

AUSTRALIAN PHOTO SUPPLIES PTY. LTD. (ABN 34 596 133 464)

Credit Account Application

1. Business Details:

I/We hereby apply to establish a trading account with Australian Photo Supplies Pty Ltd (**APS**) in accordance with your Terms and Conditions and submit the following information for this purpose.

Registered Company Name: _____

Trading Name (if applicable): _____

Trading Address (not P.O. Box) _____
State City P/Code

Contact Name for Accounts: _____ **Title:** _____

Telephone No: () _____ **Mobile** _____ **Fax No:** () _____

Email: _____ **Anticipated Monthly Purchases \$** _____

Trading Bank _____ **Branch** _____

Nature of Business (please tick one):

Sole Trader [] **Partnership** [] **Company** [] **Government** []

Trust Company [] **Type of Trust:** _____ **Name of Trust:** _____

Other (please specify): _____

For companies: **ABN:** _____

Sole Trader/Partner/Director's Names & Addresses:

(**Note:** If more than three partners/directors please provide details on a separate page)

Name: _____

Address: _____

Name: _____

Address: _____

Name: _____

Address: _____

2. Trade References: (Note: Trade references should be credit providers as defined in the Privacy Act)

Name: _____

Address: _____ **Phone:** _____

Name: _____

Address: _____ **Phone:** _____

3. Sole Trader/Partner/Director's Signature _____

Print Name: _____ **Date:** _____

OFFICE USE ONLY:

Customer Number: **Approved by:** **Date:**

Salesperson Number: **Credit Limit:**

23 Encore Avenue, SOMERTON, VIC. 3062
P.O. BOX 401, SOMERTON, VIC. 3062
Fax No. (03) 8339 0943 - Phone No: (03) 9303 2800
Email: accounts@apspl.com.au

Australian Photo Supplies Pty Ltd

Terms and Conditions of Sale

1. Definitions & Interpretation

In the following terms and conditions of sale, unless the context requires otherwise:

- (a) "APS" means Australian Photo Supplies Pty Ltd ABN 34 596 133 464;
- (b) "Customer" means the person or corporation placing an order for the purchase of goods or services from APS;
- (c) "Products" means any goods, materials, equipment or services provided to the Customer by APS;
- (d) if the Customer comprises more than one person, each of those person's liability is joint and several;
- (e) references to a party or a person includes any form of entity and their respective successors, assigns and representatives; and
- (f) for all periods and times specified in clauses 4 and 10, time is of the essence.

2. Orders

By ordering the Products and/or accepting delivery of the Products from APS, the Customer agrees that it is bound by these terms and conditions of sale, which will prevail notwithstanding anything that may be stated to the contrary on the Customer's order or any other document. All Customer orders are subject to acceptance by APS. Once a Customer order has been placed and accepted by APS, the Customer has no right to cancel or vary the order at any time, unless agreed in writing by both parties.

3. Quotations

Any quotation by APS to the Customer will be open for acceptance within the period stated in the quotation or, where no period is stated, within 7 days from the date of the quotation.

4. Prices / Taxes

Subject to any quotations accepted within the relevant period, the prices charged by and payable to APS will be the prevailing prices applicable at the time of placement of the relevant order. Prices are subject to change without notice. Recommended retail prices are provided for indicative purposes only and there is no obligation to comply with that recommendation. If GST is imposed on any supply made under or in accordance with these terms and conditions, the Customer must pay to APS an additional amount equal to the GST payable on or for the taxable supply, subject to the Customer receiving a valid tax invoice in respect of the supply at or before the time of payment. Payment of the additional amount must be made at the same time as payment for the taxable supply is required. Unless otherwise agreed in writing, the price of Products does not include installation.

5. Terms of Payment

Except to the extent otherwise agreed in writing by APS, the total price for Products supplied will be due for payment in cash or immediately available funds prior to delivery.

Where APS has agreed in writing to provide credit to the Customer but has not provided notice of the payment terms to the Customer, the Customer must pay the total price for Products supplied within 30 days of invoice. Any commercial credit arrangements that are provided to the Customer by APS will continue until terminated by APS at its sole discretion.

If APS agrees to allow the Customer to pay by credit card, the Customer must complete a credit card direct debit authorisation and related documentation as required by APS. APS will regularly provide the Customer with a credit card debit summary advising the Customer of the amount to be charged to the Customer's nominated credit card account.

Credit card payment may be offered to the Customer for a particular invoice or transaction, or in conjunction with credit card direct debit authorisation at APS's sole discretion.

