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CREDIT ACCOUNT APPLICATION

DATE: _____

BUSINESS DETAILS

*FULL TRADING NAME: (Applicant) _____ Is this Trading Name a Registered Business Name? ☐ YES ☐ NO

*REGISTERED COMPANY NAME: _____ ACN / ABN: _____

BILLING ADDRESS: _____ STATE: _____ POST CODE: _____

CONTACT DETAILS

*CONTACT PERSON: _____ *PHONE: _____ FAX: _____

MOBILE: _____ *EMAIL: _____

PHYSICAL STORE ADDRESS: _____

REQUESTED CREDIT LIMIT: _____ DATE BUSINESS ESTABLISHED: _____

BUSINESS STRUCTURE: ☐ Sole Trader ☐ Private Company ☐ Public Company ☐ Trust
☐ Partnership ☐ Co-operative ☐ Incorporated Association ☐ Government Authority

*OWNERS' / DIRECTORS' DETAILS

FULL NAME: _____ FULL NAME: _____

PRIVATE ADDRESS: _____ PRIVATE ADDRESS: _____

PHONE: _____ MOBILE: _____ PHONE: _____ MOBILE: _____

INSOLVENCY

Have any of the directors or proprietors been bankrupt or associated with an insolvent company? ☐ YES ☐ NO

If YES, NAME _____ YEAR OF BANKRUPTCY / INSOLVENCY _____

*TRADING REFERENCES

NAME 1 _____ NAME 2 _____

ADDRESS _____ ADDRESS _____

PHONE _____ PHONE _____

The Applicant applies to ROC CLOUDY PTY LTD (ACN 066 000 922) ("Roc Cloudy") for credit. Roc Cloudy's ABN is 87 066 000 922. The Applicant acknowledges receipt of and accepts the present standard Terms and Conditions and acknowledges that the Terms and Conditions may be changed by Roc Cloudy from time to time.

*PERSONAL GUARANTEE AND INDEMNITY

I/We note that the trading Terms and Conditions have been provided to us by Roc Cloudy and that I/we have read and understood them. In consideration of Roc Cloudy supplying goods on credit to the Applicant:

I/We (and if more than one, jointly and severally) agree that if the Applicant at any time fails to pay any money due to Roc Cloudy or fails to perform or observe any term or condition of credit or sale to be performed by the Applicant, I/we will forthwith pay to Roc Cloudy all money due and payable by the Applicant (or any subsequent owner of the business name of the Applicant) to Roc Cloudy. No demand by Roc Cloudy for payment shall be necessary.

I/We further agree to indemnify Roc Cloudy against any loss of money due to Roc Cloudy by the Applicant under or relating to any sale by or credit granted by Roc Cloudy to the Applicant (or any subsequent owner of the business name of the Applicant) including expenses and legal costs associated with the collection of outstanding monies and including any loss suffered by Roc Cloudy as a result of the Applicant's failure to perform or observe any term or condition of credit or sale. I/We now charge my/our interest in any real property registered in my/our name/s in favour of Roc Cloudy to secure this Guarantee and Indemnity and authorise the lodgement of a caveat to support this charge.

I/We (and if more than one, jointly and severally) agree that this Guarantee and Indemnity is a continuing Guarantee and Indemnity and will not be invalidated, released or discharged by any event which would or might so invalidate, release or discharge the Guarantee and Indemnity, including (but not limited to) the giving of time, the variation of the terms and conditions of credit or sale, the alteration of the composition of the Applicant or the release of the Applicant or any co-guarantor. I/We understand this Guarantee and Indemnity binds me/us personally.

Roc Cloudy

*SIGNATURE _____

*NAME (Block letters) _____

*WITNESS SIGNATURE _____

*WITNESS NAME (Block letters) _____

DATE _____

Customer

*SIGNATURE _____

*NAME (Block letters) _____

*WITNESS SIGNATURE _____

*WITNESS NAME (Block letters) _____

DATE _____

By signing this credit application you are bound to Roc Cloudy's Trading Terms & Conditions.

