has not been paid within the time specified for payment in this agreement and has fallen into arrears, then the totality of that account, whether or not in arrears, shall become immediately due and payable.

- 3.4 In the event that the Company suspends an account the Company may:
- 3.4.1 Cancel any orders then received but not processed.
  - 3.4.2 Suspend all credit and, at the discretion of the company, cancel credit; and
  - 3.4.3 Take legal action to recover the debt.
- 3.5 Without limiting the company's rights, an account may be subject to immediate and permanent closure if:
- 3.5.1 Payment is not received by the company within the trading terms; or
  - 3.5.2 Any trading term of the company is not observed.
- 3.6 An account together with any interrelated customer's account will be immediately and permanently closed if a customer:
- 3.6.1 Sells or offers for sale counterfeit Lotto, Fischer or Gamma products; or
  - 3.6.2 Engages in any conduct in the course of business that in the opinion of the Company has an adverse effect on the company or the Lotto, Fischer and Gamma trademarks.
- 3.7 The company shall not be liable to any party for any loss or damage which may flow directly or indirectly from the closure of any account.
- 3.8 Should an account be closed, the company reserves the right to immediately reclaim any advertising or point of sale material incorporating or referring to any Lotto, Fischer or Gamma trademark or any other Lotto, Fischer or Gamma intellectual property. In that event the Applicant shall immediately deliver all such materials to the company and shall permit the company to enter any of the Applicants premises to search for or take possession of such material.

#### **4. DEFAULT**

If the Applicant defaults in paying any amount owed by the Applicant to the company under the Terms and Conditions of sale, then any amount invoiced to or owed by the Applicant to the company becomes immediately payable and the Applicant agrees to indemnify the company against all costs (including solicitor and own client costs, commercial agent commissions, freight, insurance, loss of profit and interest) incurred by the company as a result of the Applicant's default.

#### **5. FREIGHT AND ADMINISTRATION CHARGES**

- 5.1 Goods are free into store to each capital city. All deliveries made outside metropolitan areas will incur freight charges.
- 5.2 Faulty or replacement stock will not incur a freight charge.

#### **6. RETURNS**

Claims in respect of faulty goods or deficient packaging, labeling or delivery must be made within seven (7) days of delivery.

Return stock will NOT be accepted without prior authorisation.

Claims on defective merchandise will be given fair valuation by the company.

Acceptance of returned goods by the Company or it's authorized agent shall not automatically constitute acceptance of credit/replacement purposes.

Any credit note generated by the Company relating to authorised returns will reflect the appropriate GST component.

#### **7. RETENTION OF TITLE**

7.1 The ownership of all goods delivered by the Company to the Applicant pursuant to this agreement remains vested in the Company, and shall not pass from the Company until the following conditions have been met:

- 7.1.1 The Applicant has paid to the Company the price of the goods; and
- 7.1.2 The Applicant has paid to the company all other moneys due and payable by the Applicant to the Company; and

- 7.1.3 No other moneys are due and owing by the Applicant to the Company on any account of the Applicant or on any interrelated account.
- 7.2 Until ownership has passed in accordance with clause 7.1 the Applicant shall be a bailee of the goods and shall owe fiduciary obligations to the company in respect of the goods.
- 7.3 The Applicant shall at all times keep the goods separately stored from other goods and identified as the goods of the company and shall keep records identifying the goods.
- 7.4 The company shall be entitled to recover possession of the goods from the Applicant in the following circumstances:
- 7.4.1 Once any period of credit which the Applicant has for payment of the price of the goods as governed by the terms of this agreement or as separately agreed in writing by the company has expired.
- 7.4.2 Where any voluntary administrator, voluntary liquidator, receiver, receiver and manager, liquidator, provisional liquidator, official manager or bankruptcy trustee is appointed in respect of the Applicant or its assets, or if any mortgagee shall enter into possession of assets of the Applicant which shall include the goods or of any premises where the goods shall be at that time.
- 7.5 For the purposes of exercising and giving effect to its set entitlement referred to in clause 7.4, the company shall be entitled to:
- 7.5.1 Demand that the Applicant immediately deliver up the goods to the company, and the Applicant shall forthwith comply with any such demand; and
- 7.5.2 By itself its servants or agents, recover the goods, at any time and from time to time, and to enter any premises where the goods shall be, and the Applicant hereby grants its licence and permission to the Company and such servants or agents for that purpose, which licence and permission shall be irrevocable.
- 7.6 Despite clauses 7.1-7.5 (inclusive), it shall not be in breach of the Applicant's duties to the company or an infringement of the Company's property rights in the goods, if the Applicant shall before ownership of the goods has passed from the company, sell and deliver the goods in the ordinary course of its business provided that:
- 7.6.1 The Applicant shall keep full and complete records of goods it has purchased from the Company including details of the date, price and identity of the goods.
- 7.6.2 The Applicant shall pay the proceeds of sale into a special bank account into which no moneys other than the proceeds of the sale by the customer of the Company's goods shall be deposited and which shall incorporate as part of the title of the account "proceeds of sale of United Sports Pty Ltd's goods".
- 7.6.3 If any receiver, receiver and manager, liquidator, provisional liquidator, voluntary administrator or bankruptcy trustee is appointed in respect of the Applicant or of any assets, or if any mortgagee shall enter into possession of any assets of the Applicant which include the goods or the premises where the goods are at the time, it shall not be possible for the Applicant to make any sales "in the ordinary course of its business" for the purposes of clause 7.6.
- 7.6.4 The Applicant shall not draw moneys out of a special bank account for any purpose other than payment to the Company, where the amount remaining to the credit of the account after such payment would be less than:
- (a) the balance of the price of the goods due and payable to the Company.
- (b) all other moneys due and payable by the Applicant to the Company pursuant to this agreement.
- (c) all other moneys due and payable by the Applicant to the Company under any of its accounts or under any interrelated account;
- whichever shall be largest.

