

## COMMERCIAL ACCOUNT APPLICATION FORM

<b>1. Customer Details</b>		
Have you previously had a commercial account with us?	Yes/No	
Legal Name of Entity:	(Customer)	
Trading Name:		
Applicant's Status: <input type="checkbox"/> Private company <input type="checkbox"/> Public company <input type="checkbox"/> Trust <input type="checkbox"/> Individual <input type="checkbox"/> Partnership <input type="checkbox"/> Other (provide details)		
Name of partnership/trust:		
Company Number (such as ACN) (if your entity is a company)		
Business Number (such as ABN): (include this whether you trade as a company, sole trader, partnership or trust)		
Business address:		
Registered office address:		
Postal address: (if different)		
<b>Customer Contact details</b>		
Contact Name:	Position:	Phone:
Mobile:	Fax:	
Email Address:		
Accounts Contact:	Accounts Email:	
<b>Sales Contact details</b>		
Sales Contact Name:	Sales contact Phone Number:	
	Sales contact Email:	
<b>Warehouse/Delivery details</b>		
Delivery Address:	Delivery Contact Name:	
Delivery Contact Phone Number:	Delivery contact Email:	
Delivery Instructions:		

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**Trade references**

Name:	Phone:	Email:
Name:	Phone:	Email:
Name:	Phone:	Email:

**2. Details of Guarantors: (please attach a copy of a current drivers licence for each Guarantor)**

Full name:	Home address	Date of Birth:

**3. Agreement to Terms and privacy consent – Customer and Guarantors**

We (the Customer and the signatories to this document including each Guarantor):

- (a) warrant to Uncle Bills (Australia) Pty Ltd ACN 110 447 731, Uncle Bills Asia Pacific Pty Ltd ACN 617 385 734, Action Sports Equipment Pty Ltd ACN 122 978 330 and Uncle Bills (New Zealand) Ltd Company Number 1769374 (as the context requires) and their related bodies corporate (the Company) that the information in this document and all other information provided to the Company in relation to this document is correct and complete and acknowledge that the Company relies on that information in making a decision to grant credit;
- (b) acknowledge that the Company may accept or refuse this application for credit in its sole discretion;
- (c) acknowledge that we have read and understood the Company’s Terms & Conditions of Trade (the Terms) which are attached and are also available at [unclebills.com.au](http://unclebills.com.au), [unclebillsap.com](http://unclebillsap.com); [actionsports.com.au](http://actionsports.com.au);
- (d) agree that the Terms apply to any sale or services provided by the Company and that the Terms will be incorporated by reference into this document; and
- (e) acknowledge that the Company may withdraw credit at any time.

We acknowledge that the Company collects, holds, uses and discloses personal information (including credit information) in accordance with its privacy policy available at [unclebills.com.au](http://unclebills.com.au), [unclebillsap.com](http://unclebillsap.com); [actionsports.com.au](http://actionsports.com.au) and that we have read and understood the Company’s privacy policy. We consent to the Company collecting, holding, using and disclosing our personal information (including credit information) in accordance with its privacy policy.

**4. Signature by Customer’s authorised director / person / proprietor**

Full Name:	Signature:	Date:
Position:		

Full Name:	Signature:	Date:
Position:		

**5. Guarantee and indemnity (required if the Customer is a company)**

In consideration of Uncle Bills (Australia) Pty Ltd ACN 110 447 731, Uncle Bills Asia Pacific Pty Ltd ACN 617 385 734, Action Sports Equipment Pty Ltd ACN 122 978 330 and Uncle Bills (New Zealand) Ltd Company Number 1769374 (as the context requires) and their related bodies corporate (the **Company**) providing or continuing to provide goods or services to the Customer, the Guarantors listed in section 2 of this document jointly and severally agree with the Company as follows:

1. The Guarantors unconditionally and irrevocably guarantee to the Company the due and punctual payment by the Customer for all goods and services that have been supplied or may in future be supplied from time to time at the Customer's request and all other moneys which are payable or may become payable by the Customer to the Company, actually or contingently, now or in the future (**Secured Money**) and undertake to the Company that if the Customer fails to pay any Secured Money when due, the Company will be at liberty to act and the Guarantors will be liable to pay the Secured Money on demand as if the Guarantors were the parties principally bound to pay the Secured Money to the Company.
2. The Guarantors indemnify and will keep indemnified the Company against all losses, damages, costs and expenses (including legal costs and disbursements on a full indemnity basis) which may be suffered or incurred by the Company by reason of any default on the part of the Customer in the performance of its obligations under any contract with the Company, including any failure to pay Secured Money.
3. Each Guarantor charges, for the payment of the Secured Money, all of his or her interest in any real property (including all property acquired after the date of this document and wherever situate) in favour of the Company and agrees on demand by the Company to execute a mortgage over any of that real property to better secure the Secured Money. Each Guarantor grants a security interest pursuant to the *Personal Property Securities Act 2009* (Australia) and the *Personal Property Securities Act 1999* (New Zealand) (as the context requires) in all of the Guarantor's present and after acquired property as security for the Guarantor's obligations in respect of the Secured Money. Each Guarantor irrevocably appoints the Company and any person nominated by the Company as the attorney of the Guarantor with power to execute, sign, seal and deliver any documents to better secure the Secured Money and to perfect any security, including to execute any registrable real property mortgage.
4. If the security created by this document is or becomes void or unenforceable it may be severed from this document without any effect on the validity of the remainder of this document.
5. A certificate signed by a representative of the Company is prima facie evidence and proof of moneys owing by the Customer to the Company at that point in time.
6. Each Guarantor acknowledges that he or she has made his or her own enquiries of the Customer regarding the Customer's past and prospective dealings with the Company. Each Guarantor further acknowledges that the Company is under no obligation to notify him or her of any changes to its trading terms or dealings with the Customer.
7. This guarantee and indemnity is a continuing guarantee and indemnity to the Company for the whole of the Secured Money. The obligations of each Guarantor are absolute and unconditional and will not be affected by anything that might otherwise affect them including but not limited to:
  - a. any variation of the Customer's or any other Guarantor's obligations (whether or not to make them more onerous and whether or not with the Guarantor's knowledge or consent) or any invalidity of them and any release, discharge or other indulgence to the Customer or a Guarantor;
  - b. the insolvency, death or change in constitution of, or any composition or arrangement in respect of, the Customer or any other Guarantor;
  - c. any delay or failure by the Company to take, perfect or enforce any guarantee or security from or by the Customer or any Guarantor;
  - d. the partial payment of the Secured Money;
  - e. the termination of this document; or
  - f. the exercise or purported exercise by the Company of its rights under this document.
8. The Company may proceed against any Guarantor under this document without first having to proceed against the Customer or anyone else.
9. Each Guarantor expressly postpones any claim he or she might have against the Customer, by way of subrogation or otherwise, to the claims made by the Company.
10. All payments which a Guarantor is required to make under this guarantee and indemnity must be made without any set-off, counterclaim, condition or deduction and are payable on demand by the Company.
11. This document is governed by the law of New South Wales and New Zealand (as the context requires) and each Guarantor submits to the jurisdiction of the courts in New South Wales and New Zealand (as the context requires) in connection with matters concerning this document.

**6. Signature of guarantors**

*\* Guarantors must be directors of the Customer*

*\* Each Guarantor signature must be witnessed*

**Guarantor 1**

Full Name:	Guarantor Signature:	Date:
Position:		

Witness Full Name:	Witness Signature:	Date:

**Guarantor 2**

Full Name:	Guarantor Signature:	Date:
Position:		

Witness Full Name:	Witness Signature:	Date:

**Guarantor 3**

Full Name:	Guarantor Signature:	Date:
Position:		

Witness Full Name:	Witness Signature:	Date:

**Terms & Conditions of Trade** as available at [www.unclebills.com.au](http://www.unclebills.com.au)

## 1 Definitions

In this document, the following definitions will apply:

**Australian Consumer Law** or **ACL** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth).

**Business** means the business of providing products, product development, sourcing and logistic services.

**Company** means Uncle Bills (Australia) Pty Ltd ACN 110 447 731, Uncle Bills Asia Pacific Pty Ltd ACN 617 385 734, Action Sports Equipment Pty Ltd ACN 122 978 330 and Uncle Bills (New Zealand) Ltd Company Number 1769374 (as the context requires).

**Customer** means the party placing an Order with or purchasing Products from the Company.

**GST** has the meaning given to that term in the GST Act.

**GST Act** means:

- (a) the A New Tax System (Goods and Services Tax) Act 1999 (Australia); and
  - (b) the Goods and Services Tax Act 1985 (New Zealand),
- as the context requires.

**Indirect Loss** means any one or more of the following:

- (c) economic loss, loss of actual or anticipated profits, loss of revenue, loss of savings, loss of production, loss of business, loss of opportunity, loss of access to markets, loss of goodwill, loss of reputation, loss of credit, loss of publicity, loss of data, loss of use, loss of interest or loss arising from business interruption; and
- (d) any special, indirect, consequential, incidental, punitive, exemplary or unforeseeable loss or any similar loss.

**Insolvency Event** means if a party enters into bankruptcy, provisional liquidation, liquidation, receivership, receiver and managership, voluntary administration or if a controller (as defined in the *Corporations Act 2001* (Australia)) is appointed to a party or if a mortgagee takes possession of any assets of a party whether by itself or by an agent or if a party ceases to trade or is unable to pay its debts as they fall due or if a party makes a compromise with its creditors or enters into a scheme of arrangement.

