

## NEW CUSTOMER APPLICATION

PHILIPPA PTY LIMITED ABN 23 106 665 534 ("PHILIPPA")

### OVERVIEW

All transactions made between Philippa and its Customers are subject to the attached Terms and Conditions ("Terms"). This application should be submitted with a photocopy of your Business Registration Certificate or Drivers Licence. Please note that your **first three (3) Orders require upfront payment** prior to despatch of the Products unless otherwise agreed to in writing.

### NEW CUSTOMER

Business Name:	Trading Name:
Tax ID:	No. of years trading:
Delivery Address:	
City / State / ZIP:	Country:
Telephone:	Fax:
Email:	
Name of Bank & Branch:	

### CORPORATE DETAILS

Name of director / owner:	
Address:	
City / State / ZIP:	Country:
Telephone:	Fax:

### REFERENCES

Reference #1 Name:	Reference #2 Name:
Company & Position:	Company & Position:
Telephone Number:	Telephone Number:

### AGREED TERMS

I/We understand that failure to pay Philippa Invoices within 30 days of the Invoice Date will attract a 15% Administrative Fee and that interest will be incurred at the rate of 5.0% per month on all amounts outstanding for more than 30 days after the Invoice Date.

I/We understand that the agreed payment date means no later than 30 days from the Invoice Date (as specified on each Philippa Invoice).

I/We understand that ownership of the Products does not pass to the Customer until the Products have been paid for in full.

I/We understand that accounts placed into the hands of a collection agency will incur additional costs as outlined in the attached Terms.

### EXECUTION

Name of Signatory:
Signature:
Date:

Fax the completed application to (+612) 8080 8373 or email to [admin@philippa.com](mailto:admin@philippa.com)

# TERMS & CONDITIONS

PHILIPPA PTY LIMITED ABN 23 106 665 534 ("PHILIPPA")

## 1 GENERAL

All transactions made between Philippa and its Customers are subject to the following Terms and Conditions ("Terms") unless otherwise agreed to by Philippa in writing. These Terms may be modified by Philippa without notice in its absolute discretion.

## 2 DEFINITIONS

"Customer" means any party doing business with Philippa.

"Invoice" means any invoice issued to the Customer by Philippa.

"Invoice Date" means the date of the Invoice (as specified on the Invoice).

"New Customer Application" refers to the credit application to be completed by all new Customers.

"Order" means a transaction involving the exchange of Products for Payment.

"Products" means any item of whatsoever nature which is purchased by the Customer from Philippa.

## 3 MINIMUM ORDER SIZE

The minimum Order size is \$750 unless otherwise agreed to by Philippa in writing.

## 4 PAYMENT

Payment for any Order must include:

- The sale price for the Products (as set by Philippa);
- All sales taxes and government imposts;
- Freight (including cost of over-carriage);
- Insurance;
- Bank fees;
- Quarantine, demurrage, customs or port charges; and
- Any duties, charges or levies in respect of the import of goods or changes in the classification or value of goods for customs purposes.

## 5 PAYMENT TERMS

The Customer agrees to pay Philippa:

- Upfront for the first three (3) Orders unless otherwise agreed to in writing; and
- Within thirty (30) days of the Invoice Date for all Orders thereafter.

## 6 METHOD OF PAYMENT

Customers are required to make Payment by cheque, VISA, Mastercard, Bankcard or Electronic Funds Transfer.

## 7 OVERDUE ACCOUNTS

Failure to pay Philippa Invoices within 30 days of the Invoice Date will attract a 15% Administrative Fee and interest will be incurred at the rate of 5.0% per month on all amounts outstanding for more than 30 days after the Invoice Date.

## 8 OWNERSHIP OF THE PRODUCTS

Ownership of the Products does not pass to the Customer until the Products have been paid for in full.

## 9 DELIVERY TIMINGS

Unless the Customer is otherwise informed, Philippa will endeavour to meet the following delivery timings:

- For Orders requiring upfront Payment, Philippa will deliver the Order within four (4) weeks of Philippa receiving full Payment for the Order; and
- For Orders with thirty (30) day terms, Philippa will deliver the order within four (4) weeks of the Order being placed by the Customer.

## 10 DELIVERY

The Customer acknowledges and agrees that:

- Philippa accepts no responsibility for delivery, but may elect to arrange delivery at its discretion and without any liability;
- The Customer shall be deemed to have accepted delivery:
  - immediately upon Philippa notifying the Customer that Products are ready for collection; or
  - when the Products are delivered to a carrier; or
  - when the Products are delivered to the Customer's business premises (whether attended or not);
- A certificate purporting to be signed by an officer or agent of Philippa confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket;
- Philippa will not be liable for any delay, failure or inability to deliver any Products or perform any Services;
- Once the Customer is notified Products are ready for Delivery, the Customer agrees to pay all costs associated with Philippa holding those Products for the Customer; and
- Customers will not be entitled to any refund, discount or exemption in the event that an Order is delayed.

## 11 LIMITATION OF LIABILITY

- The Customer shall notify Philippa in writing within seven (7) days of the date of Delivery if Philippa is responsible for any shortfall or damage to the Products, and shall ensure the Products are kept intact for inspection by Philippa. (This includes Products which are defective or non-conforming.)
- Failure to comply with clause 11(a) shall disentitle the Customer to any remedy in respect of any shortfall, loss or damage. Philippa may at its discretion refuse Products for return for any reason other than the conditions contained herein.
- The Customer agrees to limit any claim it makes to the cost of supply of equivalent Products or Services. Philippa may at its discretion replace Products which are the subject of a claim, at no extra cost to the Customer, and the replacement Products shall be subject to these Terms.
- Philippa will not be liable for any contingent, consequential, special, punitive, direct or indirect damage arising in any way, regardless of whether such damage was the result of Philippa's negligence or otherwise. The Customer acknowledges this express limit of liability and agrees to limit any claim accordingly.
- Other than these Terms, no other term, condition, agreement, warranty, representation or understanding, whether express or implied, relates to or binds Philippa.
- Anything published by Philippa which is incompatible with these Terms is expressly excluded.

## 12 PLACEMENT OF ORDERS

The Customer agrees:

- In the event of any dispute arising or concerning any order (and including any question of identity or authority, or any telephone, facsimile or computer

generated order) the internal records of Philippa will be conclusive evidence of what was Ordered in all respects;

- Each Order it places shall be deemed to be a representation by it, made at the time that it is solvent and able to pay all of its debts as and when they fall due;
- Failure to pay Philippa in accordance with these Terms shall be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 12(b) and that the representation was unconscionable, misleading and deceptive; and
- When any Order is placed, the Customer shall inform Philippa of any material facts which would or might reasonably affect the commercial decision by Philippa to accept the Order and/or grant credit in relation thereto and any failure to do so by or on behalf of the Customer shall constitute unconscionable, misleading and deceptive conduct.

## 13 PRODUCTS AND SERVICES

- Philippa disclaims any responsibility or liability whatsoever relating to any Products or Services utilised, stored, handled or maintained incorrectly or inappropriately.
- The Customer agrees to check all Products and Services for compliance with all relevant applicable standards and regulatory bodies before use, sale or application.

## 14 OTHER TERMS AND CONDITIONS

No terms and conditions sought to be imposed by the Customer shall apply to Philippa.

## 15 RECOVERY COSTS

The Customer will pay to Philippa the costs and expenses incurred by it or its solicitors, legal advisers, mercantile agents and other parties acting on Philippa's behalf in respect of anything instituted or being considered against the Customer whether for interest, debt, possession of any Products or otherwise.

## 16 VARIATION

Order variations or cancellations must be in writing and must be submitted prior to Payment or despatch of the Products by Philippa.

## 17 NO REFUNDS

Subject to clause 11(a), Philippa does not issue refunds to Customers under any circumstances.

## 18 DEFAULTS

Upon any default or breach hereof by the Customer, Philippa may (inter alia) retain all moneys paid and/or cease further deliveries and recover from the Customer all loss of profits arising and/or at its discretion take immediate possession of any Product not paid for, without prejudice to any other of its rights and without being liable in any way to any party.

## 19 SEVERABILITY

Any part hereof, being a whole or part of a clause, shall be capable of severance without effecting any other part of these Terms.

## 20 CUSTOMER RESTRUCTURE

The Customer will notify Philippa in writing of any change in its structure or management including any change in director, shareholder or management or change in partnership or trusteeship within 7 days of the date of any such change.

## 21 JURISDICTION

The Customer agrees that all contracts made with Philippa shall be deemed to be made in the State nominated by Philippa and agrees to submit to the jurisdiction of the appropriate Courts nominated by Philippa.

## 22 CREDIT LIMIT

If Philippa grants any credit facility or nominates any credit limit, this is an indication only of its intention at the time. Philippa can vary or withdraw any credit facility at any time at its discretion and without any liability to the Customer or any other party.

## 23 WAIVER

In the event that Philippa elects not to exercise any of its rights arising as a result of any breach of these Terms it shall not constitute a waiver of any rights of Philippa relating to any subsequent or other breach.

## 24 NOTICE

The Customer agrees that it will be deemed to have notice of any change to these Terms, immediately upon their adoption by Philippa and whether or not the Customer has actual notice thereof, and notwithstanding any other purported or pre-existing terms & conditions.

## 25 INDEMNITY

The Customer indemnifies Philippa against any claim or loss arising from or related in any way to any contract or transaction between Philippa and the Customer or anything arising therefrom, or arising as a result of or subsequent to any breach of these Terms.

## 26 SECURITY FOR PAYMENT

The Customer agrees on request to a charge in favour of Philippa:

- By way of a fixed charge all its books of account, financial records, goodwill, documents of title and current and later acquired real property and intellectual property; and
- By way of a floating charge, the whole of the Customer's other undertaking, property and assets, with payment of all monies owed to Philippa.

## 27 FORWARD / BACK ORDERS

If the Customer places a forward / back Order the Customer agrees:

- To pay for so much of any Order as is from time to time invoiced by Philippa; and
- No delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment.

## 28 FORCE MAJEURE

Philippa will not be in default or in breach of any contract with the Customer by or as a result of Force Majeure. Force Majeure means any event which is beyond the reasonable control of Philippa and includes any strike or lock-out.

## 29 INSOLVENCY

- If the Customer commits or is involved in any act of insolvency, it agrees that this should be deemed in default under these Terms.
- An act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration or the like.

## 30 INDUSTRIAL AND INTELLECTUAL PROPERTY

- The Customer shall not alter, remove or in any way tamper with any of the trade or other marks or numbers which Philippa has included, attached to or placed upon its Products.
- Philippa makes no representation or warranty of any kind, either expressed or implied, that the Products supplied will not infringe any patent or trademark. The Customer will notify Philippa or any claim or suit involving the Customer in which such infringement is alleged and if Philippa considers itself to be affected, it will be entitled completely to control the defence of any such allegation of infringement.