Roc Cloudy PTY LTD - ABN 87 066 000 922
Sunglass Importer & Wholesaler
8 Ralph St, Alexandria NSW 2015 Australia

* = REQUIRED FIELDS

ROC CLOUDY PTY LTD TRADING TERMS AND CONDITIONS

1. General

The whole of the Agreement between Roc Cloudy Pty Ltd ABN 87 066 000 922 ("Roc Cloudy") and the Applicant referred to in the Credit Application ("Customer") are those set out in these Terms and Conditions as amended from time to time and those, if any, which are implied and which cannot be excluded by law ("Terms"). Any other contractual terms of the Customer (whether upon the Customer's order or elsewhere) which are contrary to or inconsistent with these Terms shall not apply nor shall they constitute a counter-offer. By receiving delivery and/or supply of all or a portion of the goods, materials and/or parts and/or labour and/or services supplied by Roc Cloudy under these Terms ("Goods"), the Customer shall be deemed to have accepted these Terms and to have agreed that they shall apply to the exclusion of all others.

2. Credit Terms

- 21.** Payment is due on or prior to thirty (30) days from the date of invoice rendered in respect of the supply of the Goods unless otherwise stated in writing by Roc Cloudy. For non-account customers, payment is due on delivery by pre-authorised credit card. Roc Cloudy may charge interest at a rate equivalent to two percent (2%) in excess of the rate of interest for the time being fixed under Section 100 of the Civil Procedure Act 2005 if payment is not received by the due date.
- 22.** Roc Cloudy's express or implied approval for extending credit to the Customer may be revoked or withdrawn by Roc Cloudy at any time. Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in Clause 2.4, and then to principal.
- 23.** Any payments received from the Customer on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs referred to in Clause 2.4, and then to principal.
- 24.** The Customer is liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by Roc Cloudy for enforcement of obligations and recovery of monies due from the Customer to Roc Cloudy.

3. Quotations and Pricing

- 31.** Prices charged for Goods will be according to a current quotation for those Goods. Otherwise, they will be determined by Roc Cloudy by reference to its standard prices in effect at the date of delivery (whether notified to the Customer or not and regardless of any prices contained in the order). Roc Cloudy will use its best endeavours to notify the Customer of price changes but bears no liability in respect of this.
- 32.** Any quotation, acceptance of quotation, purchase order or other document which requires signature may be signed in electronic form, and such signature shall be binding upon the person affixing that signature.
- 33.** Unless otherwise specified by Roc Cloudy, the prices exclude:
- 33.1.** Any statutory tax, including any GST, duty or impost levied in respect of the Goods and which has not been allowed for by Roc Cloudy in calculating the price.
- 33.2.** Costs and charges in relation to insurance, packing (other than the standard packing of Roc Cloudy), crating, delivery (whether by road, rail, ship or air) and export of the Goods.

4. Delivery & Supply

- 41.** Any times quoted for delivery and/or supply are estimates only and Roc Cloudy shall not be liable for failure to deliver/supply, or for delay in delivery/supply. The Customer shall not be relieved of any obligation to accept or pay for Goods, by reason of any delay in delivery/supply or dispatch. Roc Cloudy reserves the right to stop supply at any time if the Customer fails to comply with the Terms.
- 42.** If the Customer directs that delivery of the Goods be staggered over different times or to different addresses from those specified in the Credit Application, then the Customer:-
- 42.1.** shall be liable for any additional cost, charge and expense incurred by Roc Cloudy in complying with the Customer's direction; and
- 42.2.** shall pay for the whole of the invoiced value of the Goods notwithstanding the staggered deliveries.
- 43.** The Customer is deemed to accept delivery of the Goods where it is either delivered to the Customer's premises or when Roc Cloudy notifies the Customer that the Goods are available for collection.
- 44.** If the Customer is unable or fails to accept delivery of the Goods, Roc Cloudy may deliver it to a place of storage nominated by the Customer and, failing such nomination, to a place determined by Roc Cloudy. Such action shall be deemed to be delivery to the Customer. The Customer shall be liable for all cost, charge and expense incurred by Roc Cloudy on account of storage, detention, double cartage/delivery or similar causes.

5. Property

- Until full payment has been made for all Goods, and any other sums in any way outstanding from the Customer to Roc Cloudy from time to time:-
- 51.** All sums outstanding become immediately due and payable by the Customer to Roc Cloudy if the Customer makes default in paying any other sums due to Roc Cloudy, becomes bankrupt, or commits any act of bankruptcy, compounds with its creditors, has judgment entered against it in any court or, being a company, has a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.
- 52.** The property in the Goods shall not pass to the Customer and the Customer shall hold the Goods as bailee for Roc Cloudy (returning the same to Roc Cloudy on request). The Goods shall nevertheless be at the risk of the Customer from the time of delivery/supply and the Customer must insure the Goods from the time of delivery/supply.
- 53.** The Customer is only authorised to sell the Goods (or any portion of them) to third parties as the fiduciary agent of Roc Cloudy provided that there shall be no right to bind Roc Cloudy to any liability to such third party by contract or otherwise. All payments (direct or indirect) received from such third parties by the Customer for the Goods (or any portion of them) shall be held on trust for Roc Cloudy pursuant to the fiduciary relationship.
- 54.** In the event that the Customer incorporates or transforms the Goods (or any portion of them) into any other goods or products produced by the Customer (or a third party), then the Customer must hold a proportion of any payment ("relevant proportion") received by the Customer for such goods or products on trust for Roc Cloudy. The Customer expressly acknowledges that the relevant proportion shall be equal to the dollar value of the Goods incorporated or transformed and the Customer further acknowledges that any part payment (not exceeding the relevant proportion) received by the Customer for such goods or products is received as payment first of the relevant proportion.
- 55.** Roc Cloudy is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of the Customer and to act on its behalf, if necessary, to recover possession of the Goods without liability for trespass or any resulting damage.
- 56.** The stand has been provided for the exclusive display of Roc Cloudy products only. The stand has been provided with the understanding that the display be kept in good order and that stock levels are maintained to represent the range of goods.
- 57.** The stand is provided a on loan. The stand will remain the property of Roc Cloudy at all times. Roc Cloudy reserves the right under any circumstances, to collect the stand at any time. The Customer will be required to pay for the cost of the insurance and delivery of the stand.
- 58.** Should either party decide to cease trading under these terms and conditions, the Customer may be required to pay for the cost of the delivery upon returning the stand back to Roc Cloudy. If the stand has become damaged beyond the wear of reasonable use as a display, the Customer may be required to pay for the stand in part or full, depending on the extent of the damage.
- 59.** In addition to any lien to which Roc Cloudy may, by statute or otherwise, be entitled, Roc Cloudy shall in the event of the Customer's insolvency, bankruptcy or winding up, be entitled to a general lien over all property or goods belonging to the Customer in Roc Cloudy's possession (although all or some of such property or goods may have been paid) for the unpaid price of any Goods sold or delivered to the Customer under this or any other contract.

6. Availability of Stock

Any order that cannot be fulfilled on its receipt will be back ordered and processed when stock becomes available unless it is the Customer's stated standard policy not to accept back orders or the Customer specifically marks its order, "Do Not Back Order". Deliveries at any time are subject to availability of stock and Roc Cloudy will not be liable for any charges due to product unavailability.

7. Freight

Subject to Clause 3.3 and unless otherwise agreed, Roc Cloudy will ship by the least expensive route and carrier to all points. If the Customer chooses a route with a higher charge than the route of Roc Cloudy's choice for shipment, Roc Cloudy will charge the difference to the Customer.

8. Returns, Cancellations and Claims

- 8.1.** The Customer shall not return any Goods to Roc Cloudy without obtaining prior authorisation from Roc Cloudy. No returns will be accepted unless a copy of the relevant invoice is enclosed with the returned Goods. A list of the Goods returned including product descriptions, quantity, date of return and the Customer's name and address must also be enclosed. Freight charges must be paid by the Customer. All Goods must be returned in the original packaging and the Customer shall be responsible for all damage incurred during return shipment. A credit note will be issued by Roc Cloudy only after Goods returned are either collected by Roc Cloudy's authorised representative or agent or returned to it by the Customer as set out above. The Customer shall not deduct the amount of any anticipated credit from any payment due to Roc Cloudy prior to the receipt of a credit note.
- 8.2.** All Goods returned must be of merchantable and reasonable quality such that the Goods are complete in their original packaging, not shop-soiled, are not price ticketed and are still listed in the current price list.
- 8.3.** If Roc Cloudy accepts the return of any Goods that have been ordered, Roc Cloudy may charge the Customer thirty percent (30%) of the invoice price as a handling fee with freight costs and risk remaining the responsibility of the Customer.
- 8.4.** No cancellations or partial cancellation of an order by the Customer shall be accepted by Roc Cloudy unless it has first consented in writing to such cancellation or partial cancellation and unless a cancellation charge has been paid which, as determined by Roc Cloudy, will indemnify Roc Cloudy against all loss, without limitation. Cancellation will not be accepted on goods that are not regular stock which are in the process of manufacture or ready for shipment.

- 8.5.** All complaints, claims, or notification of lost Goods, incomplete Goods, Goods damaged in transit or Goods that do not comply with the Customer's purchase order must be submitted by the Customer to Roc Cloudy in writing within seven (7) business days of the date of the invoice rendered for the supply of the Goods. Otherwise, the Customer shall be deemed to have accepted the Goods and shall not refuse to pay for the Goods on the basis that they were lost, incomplete, damaged in transit, or do not comply with the Customer's purchase order.

9. Privacy Act 1988 ("Privacy Act")

- To enable Roc Cloudy to assess the Customer's application for credit, the Customer authorises Roc Cloudy:-
- 9.1.** To obtain from a credit reporting agency a consumer or commercial credit report containing personal information about the Customer and its guarantors pursuant to Section 18K(1) of the Privacy Act; and
- 9.2.** To obtain a report from a credit reporting agency and other information in relation to the Customer's commercial credit activities; and
- 9.3.** To give to a credit reporting agency information including identity particulars and application details
- AND in accordance with Section 18N(1) of the Privacy Act the Customer authorises Roc Cloudy to give to and obtain from any credit provider named in the accompanying credit application and credit providers that may be named in a credit report issued by a credit reporting agency information about the Customer's credit arrangements. The Customer understands that this information can include any information about its credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act. The Customer understands that information can be used for the purposes of assessing its application for credit (Section 18L(4) Privacy Act), assisting it to avoid defaulting on its credit obligations, assessing its credit worthiness and notifying other credit providers and credit reporting agencies of a default by it under these Terms.

10. Personal Properties Securities Act (Cth) 2009 ("PPSA")

- 10.1.** The Customer agrees that the retention of title provided by clause 5 amounts to Security Interest under the PPSA and that in accordance with Part 3.4 of the PPSA the Security Interest in any products or mass which the Goods subsequently become processed or co-mingled with. Further, the Customer agrees that the Security Interest is a Purchase Money Security Interest as defined in section 14 of the PPSA.
- 10.2.** If Chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising out of this agreement, the parties agree that:
- 10.2.1.** To the full extent allowed by section 115(1) of the PPSA, the following provisions of the PPSA will not apply to the enforcement of the Security Interest:
- | | |
|-------|--|
| i. | section 95 (notice of removal of accession), to the extent that it requires Roc Cloudy to give a notice to the Customer; |
| ii. | section 96 (when a person with an interest in the whole may retain an accession); |
| iii. | subsection 121(4) (enforcement of liquid assets – notice to grantor); |
| iv. | section 125 (obligation to dispose of or retain collateral); |
| v. | section 130 (notice of disposal), to the extent that it requires Roc Cloudy to give a notice to the customer; |
| vi. | subsection 132(3)(d) (contents of statement of account after disposal); |
| vii. | subsection 132(4) (statement of account if no disposal); |
| viii. | section 142 (redemption of collateral); and |
| ix. | section 143 (reinstatement of security agreement). |
- 10.3.** to the full extent allowed by section 115(7) of the PPSA, the following provisions of the PPSA will not apply to the enforcement of that Security Interest:
- | | |
|------|---|
| i. | section 127 (seizure by higher parties – notice); |
| ii. | section 129(2) and (3) (disposal by purchase); |
| iii. | section 132 (secured party to give statement of account); |
| iv. | section 134(2) (proposal of secured party to retain collateral); |
| v. | section 135 (notice of retention of collateral); |
| vi. | sections 136(3), (4) and (5) (retaining collateral free of interest); and |
| vii. | section 137 (persons entitled to notice may object to proposal). |

- 10.4.** The Customer consents to Roc Cloudy enforcing a registration on the PPSR (in any manner Roc Cloudy considers appropriate) in relation to any Security Interest arising under or in connection with or contemplated by this agreement and the Customer agrees to provide all assistance reasonably required to facilitate a registration.
- 10.5.** The Customer waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- 10.6.** Notices or documents required or permitted to be given to Roc Cloudy for the purposes of the PPSA must be given in accordance with the PPSA.
- 10.7.** If any Customer makes a payment to Roc Cloudy at any time whether in connection with this agreement or otherwise Roc Cloudy may, in its absolute discretion, apply that payment to:
- 10.7.1.** first, satisfy obligations that are not secured;
- 10.7.2.** second, satisfy obligations that are secured, but not by a Purchase Money Security Interest ("PMSI");
- 10.7.3.** third, satisfy obligations that are secured by a PMSI for those obligations and using proceeds from the sale of the collateral subject to that PMSI; and
- 10.7.4.** fourth, satisfy obligations that are secured by a PMSI using funds or proceeds from any source.

11. Notification

The Customer must notify Roc Cloudy in writing within seven (7) days of:-

- 11.1.** Any alteration of the name or ownership of the Customer.
- 11.2.** The issue of any legal proceedings against the Customer.
- 11.3.** The appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to the Customer.
- 11.4.** Any change in the ownership of the business name of the Customer. The Customer agrees that it shall be liable to Roc Cloudy for all Goods supplied to the new owner by Roc Cloudy until notice of any such change is received.

12. Warranties

- 12.1.** No warranties are given by Roc Cloudy in respect of any Goods supplied except those implied and that by law cannot be excluded. To the extent that it is legally capable of doing so, the liability of Roc Cloudy for a breach of a condition or warranty is limited to the repair or replacement of the Goods, the supply of equivalent Goods, the payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods, as determined by Roc Cloudy.

- 12.2.** The Customer warrants to Roc Cloudy that it is purchasing Goods as the principal and not as an agent.

13. Force Majeure

Roc Cloudy shall be released from its obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders provision of the Goods impossible, where all money due to Roc Cloudy shall be paid immediately and, unless prohibited by law, Roc Cloudy may elect to terminate the Agreement.

14. Equitable Charge

The Customer as beneficial owner and/or registered proprietor now charges in favour of Roc Cloudy all of the Customer's estate and interest in any real property (including but not limited to any applicable land owned by the Customer named or described as the Customer's Street Address in the Credit Application if applicable) ("Land") to secure payment of accounts rendered by Roc Cloudy to the Customer for the delivery and/or supply of the Goods including interest payable on these accounts and costs (including legal costs on a full indemnity basis) incurred by Roc Cloudy and including the costs to prepare and lodge a Caveat against the Land and to remove the Caveat.

15. Failure to Act

Roc Cloudy's failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or Roc Cloudy's failure to exercise any right or remedy available under these Terms or at law, or Roc Cloudy's failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of Roc Cloudy's right to demand timely payment of future obligations or strict compliance with the Terms.

16. Legal Construction

- 16.1.** These Terms shall be governed by and interpreted according to the laws of New South Wales and Roc Cloudy and the Customer consent and submit to the jurisdiction of the Courts of New South Wales.
- 16.2.** Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.