**Intellectual Property Rights** means all present and future intellectual, industrial or proprietary rights conferred by statute, at common law or in equity anywhere in the world, whether issued or pending, registered or unregistered, including all forms of copyright, patents, trade marks, designs, trade secrets, know-how, confidential information and circuit layouts.

**Made to Order** or **MTO** includes any Product that has been specially ordered for a Customer (whether locally or from overseas) or which is specially manufactured for the Customer or is not a stocked item.

**Order** means an offer by a Customer to purchase Products from the Company.

**PPSA** means:

- (a) the Personal Property Securities Act 2009 (Australia); and
  - (b) the Personal Property Securities Act 1999 (New Zealand),
- as the context requires.

**PPSR** refers to the Personal Property Securities Register established under the PPSA.

**Products** means products supplied by the Company to the Customer from time to time in connection with the Business, including but not limited to, goods in the categories of storage, costumes, furniture, Christmas, electrical, pets, everyday essentials, sports and lifestyle and includes any other goods and if the context allows, services, ordered by the Customer from the Company or supplied by the Company to the Customer.

**Quotation** means a list and specification of Products prepared by the Company together with prices for those Products, either individually or in aggregate.

**Terms** means these Terms & Conditions of Trade.

**Interpretation**

In this document, unless the context otherwise requires:

- (a) words denoting any gender include all genders;
- (b) headings are for convenience only and do not affect interpretation;
- (c) the singular includes the plural and vice versa;
- (d) any schedule attached to this document forms part of it;
- (e) a reference to a party includes its legal personal representatives, successors and permitted assigns;
- (f) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (g) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it;
- (h) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions; and
- (i) a reference to this document means this document and includes any variation or replacement of this document.

## 2 Supply terms

- 2.1 The Terms apply to all sales and other supplies of Products by the Company to the Customer including all Orders. The terms and conditions, if any, contained in any documentation provided by the Customer are excluded and do not apply.
- 2.2 The Terms may be amended from time to time by the Company by notice to the Customer. The amended Terms will apply to any Order or part of an Order made from the date on which the Company notifies the Customer of that change.
- 2.3 Publication of amended Terms on the website of the Company located at [unclebills.com.au](http://unclebills.com.au), [unclebillsap.com](http://unclebillsap.com) and [actionsports.com.au](http://actionsports.com.au) will be deemed to be notice of the amendment to the Terms. The Company may choose, but is not required, to notify the Customer of the existence or content of any amendments to the Terms by any other means.

## 3 Order and acceptance

- 3.1 Any Order submitted to the Company by a Customer will be deemed to incorporate the Terms.
- 3.2 The Company may reject an Order for any reason, including the unavailability of Products, an error in the description of Products on the Company website or in its catalogue or proposal, or an error in the Order. The Company may require additional verification or information before accepting any Order.
- 3.3 Any Order received by the Company will not be deemed to be accepted by, or binding on, the Company unless the Company accepts the Order in whole or in part by oral or written notice to the Customer. Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and, subject to clauses 15 and clause 16.1, there is no right of return. Where the Company gives its consent to cancellation of an Order, the Company may charge a cancellation charge of 20% of the value of the Products ordered.

## 4 Price

- 4.1 The price of the Products will be as agreed between the parties and, where there is no written confirmation of the price, the price will be the reasonable amount indicated on an

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<p>invoice provided by the Company to the Customer in respect of the Products ordered.</p> <p>4.2 Prices in Quotations are indicative only and are based on the quantities of Products specified in a Quotation and prices current at the date of the Quotation.</p> <p>4.3 The Company reserves the right to issue an amended invoice in the case of genuine error on its part in a confirmation, Quotation or invoice.</p> <p>4.4 The Company may charge in addition to the price of the Products an amount for delivery, freight, demurrage and handling at rates dependent on distance and volume of Products supplied. The rates to be applied will be as agreed between the Customer and the Company, or the Company's usual rates for services of that kind or if there are no such usual rates then reasonable rates. The Company's usual rates are subject to change from time to time.</p> <p>4.5 Administrative fees may be charged for Orders under certain dollar values as notified by the Company from time to time.</p> <p>4.6 A service fee sufficient to cover the Company's administration and banking costs may be added by the Company to the price:</p> <p>(a) where payment by the Customer is made by way of credit card; or</p> <p>(b) where any cheque payment is returned unpaid by the bank for any reason.</p> <p>4.7 Any discount or rebate will only apply if the Customer and the Company agree in writing.</p>	<p>7 <i>Credit policy and default</i></p> <hr/> <p>7.1 If the Customer fails to make payment of any monies owing to the Company under these Terms by the due date or breaches any other term of the Terms, the Customer will be in default of these Terms.</p> <p>7.2 The Company may charge interest on all amounts not paid by the Customer by the due date at a rate of 2% per calendar month calculated from the due date and accruing monthly until the date of payment. Accrued interest is payable on demand.</p> <p>7.3 If the Customer is in default of these Terms, the Customer must reimburse and indemnify the Company for and against all expenses, costs and disbursements incurred by the Company in pursuing the debt or a claim under these Terms including the fees charged to the Company by any mercantile agency.</p> <p>7.4 If the Customer fails to pay any amount due under these Terms by the due date, the Company may at its sole discretion:</p> <p>(a) cancel any provision of credit to the Customer;</p> <p>(b) reverse any rebates and discounts allowed;</p> <p>(c) change credit payment terms including by requiring cash pre-payment for any further Products ordered;</p> <p>(d) provide details of the payment default to a credit reporting agency;</p> <p>(e) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;</p> <p>(f) decline to supply Products to the Customer and terminate any other agreement with the Customer; and</p> <p>(g) exercise any other rights at law including pursuant to the PPSA.</p> <p>7.5 A certificate of debt signed by a representative of the Company will be prima facie evidence and proof of money owing by the Customer to the Company at the time of certificate.</p>
<p>5 <i>Credit granting and payment</i></p> <hr/> <p>5.1 The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require a deposit or pre-payment as a condition of delivery.</p> <p>5.2 Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment in cleared funds for all Products supplied is required before delivery.</p> <p>5.3 Where credit has been approved for the Customer, all invoices issued by the Company are due and payable by the date for payment agreed in writing by the Customer and the Company. If no agreement in writing is made, payment is due 30 days after the date of the invoice.</p> <p>5.4 Payments must be made in Australian dollars or New Zealand dollars, as stated on each invoice provided by the Company to the Customer in respect of the Products ordered. Payments remitted in foreign currency must include all related bank charges and currency conversion costs both on the payment and receiving ends.</p>	<p>8 <i>GST</i></p> <hr/> <p>8.1 Terms used in this clause 8 that have a particular meaning in the GST Act have the same meaning in this clause. Any reference to GST payable by a party, or to an input tax credit entitlement of a party, includes any corresponding GST payable by, or input credit entitlement of, the representative member of any GST group of which that party is a member.</p> <p>8.2 All consideration for any taxable supply provided for by these Terms or any related document or agreement is exclusive of GST unless the contrary is clear. The amount of that consideration must be increased by an additional amount equal to the GST on that taxable supply. The party who has to pay the additional amount must pay it at the same time as the consideration in respect of that taxable supply becomes due or, if the supplier has to pay (or allow credit against) the relevant GST before then, the additional amount must be paid at that earlier time.</p> <p>8.3 If an amount of consideration under these Terms or any related document or agreement is calculated as specific compensation or reimbursement for an expense, loss or liability of a supplier, the consideration must be calculated after excluding any amount for which the supplier is entitled to an input tax credit as recipient of the item to which the expenses, loss or liability relates.</p> <p>8.4 A party is not obliged to make any payment for GST unless it is provided with a tax invoice which complies with the GST Act.</p> <p>8.5 If at any time an adjustment is made or required to be made between a party and the relevant taxing authority on account of any amount paid as GST under these Terms or any related document or agreement:</p>
<p>6 <i>Disputed charges</i></p> <hr/> <p>6.1 Subject to clause 16.1, the Customer accepts that minor defects in the Products or incomplete installation do not constitute grounds to dispute an invoice or part of an invoice.</p> <p>6.2 If the Customer disputes any invoiced amount, the Customer must:</p> <p>(a) notify the Company in writing of the grounds of the dispute within 14 days after the date of the relevant invoice; and</p> <p>(b) pay the amount (if any) which is not disputed.</p> <p>6.3 The Company will investigate all disputes reasonably. If the disputed amount is found by the Company to be payable (in whole or in part), the Customer must pay the due amount within seven days after receiving notice of the amount payable by the Customer (including the basis of the Company's decision) from the Company. Invoiced amounts that are not disputed in writing within 14 days after the date of the relevant invoice will be deemed to be correctly charged and accepted by the Customer and the Customer will be liable to pay those amounts in accordance with these Terms.</p>	

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- (a) a corresponding adjustment must be made;
  - (b) adjustment notes must be issued; and
  - (c) any payment must be made,
- between the parties as may be necessary to give effect to the adjustment.

9 Delivery

- 9.1 Delivery of the Products to the Customer is deemed to have taken place when:
- (a) the Customer takes possession of the Products at the Company's address;
  - (b) the Products are delivered to the Customer's nominated address (and will be effective if delivery is made to any person reasonably appearing to be an employee or agent of the Customer); or
  - (c) the Customer's nominated carrier takes possession of the Products in which event the carrier will be deemed to be the Customer's agent.
- 9.2 The Customer's nominated address is the address specified in the Commercial Account Application Form or otherwise notified by the Customer to the Company from time to time.
- 9.3 Delivery of Products must not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company.
- 9.4 Products may be delivered either assembled or unassembled and to be assembled on site.
- 9.5 The Customer must make all arrangements necessary to accept delivery of the Products at the Customer's nominated address. The delivery area must be clean and cleared before delivery. The Customer must ensure adequate access is available.
- 9.6 If the Customer is unable to accept delivery of the Products in accordance with these Terms, the Company may charge all reasonable costs and expenses of demurrage, storage and redelivery.
- 9.7 The Company will not be liable for any loss or damage or expense arising from failure by the Company to deliver the Products at a specified time, promptly or at all and the failure of the Company to deliver at a specific time or at all will not entitle the Customer to treat these Terms (or any connected agreement) as repudiated.
- 9.8 A proof of delivery document signed by the Customer or any person appearing to act on its behalf will be deemed to be confirmation by the Customer that the delivery of the Products is in accordance with the Customer's Order.

10 Made to Order

- 10.1 Subject to clause 16.1, MTO Products are not in any case eligible for return.
- 10.2 If the Company holds MTO Products in inventory specifically for the Customer and normal regular purchasing of these MTO Products by the Customer ceases for any reason, the Customer must buy all remaining inventory of those MTO Products within ten days after receiving notice from the Company requiring it to do so at the price which would have been payable by the Customer if those MTO Products had been ordered on the date of that notice.
- 10.3 If the Customer does not buy MTO Products in accordance with clause 10.2 when required by the Company to do so, the Company may invoice the Customer for those MTO Products and dispose of the MTO Products without liability for any loss or damage suffered by the Customer as a result.

11 Product information, photos and images

Product information, photos and images supplied by the Company, available on the Company website or otherwise contained in catalogues, price lists, advertising or other printed material of the Company are approximate and for

general illustration purposes only, may differ from the actual Products and do not form part of the contractual description of the Products unless agreed to in writing by the Company.

12 Intellectual property

- 12.1 The Customer agrees that:
- (a) the Company owns and retains, and the Customer must not assert any right of any kind to any Intellectual Property Rights in respect of the Products, their design or anything used to make or design them; and
  - (b) nothing in this document transfers any Intellectual Property Rights to the Customer or confers any licence to use any Intellectual Property Rights.
- 12.2 The Customer indemnifies the Company and keeps the Company indemnified against all claims, demands, loss, costs and expenses incurred by or made against the Company, arising out of any actual or alleged infringements of Intellectual Property Rights relating to any logo, design or other material that the Company uses, prints or reproduces at the Customer's request.

13 Retention of title and passage of risk

- 13.1 Terms used in this clause 13 that have a particular meaning in the PPSA have the same meaning in this clause.
- 13.2 Risk in the Products which are the subject of an Order will pass to the Customer on delivery of those Products. The Customer's obligation to insure Products commences when risk passes to the Customer. The Customer must insure the Products for their full value and ensure that the Company's interest is noted on the policy. The Company may require the Customer to demonstrate compliance with this clause including by producing a copy of the insurance policy.
- 13.3 The Company remains the legal and beneficial owner of all Products sold by the Company to the Customer until all amounts secured by all Products have been paid to the Company in cleared funds.
- 13.4 The security interest granted to the Company is a purchase money security interest (PMSI) to the extent that it can be under section 14 of the PPSA. The Customer agrees, to the extent possible under the PPSA, that all collateral which is at any time subject to the Company's security interest secures as a PMSI the purchase price of all other collateral supplied to the Customer and also secures all other amounts owed at any present or future time or contingently to the Company.
- 13.5 Except to the extent agreed to in writing by the Company, the Customer must hold the Products as the Company's fiduciary bailee and must keep the Products physically separate from all other products purchased by the Customer from other suppliers and ensure that they are identifiable as the Company's property. The Customer must notify the Company of all premises at which it holds any Products supplied under this document. The Customer must allow the Company to enter its premises to inspect the Products in its possession on reasonable notice from time to time.
- 13.6 If:
- (a) the Customer fails to pay any amount (whether in part or whole) payable in respect of any Products by the time required for payment;
  - (b) the Customer is the subject of an Insolvency Event; or
  - (c) this document is terminated, or becomes terminable at the option of the Company,
- the Company may, without notice to the Customer, enter at any reasonable time any premises where Products are located (or believed by the Company to be located) and take possession of those Products not paid for and any other Products to the value of the amount owing or secured. The Company's permission to enter the Customer's premises for that purpose is irrevocable. The Company is not liable to the

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<p>Customer in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by the Customer as a result of any action taken by the Company under this clause.</p> <p>13.7 If any Products belonging to the Company are sold or otherwise disposed of by the Customer or if any insurance claim is made in respect of them, the Customer must keep the proceeds of sale or insurance in a separate bank account on trust for the Company.</p> <p>13.8 The Customer must reimburse to the Company all costs incurred by the Company in exercising its rights under this clause.</p> <p>13.9 The parties agree that payments to the Company will be applied in the following order:</p> <p style="margin-left: 20px;">(a) to obligations that are not secured, in the order in which those obligations were incurred;</p> <p style="margin-left: 20px;">(b) to obligations that are secured, but not by PMSIs, in the order in which those obligations were incurred;</p> <p style="margin-left: 20px;">(c) to obligations that are secured by PMSIs, in the order in which those obligations were incurred.</p> <p>13.10 The Company may register its security interest, including as a PMSI. The Customer must do anything (such as obtaining consents and signing documents) which the Company requires for the purposes of ensuring that the Company's security interest is enforceable, perfected, first in priority and otherwise effective under the PPSA. To assure performance of its obligations, the Customer gives the Company an irrevocable power of attorney to do anything the Company considers the Customer should do under this document.</p> <p>13.11 The rights of the Company under this document are in addition to and not in substitution for the Company's rights under other law (including the PPSA) and the Company may choose whether to exercise rights under this document or under such other law (or both) as it sees fit.</p> <p>13.12 To the extent that:</p> <p style="margin-left: 20px;">(a) section 115 of the PPSA permits the parties to contract out of any provision of Chapter 4 of the PPSA; and</p> <p style="margin-left: 20px;">(b) such a provision requires the Company to give a notice, allow time, give an account, or allow reinstatement or similar rights to the Customer in connection with enforcement,</p> <p>the parties agree that all such provisions are contracted out of.</p> <p>13.13 Provisions of Chapter 4 of PPSA confer rights on the Company. The Customer agrees that in addition to those rights, the Company will, if there is default by the Customer, have the right to seize, purchase, take possession or apparent possession, retain, deal with or dispose of any goods, not only under those sections but also, as additional and independent rights, under this document, and the Customer agrees that the Company may do so in any manner it sees fit including (in respect of dealing and disposal) by private or public sale, lease or licence.</p> <p>13.14 The Customer waives its rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPSA.</p> <p>13.15 The parties agree not to disclose information of the kind that can be requested under section 275(1) of the PPSA. The Customer must do everything necessary on its part to ensure that section 275(6)(a) of the PPSA continues to apply. The agreement in this sub-clause is made solely for the purpose of allowing the Company the benefit of section 275(6)(a) and the Company will not be liable to pay damages or any other compensation or be subject to injunction if the Company breaches this sub-clause.</p>	<p>14 <i>Retention of title and passage of risk (New Zealand Customers)</i></p> <hr/> <p>14.1 Terms used in this clause 14 that have a particular meaning in the PPSA have the same meaning in this clause.</p> <p>14.2 Risk in the Products which are the subject of an Order will pass to the Customer on delivery of those Products. The Customer's obligation to insure Products commences when risk passes to the Customer. The Customer must insure the Products for their full value and ensure that the Company's interest is noted on the policy. The Company may require the Customer to demonstrate compliance with this clause including by producing a copy of the insurance policy.</p> <p>14.3 The Company remains the legal and beneficial owner of all Products sold by the Company to the Customer until all amounts secured by all Products have been paid to the Company in cleared funds.</p> <p>14.4 The Purchaser acknowledges that clause 14.3 gives rise to a security interest in all Products supplied by Uncle Bills (New Zealand) Ltd to the Customer.</p> <p>14.5 Except to the extent agreed to in writing by the Company, the Customer must hold the Products as the Company's fiduciary bailee and must keep the Products physically separate from all other products purchased by the Customer from other suppliers and ensure that they are identifiable as the Company's property. The Customer must notify the Company of all premises at which it holds any Products supplied under this document. The Customer must allow the Company to enter its premises to inspect the Products in its possession on reasonable notice from time to time.</p> <p>14.6 If:</p> <p style="margin-left: 20px;">(a) the Customer fails to pay any amount (whether in part or whole) payable in respect of any Products by the time required for payment;</p> <p style="margin-left: 20px;">(b) the Customer is the subject of an Insolvency Event; or</p> <p style="margin-left: 20px;">(c) this document is terminated, or becomes terminable at the option of the Company,</p> <p>the Company may, without notice to the Customer, enter at any reasonable time any premises where Products are located (or believed by the Company to be located) and take possession of those Products not paid for and any other Products to the value of the amount owing or secured. The Company's permission to enter the Customer's premises for that purpose is irrevocable. The Company is not liable to the Customer in contract, tort or otherwise, for any costs, damages, expenses or losses incurred by the Customer as a result of any action taken by the Company under this clause.</p> <p>14.7 The Customer agrees that the Company may sell any of the Products without giving notice of the sale to the Customer.</p> <p>14.8 If any Products belonging to the Company are sold or otherwise disposed of by the Customer or if any insurance claim is made in respect of them, the Customer must keep the proceeds of sale or insurance in a separate bank account on trust for the Company.</p> <p>14.9 The Customer must reimburse to the Company all costs incurred by the Company in exercising its rights under this clause.</p> <p>14.10 The Customer undertakes to:</p> <p style="margin-left: 20px;">(a) promptly do all things, execute all documents and/or provide any information which Uncle Bills (NZ) Ltd requires to perfect and maintain the perfection of its security interest (including by registration of a financing statement);</p> <p style="margin-left: 20px;">(b) give Uncle Bills (NZ) Ltd not less than 14 days' prior written notice of any proposed change in its name and/or any other change to its details; and</p> <p style="margin-left: 20px;">(c) immediately on request by Uncle Bills (NZ) Ltd (and at the Customer's expense) obtain from any third</p>
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	party such agreements and waivers of any security interest that third party has in the Products, to ensure that at all times Uncle Bills (NZ) Ltd has a first priority security interest in the Products.				
14.11	The Customer waives its rights to receive a copy of any verification statements under the PPSA and agrees that as between Uncle Bills (NZ) Ltd and the Customer, the Customer will have no rights under (or by reference to) sections 114(1)(a), 116, 120(2), 121, 125, 129, 131, 133 and 134 of the PPSA.	16.3	The Customer agrees that it does not rely on any guarantee, term, condition, warranty, undertaking, inducement or representation made by or on behalf of the Company which is not expressly stated in this document.		
15	<i>Defects, claims and returns</i>	16.4	Where any legislation implies or imposes a guarantee, term, condition, warranty, undertaking, inducement or representation in relation to this document and the Company is not able to exclude that guarantee, term, condition, warranty, undertaking, inducement or representation ( <b>Non-Excludable Provision</b> ), and the Company is able to limit the remedy of the Customer for a breach of the Non-Excludable Provision, then the Company's liability for breach of the Non-Excludable Provision is limited to (at the Company's election):		
15.1	The operation of this clause 15 is subject to clause 16.1.		(a) in the case of goods, the repair or replacement of the goods or the supply of equivalent goods (or the payment of the cost of doing so); and		
15.2	The Customer accepts that:		(b) in the case of services, the supplying of the services again (or the payment of the cost of doing so).		
	(a) minor defects in the Products do not constitute grounds for a claim or return;	16.5	Subject to the Company's obligations under the Non-Excludable Provisions and clause 16.6, the Company's maximum aggregate liability to the Customer in respect of any one claim or series of connected claims under this document or in connection with its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, or under an indemnity or otherwise is limited to an amount equal to the amount paid by the Customer to the Company for the Products.		
	(b) MTO Products may not be returned; and	16.6	Subject to the Company's obligations under the Non-Excludable Provisions, the Company is not liable to the Customer or any third party for any Indirect Loss arising in connection with this document or its subject matter, whether arising in or for breach of contract, negligence or other tort, breach of statutory duty, breach of warranty or guarantee, under an indemnity or otherwise and whether or not that loss was foreseeable, even if the Company has been advised of the possibility of such loss.		
	(c) refunds or returns will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or other applicable legislation.	16.7	Where the Customer is acquiring (or represents itself as acquiring) any Products for the purposes of a business, in terms of section 43(2) of the <i>Consumer Guarantees Act 1993</i> (New Zealand) ( <b>Act</b> ), the Customer will not assert or attempt to assert any rights or claims against the Company under the provisions of that Act.		
15.3	The Customer will inspect and check all Products received and within seven days after receipt notify the Company in writing of any shortage in quantity, defect, incorrect specification, damage or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products correspond with those ordered before use. After use or expiry of the seven day period following receipt, the Products will be deemed to be free from any defect or damage at delivery.	16.8	Where the Customer onells any Products to consumers who purchase those Products for business purposes, the Customer agrees to contract out of the Act (to the extent permitted by law) in the manner provided for in the Act. If the Customer fails to contract out of the Act, the Customer agrees to indemnify the Company against any claim, expenses or loss suffered or incurred by the Company as a direct or indirect consequence of such failure.		
15.4	The Customer agrees that it will not return any Products without first informing the Company. No credit or replacement will be given unless and until Products returned have been verified as being valid for return or are defective. The Company reserves the right to recover its costs where the returned Products prove not to be valid for return or are not defective. Returned Products must be returned to the Company to the address notified by the Company to the Customer from time to time.	17	<i>Set-off and assignment</i>		
15.5	Other than in relation to Products not ordered or found to be defective ( <b>Conforming Products</b> ):	17.1	The Customer is not entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.		
	(a) all freight, handling and other charges in relation to returning Conforming Products are the responsibility of the Customer;	17.2	The Customer must not assign or subcontract any contract for the purchase of Products or its rights or obligations under these Terms (or a connected agreement).		
	(b) the Customer will be liable for a restocking fee of 10% of the price of the Conforming Products returned on all Products accepted for return; and	17.3	The Company may, at any time, novate, assign or transfer part or all of its rights and obligations under this document to any third party and, to the extent required, the Customer consents to the novation, assignment or transfer and agrees to enter into a novation, assignment or transfer agreement on terms specified by the Company.		
	(c) to the extent permitted by law, the Company will have no further liability to the Customer in respect of the Conforming Products.	18	<i>Force majeure</i>		
15.6	Where the freight, handling and other charges in relation to a returned Product are the responsibility of the Company:		The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's		
	(a) the Company must authorise those costs in writing to the Customer before the Customer returns the Product to the Company; or				
	(b) the Company may elect to collect the Product from the Customer or nominate its own carrier.				
16	<i>Limitation of liability</i>				
16.1	Nothing in this document is or should be interpreted as an attempt to modify, limit or exclude any right or remedy, or any guarantee, term, condition, warranty, undertaking, inducement or representation, implied or imposed by legislation which cannot be modified, limited or excluded.				
16.2	The Company excludes to the extent permitted by law all other guarantees, terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise, which would otherwise be implied into				

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failure to complete an Order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock out, war, the inability of the Company's suppliers to supply necessary materials or any other matter beyond the Company's control.

19 *Privacy consent*

The Company collects, uses, stores and discloses personal information in accordance with the Company's privacy policy, which the Customer acknowledges it has had an opportunity to read and understand. The Customer can access the current policy from the Company's website located at [www.unclebills.com.au](http://www.unclebills.com.au).

20 *Indemnities*

20.1 Each indemnity in this document:

- (a) is a continuing obligation, separate and independent from the other obligations of the parties;
- (b) will not be affected by any matter including without limitation, the termination, renewal or extension of this document or any indulgence, waiver or other concession given by a party unless the party benefiting from the indemnity agrees in writing; and
- (c) includes legal costs and disbursements on a full indemnity basis.

20.2 It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this document.

20.3 A party must pay on demand any amount it must pay under an indemnity in this document.

21 *General*

21.1 If the Customer disposes of all or part of its business, the Customer must immediately notify the Company in writing of that disposal to enable the Customer's account to be closed. If the Customer fails to notify the Company of the disposal, the Customer will remain fully liable to the Company for the payment of any Products subsequently sold to the third party on the Customer's account as if the Customer had ordered the Products itself, regardless of whether the third party acquiring all or part of the Customer's business is also liable.

21.2 The Company may serve any notice or court document on the Customer by hand or by prepaid post to the address of the Customer last known to the Company or by email to an email address supplied by the Customer. Any such notice is taken to be duly given and received:

- (a) if delivered by hand, when delivered; or
- (b) if delivered by prepaid post, two Business Days after being deposited in the mail with postage prepaid; or
- (c) if delivered by email, on the day of dispatch provided that no notice of non-delivery is received.

21.3 This document records the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this document.

21.4 The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under these Terms (or any connected agreement) does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

21.5 The rights, powers, authorities, discretions and remedies of a party under this document do not exclude any other right, power, authority, discretion or remedy.

21.6 If any provision of this document is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- (a) where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- (b) where the offending provision cannot be read down then that provision must be severed from the document in which event, the remaining provisions of this document operate as if the severed provision had not been included; and
- (c) the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this document.

21.7 These Terms can only be amended, supplemented or replaced by another document signed by the parties or as otherwise permitted by these Terms.

21.8 This document (and each connected agreement) is governed by the law of New South Wales and New Zealand. Each party submits to the jurisdiction of the courts in New South Wales and New Zealand (as the context requires) in connection with matters concerning this document and any connected agreement. If the Local Court has jurisdiction, the parties consent to the exclusive jurisdiction of the Local Court closest to the Company's place of business. Any agreement entered into in connection with these Terms will be deemed to have been entered into at the Company's place of business.