

A. WHERE THE APPLICANT IS A PARTNERSHIP/SOLE TRADER:

	name	address	date of birth*	private telephone
Partners' or trader's full name(s) and private address(es)				

***ATTACH COPY OF DRIVER'S LICENCE, PASSPORT OR BIRTH CERTIFICATE EVIDENCING DATE OF BIRTH DETAILS.**

B. WHERE THE APPLICANT IS A COMPANY:

Company name:		A.C.N.:	
		A.B.N.:	

Registered office address:		postcode:	
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Directors' full names:	name	address	date of birth	private telephone
1.			
2.			
3.			
4.			

C. TRADING DETAILS:

Trading name:		A.B.N.:	
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Business address:		postcode:	
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Address for correspondence:		postcode:	
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telephone: ()	fax: ()	email:
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Trusts:

Is the Applicant involved or associated in any way with a Trust?
 Yes No

If yes, is the Trust a: unit trust family trust other?

Insolvency:

Has the Applicant or any partners or directors been insolvent or in any way involved with an insolvency administration (e.g. liquidation, receivership, administration, bankruptcy or personal insolvency agreement etc.)?
 Yes No

Type of business:		Date business commenced?		How long current owner?		Government instrumentality?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Name(s) of related entities:	
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Financial details:	bank:	branch:	phone: ()
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Trade references (each must provide credit similar in value to level of credit sought):	company	address	telephone

GENERAL TERMS AND CONDITIONS OF TRADE FOR CLIENTS (Effective 1 April 2012)

To the fullest extent legally permissible including The Australian Consumer Law (ACL) all dealings between **37South Pty Ltd ACN 129 827 612** (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as "37South" and/or otherwise (**Company**) and each and every party dealing with the Company as a client (**Client**) in relation to any goods and/or services supplied or to be supplied by the Company (**goods** and/or **services**) are subject to the following terms and conditions (**Terms**) unless otherwise expressly agreed in writing. Where the ACL applies, to the extent of any inconsistency these Terms or any part thereof will be void and capable of severance without affecting any remaining clauses:

1. Payment: a) Payment shall be made by cash, cheque, bank cheque or EFTPOS, without deduction and within the credit period stipulated in each invoice or statement. If no credit period is stipulated, payment shall be made within 30 days from the date of invoice. b) The Client agrees to pay an administration fee of 2% as the liquidated processing cost on credit card payments and/or on payments made outside the credit period stipulated in each invoice or statement.

2. Interest: Interest shall be charged on overdue accounts calculated daily at the cash target rate plus 2% until such time as the account is paid in full if an account remains unpaid after thirty (30) days from the invoice date. The Company reserves the right to withhold at any time the provision of goods and/or services to the Client in the event the Client fails to comply with the company's terms of payment or for any other reason.

3. Property: a) The Client agrees that these Terms constitute a "security agreement" for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**) and that the Company has and/or will have a "security interest" in respect of all goods and/or services whether present or after acquired for the purposes of the PPSA. Client further agrees to waive rights that Client has or may have with regard to PPSA sections 125,130, 132(3)(d), 132(4), 135 and 157. These Terms may be produced as evidence of Client's waiver of rights with regard to the sections listed. b) Property in goods shall not pass until payment in full of all monies owed by the Client. c) The Company reserves the right to take possession and dispose of goods as it sees fit at any time until full payment. The Client grants permission to the Company to enter any property where any goods are stored with force if necessary. d) Immediately on delivery the Client accepts liability for the safe custody of goods and indemnifies the Company for any related losses. e) On sale or disposition of any goods prior to full payment the Client agrees to deposit all proceeds in a separate bank account and to not mix proceeds with any other monies and shall forthwith account to the Company despite that the Company may have granted any credit facility and/or time to pay. f) Until payment in full the Client agrees: (i) to keep all goods unpaid for as fiduciary for the Company and store all goods in a manner which shows the Company as owner; (ii) to only sell goods in the usual course of its business on the basis that all proceeds are held in trust for the Company; and (iii) that sale on terms, for less than cost and/or to a related entity of the Client shall not be "in the usual course". g) Without derogating from any rights of the Company as a creditor or under these Terms if goods are used in any construction, fabrication, manufacturing and/or other process (**Process**) which results in an entitlement of the Client to receive money from any other person the Client agrees to hold such part of any monies received by the Client (or the corresponding book debt owed to the Client in respect of those monies) as is equivalent to the value of any goods used in the Process as invoiced to the Client by the Company UPON TRUST for the Company until payment in full for those goods and all monies owed to the Company. h) Nothing in this clause is intended to create a charge and this clause shall be read down to the extent necessary to avoid creating any charge. i) The Client agrees a certificate signed by an officer of the Company and stating certain facts for the purposes of this clause shall be conclusive evidence of each fact stated.