- 7.7 If despite its obligation under clause 7.6.2 to maintain the special bank account the Applicant mixes the proceeds of the sale of the Company's goods with other moneys then any such mixed funds will be held by the Applicant on trust for the Company subject to the same obligations as are contained in clause 7.6.4....
- 7.8 Where the Applicant has not been paid by a third party for the goods or any part of them sold by the Applicant to that third party, and the ownership of those goods sold to that third party has not passed to the Company under clause 7.6, the Company shall be entitled to issue proceedings in the name of the Applicant against the third party for recovery of all moneys payable by the third party to the Applicant in respect of those goods so sold and to recover such moneys and apply them towards payment of any moneys owing by the Applicant to the Company.
- 7.9 In consideration of the making of this agreement by the Company, the Applicant irrevocably appoints the Company its attorneys for the purpose of giving effect to all the terms and provisions contained in this agreement.
- 7.10 The Company shall be entitled, by themselves, its servant and/or agents, to inspect at any reasonable time and place and from time to time, the records which the Applicant is required to keep under this clause 7, and the Applicant's records relating to the account and any interrelated account, and the Applicant shall make all such records available for such inspection upon reasonable prior notice by the Company to the Applicant.
- 7.11 Each subclause of this clause 7 shall be an independent and separate provision from each other subclause, and each paragraph of each subclause, shall be an independent and separate provision from each other paragraph, and if one or more provisions shall be deemed to invalid, void or ineffective for any reason, the remaining provisions shall not be affected and shall remain in full force and effect.

#### **8. INDEMNITY**

Until payment in full for delivered goods is received, the Applicant shall indemnify the Company for all forms of loss and damage of any nature whatsoever in respect of those goods.

#### **9. JURISDICTION**

The proper law of all contracts arising between the Company and the Applicant shall be the law of the State of New South Wales and the parties agree to submit to the jurisdiction of the Courts of that State.

#### **10. ACCEPTANCE**

All orders are subject to acceptance by the company.

#### **11. LIABILITY FOR DAMAGES AND WARRANTIES**

- 11.1 The Applicant and the company agree that the company shall have no responsibility or liability whatsoever or howsoever arising in contract or tort or otherwise for loss of profits, business or savings or of any indirect or consequential loss of any nature arising out of or from the use of, custody, supply of the goods to the fullest extent permitted by law.
- 11.2 Notwithstanding any other clause in this agreement the Company gives no express warranty in relation to the supply of the goods and the Applicant acknowledges that it has not relied on any representation or warranty made by or on behalf of the Company in relation to the goods and their supply.
- 11.3 Where the Trade Practices Act 1974 or similar State legislation implies covenants and warranties into the agreement for the supply of the goods for the benefit of the Applicant then to the extent only that those conditions and warranties may as between the Applicant and Company be lawfully excluded all such conditions and warranties are expressly excluded.
- 11.4 Where the company becomes liable to the Applicant in any manner for any breach of any condition or warranty expressed or implied in relation to the supply of goods then the company's liability will be limited, at the Company's sole and absolute discretion to either:
- 11.4.1 the replacement of the goods or the supply of equivalent goods; or

- 11.4.2 the price paid by the Applicant for the goods; or
- 11.4.3 the cost of repair to the goods; or
- 11.4.4 the cost of the resupply of the goods.

