

TERMS AND CONDITIONS OF CREDIT & TRADE

In these Terms and Conditions, Fotobase Australia Pty Ltd is referred as "Fotobase"

- 1) The Applicant ("you") warrants that the information provided above is accurate, correct and complete at the time it was completed, and is supplied for the purpose of obtaining credit. In the event that there is any change to the information provided above, the Applicant undertakes to advise Fotobase of the change immediately.
- 2) The person/s signing below warrants that he/she is duly authorised by the Applicant to apply for credit and execute this Application on its behalf.
- 3) Credit Limits
 - a) The Applicant agrees that it is not entitled to any credit facilities until it receives notice in writing from Fotobase stating that credit facilities have been approved. Until the Applicant receives such notice, any goods or services that are supplied by Fotobase to the Applicant shall be on basis of cash up front, prior to production or media booking.
 - b) The Applicant also agrees that the approved credit limit is a maximum limit which covers all current and outstanding invoices, plus any forward bookings for Production and Media. Should the aggregate of these amounts reach the approved maximum credit limit, then any amounts exceeding this limit are strictly on cash up front basis.
 - c) The Applicant can re-apply to extend or reduce the credit limit at anytime in writing.
- 4) In the event of Fotobase granting credit facilities to the Applicant then:-
 - a) All accounts are to be settled in full within 30 days from date of invoice. Credit facilities may be suspended if payment is not made in accordance with those agreed trading terms.
 - b) Should the Applicant default in making any payment in accordance with the agreed trading terms, then all monies due to Fotobase shall immediately become due and payable. Fotobase shall be entitled to and may charge interest at the rate of 2.5% per calendar month on all overdue amounts from the due date for payment until the date of actual payment.
 - c) Any expenses and/or costs or disbursements incurred by Fotobase in recovering any outstanding monies including debt collection, agency fees, administration fees and legal costs (on a full indemnity basis) shall be paid by the Applicant.
 - d) It is expressly understood and agreed that this credit arrangement may be terminated at any time by Fotobase. In that event, all monies owing to Fotobase will be immediately due and payable.
 - e) Fotobase may at any stage during the continuance of the credit arrangement impose as a condition precedent to the grant of further credit, that the Applicant give such security or additional security as Fotobase shall in its discretion think fit. Fotobase shall be entitled to withhold supply of goods, services or further credit until such security or additional security is obtained.
 - f) Should your account be outstanding in excess 90 days, as part of Fotobase's credit insurance policy, we are obliged to
 - i) Report you to our credit insurers, which will result in them instructing us to immediately cancel any and all future orders and production.
 - ii) Not take any further orders until your account is brought back into normal trading terms (30-Days).
The future credit implications on your company could be severe.
 - g) Fotobase, at its absolute discretion, may suspend its services at anytime should Fotobase believe the Applicant is unable or unwilling to make further payments, or may amend the credit limit until further notice.
- 5) Terms and Conditions of Sale
 - a) Our standard procedure for quoting will be to provide cost estimates in good faith, based on the information at hand. Where multiple tasks are required, each component of the overall campaign will be quoted and approved by you prior to commencement of that campaign component.
 - b) Where necessary, proofs, quote/purchase and or processing agreements may be forwarded for your signature to comply with your requirements.
 - c) Fotobase will at all times respect the confidentiality of the information entrusted to it to effect its tasks.
 - d) Invoices will be submitted fortnightly if not monthly for artwork, printing and other costs. We aim to forward the statement with all invoices for the month by the 7th day of the following month, with the expectation that it will be paid by the end of that month (ie June expenditure will be billed early July and is due for payment by July 30th).
 - e) All invoices will be subject to GST and duly submitted as a tax invoice.
 - f) Quotes remain valid for 30 days from the date of issue, unless otherwise specified in writing.
 - g) Where you have given approval, either verbally or in writing to proceed with the preparation and/or implementation of a project or campaign through Fotobase, should any outstanding production costs or third party involvement be affected by you canceling or terminating the project, any costs which have been incurred shall be payable by you according to the payment terms and conditions set out above.
- 6) Trust - Where the Applicant is a Trustee, the Applicant shall be liable on the account, and in addition, the assets of the Trust shall be available to meet payment of any monies due and owing to Fotobase.
- 7) Change of Ownership/Particulars - The Applicant will notify Fotobase no later than 14 days after any change of ownership, change in its particulars, any alteration or addition to shareholders or directors, and any change, alteration or addition to the Applicant's senior management.
- 8) Privacy Act - The Applicant and its directors, hereby authorises and unconditionally grants its consent to Fotobase obtaining from a credit reporting agency or other person or company, information and/or reports concerning it from time to time during the continuance of its credit account so as to assist Fotobase in deciding whether to grant credit or to continue to grant credit to it or for collecting overdue payments in respect of commercial credit applied for or provided to it. The Applicant further authorises and consents to Fotobase obtaining and disclosing information about its credit worthiness to and from credit reporting agencies and credit providers (including identifying particulars and details of overdue payments), who have or are or intending to enter into some

commercial or business dealings with it and/or grant credit to it. For the purposes of this paragraph 'report' and 'information' include any credit report originating from a credit reporting agency or any other record of information that has any bearing on the Applicant's creditworthiness, credit standing, credit history, credit capacity and personal information.