4. Limitation of Liability: A. If the goods and/or services are supplied to the Client as a 'consumer' as defined in the ACL, then the Client has the benefit of certain consumer guarantees, non-excludable rights and remedies in respect of those goods and/or services (**Consumer Rights**) and nothing in these Terms shall exclude, restrict or modify any Consumer Rights: a) The Client acknowledges and agrees that if it is a 'consumer' under the ACL then (i) its right to make any claim(s) for any loss or damage sustained by the Client and/or any third parties shall be limited to the Consumer Rights (ii) the liability of the Company for failure to comply with a consumer guarantee in relation to the supply of goods and/or services will be limited to that set out under s64A of

the ACL. b) To the fullest extent possible under law including the ACL (if applicable), the Company shall not be liable for any errors or omissions resulting from the Client's failure to sign off on any of the goods and/or services; and/or any claim in any way caused and/or contributed to by the Client or any of its employees or servants; c) The Client warrants that: (i) any information, designs or other material provided by it does not infringe any copyright, trade mark or registered design, is not in breach of confidence and is not misleading and/or deceptive and (ii) any statement made by it purporting to be factual is true.

B. If any services and/or goods are supplied to the Client and it is not a 'consumer' as defined under the ACL and the goods and/or services provided are other than of a kind ordinarily acquired for personal, domestic or household use or consumption, then (a) the liability of the Company for a breach of a condition or warranty under these Terms is limited to (i) in the case of services the supplying of the services again or the payment of the cost of having the Services supplied again; (ii) in the case of goods the replacement of the goods or the supply of equivalent goods or the repair of the goods. (b) Save as expressly provided for under these Terms the Company shall not be liable to the Client or the Client's servants, agents or representatives for any direct, indirect, incidental or consequential loss or damages of any nature however caused (whether based on tort including negligence, contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour cost and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of the Company under these Terms and in no event shall any claim be recognized unless the claim is in writing and received by the Company within fourteen (14) days of the date of Delivery.

5. Cancellations and Returns: To the extent that the ACL does not apply the Client agrees: a) not to cancel any order without the Company's prior approval; b) not to return goods without the Company's prior approval and if goods are not in brand new and unused condition with undamaged packaging and 3 weeks or more have passed since delivery; c) that the Company may take back goods in saleable condition on such terms as the Company considers to be reasonable; d) to pay the Company on request a restocking fee of 15% of the gross invoice value of all returns; e) not to return goods without first providing the Company an original invoice as proof of purchase; f) not to return any goods which have been custom made, custom processed or custom acquired; g) that the Company does not give cash refunds otherwise than in accordance with the Consumer Rights under the ACL (if applicable); h) The Client may cancel an order for services by providing not less than one (1) months' notice in writing. If the Client so acts, it will pay to the Company the fees and expenses due under any order on a pro-rata basis as undertaken by the Company and as specified in any notice of cancellation. If the ACL does apply to the Client as a 'consumer' as defined therein then the parties will be bound by the provisions of Part 5-4 of the ACL dealing with remedies relating to guarantees in relation to the supply of goods or services.

6. Quotations: To the extent that the ACL does not apply the Client agrees that: a) quotations must be in writing; b) the Company shall not be bound by any quotation if an order is not placed within 14 days from the date of quotation; c) the Company may prior to receipt of any order amend any quotation and notify the Client accordingly without ramification; d) the Company shall not be bound by any quotation if it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Client and if the Company also forms the view that those circumstances have substantially and/or materially changed; e) the Client shall pay any additional charges the Company levies for holding any goods referred to in any quotation pending placement of an order.

7. Placement of Orders: To the extent that the ACL does not apply the Client agrees that: **a)** if any dispute arises concerning any order (including any question of identity, authority or any phone, fax or computer generated order) the internal records of the Company shall be conclusive evidence of what was ordered; **b)** each order placed shall be and be deemed to be a representation by the Client made at the time that it is solvent and able to pay all of its debts as and when they fall due; **c)** when placing any order the Client shall inform the Company of any facts which might reasonably affect acceptance of the order by the Company and/or any grant of credit and any failure to do so by or on behalf of the Client shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of the Company and to be unconscionable, misleading and deceptive.

8. Supply and Delivery: **a)** the Company may supply by instalments and/or withhold or cancel supply without ramification where: (i) the Company has insufficient goods to fulfil orders; (ii) goods are not available to supply; (iii) the Client is in breach of these Terms; (iv) the Company has any safety concerns; and/or (v) the Company considers it appropriate whether because of any minimum invoice policy or otherwise. **b)** The Client agrees that: (i) the Company may elect to arrange delivery at its discretion and without any liability and at the cost and responsibility of the Client in all things subject to the provisions of the ACL (if applicable); (ii) the Client shall be deemed to have accepted delivery and liability for goods on being notified by the Company that goods are ready for collection and/or on goods being delivered to a carrier or to the Client's business premises or nominated site whether attended or not; (iii) a certificate purporting to be signed by an officer of the Company confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and (iv) the Company shall not be liable for delay, failure or inability to deliver any goods subject to the provisions of the ACL (if applicable). **c)** The Client agrees: (i) to pay for so much of any forward order as the Company invoices from time to time; (ii) that no delay or failure to fulfil any part of any order shall entitle the Client to cancel or vary any order or delay or reduce any payment; (iii) to pay the Company for any demurrage or other costs and expenses in handling and/or holding any goods once ready for delivery and/or collection; and (iv) the Company may supply an excess or deficiency of goods up to 5% of the volume or weight of the amount ordered and the Client shall pay for the amount so supplied and shall not make any claim against the Company for the amount over or under supplied.

9. Purchase Price: **a)** In the absence of a binding quotation all sales are made at the price nominated by the Company at the time of delivery. **b)** All government imposts, levies and excise duties (including any GST or equivalent) shall be to the Client's account. **c)** Prices exclude government imposts, levies, excise duties (including any GST or equivalent) and/or any fees and/or fines levied by emergency service providers unless the Company otherwise agrees.

10. Variations: To be binding any variation or cancellation of these Terms or any order must be approved by the Company in writing.

11. Exclusions: But for the operation of the ACL (if applicable) **a)** No dealing between the Company and the Client shall be or be deemed to be a sale by sample. **b)** If the Company publishes material concerning its goods, services and/or prices anything so published which is incompatible with these Terms is unless otherwise stated expressly excluded. **c)** The Client shall rely on its own knowledge and expertise in selecting any goods and/or services for any purpose and any advice and/or assistance given by or for the Company shall be at the Client's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Client or anyone claiming through the Client. **d)** All goods are sold subject to all applicable trading terms, warranties and representations of the manufacturer. **e)** The Company shall not be responsible nor liable for: (i) paying and/or obtaining any necessary judicial, statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences; and/or (ii) any failure to comply with any special requirements of the Client or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of

any goods and/or services or otherwise). **f)** The Company shall not be liable for any goods and/or services: (i) made or performed to designs, drawings, specifications and/or procedures etc. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Client; (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or (iii) manufactured and/or supplied by any other party. **g)** The Client agrees to: (i) check all goods for compliance with all applicable laws, standards and/or guidelines before use, on-sale and/or application; (ii) comply with all applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by the Company and/or by any manufacturer; and (iii) act in accordance with good practice at all times.

12. Default: Subject to applicable legislation: **a)** On default or breach of any part of these Terms by the Client the full balance of all unpaid monies shall be deemed by this clause to be immediately due and payable (save to the extent that the Company expressly directs otherwise in writing) and the Company may *inter alia* terminate any contract, retain all monies paid, cease further deliveries and/or provision of services, recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party. **b)** The Client agrees not to commence or continue or permit to be commenced or continued through it any suit against the Company while the Client is in default under any part of these Terms or in any of its dealings with the Company. **c)** The Client agrees to indemnify the Company for all fees and expenses payable to solicitors, mercantile agents and other parties acting on behalf of the Company in respect of anything instituted or being considered against the Client whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis). **d)** The Company may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as the Company in its discretion deems appropriate. **e)** The Client irrevocably authorises the payment directly to the Company of any debt due to the Client by any debtor of the Client in reduction of any amount due to the Company under these Terms or otherwise.

13. Indemnity: Under applicable legislation the Client fully indemnifies the Company against any claim or loss arising from or related in any way to any dealing between the Company and the Client and/or arising under these Terms.

14. Intellectual Property: The Client agrees that all intellectual property in the creation of any goods and/or services shall be and remain the property of the Company despite any contribution by the Client and warrants that all designs or instructions to the Company will not cause the Company to infringe any third party intellectual property rights.

15. Other Terms and Conditions: No terms and conditions sought to be imposed by the Client upon the Company shall apply unless otherwise agreed in writing by both parties.

16. Reconditioned Goods: The Company shall not be liable for any reconditioning and/or repair of products made and/or supplied by the Client and/or by any third party.

17. Client Restructure: The Client shall notify the Company in writing of any change in its structure or management including any change in director, shareholder and/or management and/or any change in partnership and/or trusteeship within 7 days of each change. Until such notice is received the Client guarantees the performance of all obligations passing to any third party and fully indemnifies the Company against all loss (including legal costs on an indemnity basis).

18. Jurisdiction: Subject to applicable legislation the Client agrees that all dealings with the Company shall be governed by the laws of Victoria and the Client agrees to submit to the jurisdiction of the appropriate Court nominated by the Company in Melbourne.

19. Credit Limit: Any credit facility or credit limit is an indication only of the intention of the Company at the time. The Company may vary or withdraw credit at any time at its discretion and without any liability to the Client or any other party. Upon breach of any of these Terms, the whole of the monies owing by the Client shall become immediately due and payable.

20. Waiver: An election by the Company not to exercise any of its rights arising as a result of any breach of these Terms shall not constitute a waiver of any rights of the Company relating to any other breach.

21. Notice: If the ACL does not apply the Client agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by the Company and whether or not the Client has actual notice. The Client shall be deemed to be bound by any terms and conditions of trade which may be adopted by the Company immediately any change is adopted and despite any other purported or pre-existing terms and conditions which might otherwise have applied.

22. Security For Payment: Subject to applicable legislation the Client hereby grants to the Company a general lien over all property of the Client until payment in full of all monies owing to the Company.

23. Force Majeure: Subject to applicable legislation the Company shall not be in default or in breach of any contract with the Client as a result of *Force Majeure* including any strike or lock-out.

24. Insolvency: **a)** If the Client commits or is involved in any act of insolvency the Client shall be deemed to be in default under these Terms. **b)** An act of insolvency is deemed to include the appointment of any insolvency practitioner and the calling of any formal meeting of creditors.

25. Containers, Pallets and Stands: The Client agrees on request to return all containers, pallets, stands, reusable packaging and/or display equipment (**Equipment**) provided by the Company and to indemnify the Company for the full replacement cost of any Equipment not returned or damaged.

26. Severability: Any part of these Terms shall be capable of severance without affecting any other part of these Terms.

Please initial:

DEED OF GUARANTEE, INDEMNITY AND CHARGE (this Deed)

To THE COMPANY:

1. **We guarantee** payment to the Company of all monies and performance of all obligations including any past, present and/or future indebtedness and/or obligation of the **Client** and/or any of us arising from any past, present and/or future dealing(s) with the Company.
2. **We indemnify** the Company against all loss and/or damage arising from any past, present and/or future dealing(s) with the Client and/or any of us including all legal costs on an indemnity basis.
3. **We jointly and severally agree:** (a) that this Deed constitutes a "security agreement" for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**) and that the Company has and/or will have a "security interest" in respect of all goods, services and/or any other property supplied or to be supplied by the Company whether present or after acquired for the purposes of the PPSA; (b) to waive rights that we have or may have with regard to PPSA sections 125,130, 132(3)(d), 132(4), 135 and 157 and that this Deed may be produced as evidence of our waiver of rights with regard to the sections listed; (c) to pay to a stake-holder nominated by the Company the amount which the Company certifies is payable before being entitled to dispute whether or not that amount is payable; (d) that this Deed shall remain effective despite any conduct or event (including any arrangement or deed of company arrangement whether or not agreed to by the Company) which but for this clause may have released or varied any obligation of the Client and/or any of us and even if the Client and/or any of us execute(s) in favour of the Company any later agreement, guarantee and/or security; (e) that any payment which is subsequently avoided by any law relating to insolvency shall be deemed not to have been paid; (f) that we sign both in our personal capacity and as Trustee of every trust of which we are trustee; and (g) to notify the Company within 7 days of any material change in the legal structure and/or management of the Client including: (i) any sale or disposition of any part of the business of the Client and/or of any trust of which the Client is Trustee; (ii) any change in director, shareholder, management, partnership and/or trusteeship; (iii) any new charge, mortgage and/or security given to any supplier and/or financier; and/or (iv) any involvement in any franchised business in any capacity.
4. **Charge:** We charge in favour of the Company with payment of all monies owed to the Company by the Client and/or any of us (whether pursuant to this Deed or otherwise) all our estate and interest in any land and/or in any other assets whether tangible and/or intangible in which we now have any legal and/or beneficial interest and/or in which we later acquire any such interest and we agree to execute on request a registrable mortgage in favour of the Company.
5. **Consideration:** the Company agrees at its discretion to grant credit from time to time to the Client and/or to forbear from taking any legal action against the Client for the time being.
6. **Proper law:** We agree that this Deed and any claim or dispute between the Company, the Client and/or any of us shall be governed by the law applicable in the State nominated by the Company and we agree to submit to the jurisdiction of the appropriate Court nominated by the Company in the capital city of that State. If no State is nominated then Victoria shall be deemed to be the nominated State.
7. **Several guarantors:** If more than one of us is named and/or intended to sign as **Guarantor(s)** we each agree to be bound and liable for the full amount owed to the Company even if all of us don't sign and whether or not any amount is extinguished and/or compromised in any way. The Company may make any arrangement and/or compromise with any of us, obtain additional guarantees, indemnities and/or securities from any party and/or release and/or compromise with any of us and/or any other party without otherwise affecting our joint and several liability to the Company. Neither the Company nor the Client is required to sign this Deed.
8. **Credit limit:** Any credit granted by the Company to the Client is at the discretion of the Company and shall not affect our joint and several liability.
9. **Privacy Act:** We hereby consent to the Company (subject to its obligations under the *Privacy Act 1988* (Cth)) at any time collecting, using and/or disclosing commercial and/or consumer information about us: (i) which relates to but is not limited to identity, credit history and/or solvency; (ii) for the purpose(s) of assessing creditworthiness, risk and/or solvency and/or enforcing any rights of the Company; and/or (iii) by arrangement with any authorised agent(s), credit provider(s) and/or reporting service(s) and the like (including any banker(s), the ASIC, ITSA etc.). The Company may refuse to grant credit if any information to which it is entitled is inaccurate or not provided and otherwise agrees to allow us access to all such information. This Deed may be produced as conclusive evidence of our consent.
10. **Severability:** Any part of this Deed shall be severable without affecting any other part of this Deed.
11. **Acknowledgment of liability:** We agree that: (a) the Client is indebted to the Company for an amount which is not less than the sum noted below as at the date noted below; (b) our guarantee is unlimited; and (c) all obligations under this Deed are additional to and do not (save to the extent of any inconsistency) invalidate any obligations any of us may have under any other agreement with the Company.
12. **Definitions:** (a) "the Company" means each of **THE PARTIES** listed below as "**THE COMPANY**" jointly and individually; (b) "We" and "us" means any and all of **THE PARTIES** listed below as **Guarantor(s)** and if more than one jointly and severally; and (c) "Client" means each of **THE PARTIES** listed below as the "**Client**", all related and/or associated companies, trusts and/or other entities, all successors and/or assigns, each trust of which the Client is Trustee (unless expressly excluded in writing), any party or parties who acquire, have any beneficial interest in and/or conduct any part of the business of the Client or any trust of which the customer is Trustee (until notice is given pursuant to sub-clause 3(f) of this Deed) and each member of any franchise/network group of which the Client is a member (whether as franchisee, franchisor or otherwise).
13. **Demand:** We agree that our liability to the Company arises without any demand by the Company upon the Client and/or any of us.
14. **Stamp duty:** We agree to pay any stamp duty applicable to this Deed and/or to any document created pursuant to clause 4. of this Deed.
15. **Attornment:** To give effect to our obligations arising under this Deed we irrevocably appoint any lawyer for the Company as attorney for each of us.
16. **Read and understood:** We have each read and understood this document before signing it (*refer below).

THE PARTIES:

A. The Company: 37South PTY LTD ACN 129 827 612 and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns whether trading as “the Company” and/or otherwise.

B. Client: (** PLEASE COMPLETE - refer below)
..... **ACN** (if applicable)

C. Guarantor(s): 1. (Full name of the first Guarantor – please print)
.....

(Full home address of first Guarantor – please print)
.....

2. (Full name of the second Guarantor – please print)
.....

(Full home address of second Guarantor – please print)
.....

D. Current debt acknowledged: \$

DATED:

EXECUTED AS A DEED in accordance with sub-clause 3(d) of this Deed by the Guarantor(s) in the presence of a witness:

1.
(Signature of first Guarantor)

2.
(Signature of second Guarantor)

Signature of Witness
.....

Signature of Witness
.....

Name of Witness – please print
.....

Name of Witness – please print
.....

* **IMPORTANT NOTICE:** If you sign this Deed you may be required to pay someone else’s debts. You should ensure that you read and understand all terms of this Deed. If necessary seek independent legal and financial advice.

** *If this section is incomplete for any reason the Company may treat as the Client the party so described on Page 1 of the document headed **APPLICATION FOR COMMERCIAL CREDIT ACCOUNT AND SECURITY AGREEMENT.***