**12. TRUSTS**

Should the Applicant be a trustee of a trust then the Applicant shall be liable both in its own capacity and its capacity as trustee of the trust for performance of all obligations to the Company.

- 13. Despite any request or stipulation by the Applicant any payment received by the company from the Applicant may be used by the Company to discharge any liability or other obligation of the Applicant to the Company as the Company see fit.

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**SECTION D – NOTICE AND CONSENT IN RELATION TO *THE PRIVACY ACT 1988***

- 1. The Applicant hereby acknowledges that it has been informed by the Company that personal information about it may be disclosed to or acquired from a credit reporting agency.
- 2. The Applicant hereby agrees that the Company provider may contact any trader references or other credit references at any time whether now or in the future for the purpose of assessing credit worthiness.
- 3. The Applicant hereby agrees to the Company receiving from any other credit provider or providing to any other credit provider any credit information whether by way of report record or otherwise relating to credit worthiness and notification of default at any time whether now or in the future.
- 4. The Applicant hereby agrees to the company obtaining from a credit-reporting agency, a credit report on the Applicant for the purposes of assessing this credit application and the Applicant further consents to the Company obtaining such reports from time to time for the purpose of assessing credit worthiness during the continuance of credit provision.
- 5. The Applicant hereby agrees that in the event of default of payment of its debts that the Company may disclose all information relating to its account to a collection agency for the purpose of receiving any or all amounts outstanding.

SIGNATURE: .....  
POSITION: .....  
DATED: The ..... day of ..... 20.....

**SECTION E – GUARANTEE, ACKNOWLEDGEMENT AND CONSENT**

**STATEMENT TO BE COMPLETED BY THE DIRECTORS WHERE THE APPLICATION FOR A CREDIT ACCOUNT IS MADE ON BEHALF OF A REGISTERED COMPANY**

In consideration of United Sports Pty Ltd (ACN 002 283 892 ABN 74 002 283 892) agreeing to supply the Applicant with goods on credit, I/We

**HEREBY AGREE AND COVENANT WITH YOU AS FOLLOWS:**

1. I shall be answerable and responsible to you upon demand payment by the Applicant for such goods as you may from time to time supply to it whether I had notice or not or non-payment for such goods according to your terms and will indemnify you against all losses and costs whatsoever which you may incur by reason of any default in respect of your terms by the Applicant.
2. This agreement shall be a continuing guarantee to you for all debts whatsoever and wheresoever contracted by the Applicant with you in respect of goods to be supplied to it.
3. You are at liberty without notice to me at any time and without in any way discharging me from any liability hereunder to grant time or other indulgence to the Applicant.
4. A certificate signed by your authorized officer served by mail at the above address stating the amount due by the Applicant shall be conclusive evidence against me without it being necessary for you to produce any evidence whatsoever to verify such amount. If I have not paid the amount stated in the certificate referred to above within 7 days of service of the certificate you will be entitled to Judgment in a Court of competent jurisdiction against me for that amount plus interest and the costs of obtaining Judgment. I irrevocably undertake not to defend any legal proceedings brought against me as a result of a default in payment.
5. The covenant for payment herein shall be made a charge in relation to which I consent to you lodging a caveat against the title to any property or interest of mine whether solely or jointly held and I will upon your request execute in your favour a registerable mortgage over such land or interest in such terms as you require.
6. I acknowledge that in this guarantee the singular includes the plural and vice versa and I agree that if this document is signed by another person then liability shall be joint and several with that person.
7. I agree that the guarantees and indemnities given by me herein are on behalf of myself, my executors, administrators and assigns and are for the benefit of you and your assigns.
8. I agree that this agreement shall be deemed to have been made in the State of New South Wales and shall be governed by the law of the State of New South Wales and I submit to the jurisdiction of the Courts of the State of New South Wales.

Dated the ..... day of ..... 20 .....

Signed .....

Signed: .....

Name: .....

Name: .....

Witness: .....

Witness: .....

**THIS SECTION TO BE SIGNED BY THE APPLICANT/S WHO COMPLETE THIS APPLICATION**

I/We the undersigned having authority to make this declaration hereby acknowledge having read the Terms and Conditions set out herein and agree to those Terms and Conditions. I/We further declare that the information provided is, to the best of my/our knowledge and belief, true and correct.

I hereby execute this credit application for and on behalf of the Applicant

Name (printed) ..... Signature .....

in the presence of:

Witness (signature) .....

Name of Witness (Printed): .....

Address: .....

Dated this ..... day of ..... 20 .....