6. Interest

If the Customer fails for any reason to pay any amount owing to APS in respect of any of the Products supplied to it, APS may, without prejudice to any other right or remedy, charge interest at the rate equivalent to the rate charged or which could be charged from time to time by the Commonwealth Bank in respect of a standard overdraft facility of A\$100,000. Such interest will be calculated daily

and compounded monthly from the due date until the date that full and final payment is received by APS. Any payment will be credited first against accrued interest and will then be used to pay moneys due to APS for the Products with the oldest invoice being paid first.

7. Change of Ownership

Trading accounts are approved by APS based on the information supplied and the representations made by the Customer. In the event that there is a change in ownership of the Customer, whether total or partial, the Customer must immediately provide written notice, of those changes to APS. Where a Customer has been authorised by APS to make payments through credit card direct debit, the Customer must provide notice in writing at least 5 days prior to any change in ownership of the business.

8. Information on the Products supplied

To the extent permitted by law, all descriptive specifications, illustrations, drawings, data, dimensions and weights furnished by APS or otherwise contained in catalogues or other advertising material are approximate only and are intended to be merely a general description of the Products, are not incorporated within these terms and conditions and do not form part of the description of the Products unless otherwise agreed to in writing by APS (in which case such information will be subject to recognised trade tolerances).

9. Delivery

APS may, in its sole discretion, determine the means of delivering the Products to the Customer. APS reserves the right to deliver Products in part deliveries. In the event that APS incurs additional costs for meeting special or urgent delivery arrangements, these additional costs may be charged to the Customer and may include the cost of airfreight where it is not the normal method of delivery. The Customer agrees to accept delivery of the Products sold at any time during normal business hours.

APS will not be liable for any loss or damage resulting from any late delivery of the Products and late delivery will not entitle the Customer to rescind or repudiate the Customer's order for the Products.

10. Inspection

The Customer must inspect the Products immediately upon delivery. Any claim that the Products delivered are not in accordance with the Products that were ordered must be made in writing to APS within 7 days after delivery.

If the Customer fails to give notice of any such claim in accordance with this clause 10, then to the maximum extent permitted by law, the Products delivered will be deemed to have been delivered to the Customer in accordance with the relevant order and these terms and conditions and the Customer waives any rights which the Customer may otherwise have to claim that the Products delivered were not in accordance with the Products that were ordered.

Providing notice of a claim to APS does not excuse the Customer's obligation to fully satisfy its payment obligations for the Products to APS.

11. Returns

Products must not be returned without the prior written consent of APS. Any Products returned must be returned at the Customer's cost and must be in their original condition and packaging. A restocking fee may be charged to the Customer for returned Products.

12. Storage and Labelling

The Customer acknowledges being informed by APS that:

- (a) sensitised goods require proper storage, handling and display conditions to maintain quality;
- (b) films, plates, papers and packed chemicals may deteriorate if not stored and handled in original sealed packages;
- (c) APS products are packaged for sale to Customers in their original packages on which are set out marks, numbers, references and other information. Consumers may be disadvantaged or even misled if these packages are covered, defaced, altered, erased or otherwise misused; and
- (d) any trademarks and trade dress or get-up that are located on or provided with the Products are protected by law from misuse.

13. Title & Risk

Risk in the Products passes to the Customer when the goods are delivered or collected by the Customer, as the case may be.

Title in the Products only passes to the Customer, free of encumbrances and all other adverse interests, when payment by the Customer for the Products supplied is received in full by APS. Until payment, for the products is received in full by APS, the customer acknowledges that it holds the Products as a fiduciary bailee for APS and owes APS the duties and liabilities of a bailee. The Customer further agrees that this bailment continues until all moneys owing to APS for the Products supplied have been received in full by APS and that it will keep all Products stored in a way that identifies the Products as APS's goods so that they can be distinguished from all other goods in the Customer's possession.

If the Products are sold or otherwise disposed of by the Customer prior to payment being received by APS in full, the Customer will be deemed to have done so as agent for APS and must hold the proceeds of such sale in a separate fund from its own money and provide these proceeds to APS on request.

APS reserves the following rights in relation to the Products until all monies owed by the Customer to APS for the Products are paid in full:

- (a) ownership of, and title to, the Products;
- (b) the right to enter the Customer's premises (or the premises of any associated-company or agent of the Customer where the Products are located), without liability for trespass or any resulting damage, and retake possession of the Products; and
- (c) to keep or resell any Products repossessed, pursuant to 13(b).

14. Termination

If:

- (a) the Customer breaches any of its obligations under these terms and conditions including failing to make payments when due;
- (b) being a natural person, the Customer dies, convenes a meeting of its creditors or becomes bankrupt; or
- (c) being a company, the Customer calls a meeting of its creditors, has a receiver or other administrator appointed over all or any part of its assets, enters into liquidation, becomes subject to a winding up order of the court, makes any arrangement or composition with its creditors, permits any judgement against it to remain unsatisfied for at least 7 days or has any distress, execution or other legal process levied against it.

APS may, at its option and without prejudice to any of its other rights and remedies, do any one or more of the following:

- (i) delay delivery or settlement of any Products until the matter is resolved to APS's satisfaction;
- (ii) suspend or cancel (in-whole or in part) any order by written notice to the Customer; and/or
- (iii) recover from the Customer, or deduct from or set-off against any amount APS may owe the Customer, amounts for any damage, loss or cost (including legal costs) suffered or incurred by APS as a result of or in connection with the non-performance by the Customer.

15. Limitation of Liability

To the extent permitted by law, APS's liability to the Customer in any way connected with the supply of the Products under these terms and conditions and for any damage or injury caused to any person or property by the Products is limited to, at APS's election:

- (a) the replacement of the Products or the supply of equivalent Products;
- (b) the repair of the Products;
- (c) the cost of replacing the Products or of acquiring equivalent Products;
- (d) the payment of the cost of having the Products-repaired.

To the extent permitted by law, APS is not liable to the Customer or any other person for any physical or financial injury, loss, damage or liability or for indirect or consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Products, including where arising out of APS's negligence.

16. Warranties

APS warrants to the Customer that clear title to the goods passes to the Customer when ownership passes in accordance with clause 14. The only conditions and warranties which are binding on APS in respect of the state, quality or conditions of the Products sold or any thing else in respect of the Products sold are those provisions which

cannot be excluded pursuant to the Trade Practices Act 1974. Otherwise all other conditions and warranties, in respect of the state, quality or conditions of the Products sold whether express or implied by law, which may be binding on APS apart from this clause, are hereby expressly excluded. The United Nations Convention On Contracts for the International Sale of Goods does not apply.

17. Indemnity.

The Customer indemnifies and must keep indemnified APS against all claims, actions, demands, liabilities, loss, damage, costs, charges and expenses of whatsoever nature which may be brought against APS or which APS must pay, sustain or incur by reason of or in any way connected with:

- (a) any delay or failure by the Customer to pay money in accordance with these terms and conditions;
- (b) any other breach by the Customer of any warranties or obligations set out in these terms and conditions;
- (c) any breach by the Customer of any representations, warranties or obligations in respect of any credit arrangement between APS and the Customer; and
- (d) any act, default or omission of or any representation made by the Customer or a servant or agent of the Customer.

18. Force Majeure

Where an act of God, strike, lockout or other interference with work, war declared or undeclared, blockade, disturbance, lightning, fire, earthquake, storm, flood, explosion, governmental or quasi-governmental restraint, unavailability or delay in availability of the Products or ancillary material or transport, inability or delay in obtaining governmental or quasi-governmental approvals, consents, permits, licences, authorities or allocations, or any other cause or event whether of the kind specifically set out above or otherwise which is not reasonably within the control of APS affects APS's ability to carry out any obligation under these terms and conditions, APS will be excused from performing that obligation, to the extent that it is affected by such cause or event.

19. General

- (a) These terms and conditions and any agreement made between APS and the Customer hereunder is governed by and must be construed in accordance with the laws in force in Victoria. The parties submit to the exclusive jurisdiction of the Courts of Victoria and the Commonwealth of Australia in respect of all matters arising out of or relating to these terms and conditions, its performance or subject matter.
- (b) A failure, delay, relaxation or indulgence by APS in exercising any power or right conferred on APS by these terms and conditions does not operate as a waiver of the power or right. A waiver of a breach is not a waiver of any other breach. No waiver is effective unless it is in writing.
- (c) The Customer agrees and acknowledges that it has no authority to Pledge the credit of APS or represent to any party that APS has an interest in the Customer's business.
- (d) The Customer must not assign or delegate any of its rights or obligations under these terms and conditions without the express written permission of APS. Any attempt at such assignment or delegation without APS's written permission is void.
- (e) If any provision of these terms and conditions offends any law applicable to it and is as a consequence illegal, invalid or unenforceable then:
 - (i) where the offending provision can be read down so as to give it a valid and enforceable operation of a partial nature, it must be read down to the minimum extent necessary to achieve that result; and
 - (ii) in any other case the offending provision must be severed from these terms and conditions, in which event the remaining provisions of these terms and conditions operate as if the severed provision had not been included.
- (f) APS is committed to the protection of your personal information and will only use personal information provided to it in accordance with the National Privacy Principles set out in the Privacy Act 1988 (Cth).
- (g) These terms and Conditions contain the entire understanding between APS and the Customer concerning the supply of Products to the Customer.