- 9) Law - The parties agree that these terms and conditions of credit shall be governed and construed in accordance with the laws of the State of South Australia and the parties agree to submit to the jurisdiction of the Courts of that State
- 10) Exclusion of Representations - Because public response to the type of service provided by Fotobase depends on a variety of factors which are unpredictable, Fotobase does not represent or warrant that any particular level of enquiries for your products or services will be achieved as a result of the provision of goods or services by Fotobase.
- 11) Termination
 - a) Subject to 11(b), termination of this Agreement may be brought about by either party giving 3 months notice, unless a shorter period is mutually agreed upon.
 - b) Should the applicant default in these terms of credit or terms of sale, then Fotobase may initiate an immediate termination at any stage.
 - c) The Applicant is liable to Fotobase for any fees incurred during the termination period for all orders, and beyond this period for any orders that are not cancelable due to long cancellation deadlines. At the point of termination and after the payment of its accounts, Fotobase will return to you all creative material including film, artwork, tapes etc. As most components used in the preparation of advertising materials are now stored on computer, any costs incurred to retrieve such data from storage will be charged to you. A cost estimate for archive retrieval will be provided for approval prior to such action. The media department will hand over to the new agency or client all current media contracts.
- 12) Copyright - Where Fotobase does not charge a "concept fee" for creative work produced, all copyright and intellectual property rights in the material produced by Fotobase will remain the property of Fotobase. Where consideration of payment for concept fees has been made by the Client, Fotobase will assign all copyright and ownership of materials (including negatives, masters, exposed film stock and all prints) to the Client.
- 13) Indemnity
 - a) You represent and warrant that any material provided by you to Fotobase for the purpose of this Agreement does not infringe any third party intellectual property rights whether in the nature of copyright or otherwise.
 - b) You agree to fully indemnify Fotobase against any loss, costs, expenses, demands or liability whether direct or indirect, arising out of a claim by a third party that any material supplied by you and used by Fotobase in its original form or some adapted form, infringes any intellectual property rights of that third party.
- 14) Liability
 - a) Except as expressly provided to the contrary in this Agreement, Fotobase shall not be under any liability to you in respect of any loss or damage (including consequential loss or damage) however caused, which may be suffered or incurred or which may arise, directly or indirectly in respect of the supply of advice or services, or any goods supplied pursuant to this Agreement or the failure or omission on the part of Fotobase to comply with its obligations under this Agreement.
 - b) Except as expressly provided to the contrary in this Agreement, all conditions and warranties whether expressed, implied, statutory or otherwise, relating in any way to the subject matter of this Agreement or to this Agreement generally are excluded. Notwithstanding the preceding sentence, this Agreement shall be read subject to any implied conditions or warranties imposed by the Trade Practices Act 1974 (Commonwealth) or any other Commonwealth or State Legislation in-so-far-as such may be applicable and prevents either expressly or by implication, the exclusion or modification of those conditions or warranties. However, the liability of Fotobase for any breach of any such condition or warranty shall, if permitted by that Act, be limited at the option of Fotobase to either supplying of services again; or the payment of the costs of having the services supplied again.
 - c) You warrant that you have not relied on any representation made by Fotobase which has not been stated expressly in this Agreement or upon any descriptions or illustrations or specifications contained in any document, including any catalogues, advertising or publicity material produced by Fotobase.
- 15) Force Majeure - Fotobase shall not be liable for any delay or failure to perform its obligations if such failure or delay is due to any act, omission or circumstance of which Fotobase could not reasonably have exercised control.
- 16) Acknowledgement
 - a) The Applicant and signatories appearing below hereby acknowledge receipt of a copy of this Application and Fotobase terms and conditions of credit and trade, and agree to be bound by the same.
 - b) The Applicant also acknowledges that these terms and conditions of credit and trade may be varied from time to time by Fotobase.
- 17) In consideration of Fotobase having agreed to our request to supply goods and services on the terms and conditions expressed on this form and to give credit to the Applicant, we the undersigned directors, hereby guarantee the payment of all sums of money, interest costs and damages which the Applicant may now or hereafter be liable to pay Fotobase. We further agree to indemnify Fotobase against all losses and costs suffered as the result of each and every default by the Applicant and/or any default by us under this Guarantee. This Guarantee is continuing, irrevocable, joint and several and is a principal obligation. Our liability hereunder is absolute and shall not be affected by any other matter or indulgence granted to the Applicant by Fotobase and which but for this provision might have operated as a release in whole or in part. We have obtained, or have had the opportunity to obtain, independent legal advice on our obligations under this Guarantee.
- 18) This agreement may be executed in any number of counterparts. A counterpart may be a facsimile. Together all counterparts make up one document.

SIGNED SEALED AND DELIVERED BY

..... <i>Signature of Director</i>	} <i>Signature of Witness</i>
..... <i>Name of Director (Please print)</i>	 <i>Name of Witness (Please print)</i>
..... <i>Date</i>	 <i>Date</i>

SIGNED SEALED AND DELIVERED BY

..... <i>Signature of Director</i>	} <i>Signature of Witness</i>
..... <i>Name of Director (Please print)</i>	 <i>Name of Witness (Please print)</i>
..... <i>Date</i>	 <i>Date</i>

OFFICE USE ONLY

CLIENT SERVICE REPRESENTATIVE USE

Agency Manager's Authorisation Client Service Representative:

FINANCE CONTROLLER USE ONLY:

Finance Controller Authorisation:

APPROVED: YES / NO

CREDIT LIMIT APPROVED \$.....

PLEASE OPEN ACCOUNT: YES / NO

NEW ACCOUNT ADVICE TO CUSTOMER: YES / NO

DATE:

SET UP BY IMPLEMENTATION

NAME: DATE:
