

WINONA AUSTRALIA

ACN 161 457 058
281 Old South Head Road
Bondi Beach NSW 2026
P: 02 9300 0997 – E: contact@winonaaustralia.com

COD (cash on delivery) / Credit Application

CUSTOMER'S NAME:	DATE:
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CUSTOMER DETAILS	
Phone:	Fax:
Mobile:	Email:
BILLING ADDRESS:	PHYSICAL ADDRESS:
STATE:	POSTCODE:
STATE:	POSTCODE:
ACN:	ABN:
Acting in its own right and/or as Trustee for the:	Trust
Trading as:	Trust ABN:

CONTACT PERSON(S)	
1. Full Name:	2. Full Name:
Position:	Position:
Phone:	Phone:
Email:	Email:

CREDIT REQUEST	
Requested Credit Limit:	
TRADE REFERENCES	
Business Name 1:	Business Name 2:
Contact Person:	Contact Person:
Phone:	Phone:

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS OF TRADE (overleaf) of Lani Winona Pty Ltd which form part of, and are intended to be read in conjunction with this Credit Application and agree to be bound by these conditions. I authorise the use of my personal information as detailed in the Privacy Act clause therein.	
SIGNED (CUSTOMER):	SIGNED (SELLER):
Name:	Name:
Position:	Position:
Date:	Date:
WITNESS TO CUSTOMER'S SIGNATURE:	
SIGNED:	
Name:	

WINONA - Terms & Conditions of Trade

1. Definitions

- 1.1. "Seller" means Lani WINONA Pty Ltd ACN 161 457 058 trading as WINONA, any current or future holding company, subsidiary, related company or successors and assigns of these companies or any person acting on behalf of and with the authority of Lani WINONA Pty Ltd ACN 161 457 058 trading as WINONA.
- 1.2. "Customer" means any person or entity buying/ordering the Goods as specified in any invoice, quotation, document or order, including any online order, and if there is more than one Customer is a reference to each Customer jointly and severally.
- 1.3. "Delivery" means delivery of the Goods. Delivery of the Goods is taken to occur at the time that (a) the Customer or the Customer's nominated carrier takes possession of the Goods at the Seller's address; or (b) the Seller (or the Seller's nominated carrier) delivers the Goods to the Customer's nominated address even if the Customer is not present at the address.
- 1.4. "Goods" means all Goods or Services supplied by the Seller to the Customer at the Customer's request from time to time (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.5. "Price" means the Price payable for the Goods as agreed between the Seller and the Customer in accordance with clause 2 below.
- 1.6. "Terms and Conditions" means the Terms and Conditions outlined herein, as amended from time to time in writing by the Seller.

2. Offer and Acceptance

- 2.1. If a Customer wishes to obtain credit from the Seller in relation to any Goods, that Customer may submit to the Seller a completed Credit Application in the form as the Seller may require (the "Credit Application").
- 2.2. The submission of a Credit Application by a Customer will constitute an offer from that Customer to buy the Goods and/or Services (an "Offer") pursuant to these Terms and Conditions.
- 2.3. The Customer is taken to have accepted and is immediately bound by these Terms and Conditions upon submission of a signed Credit Application by the Customer and/or if the Customer provides the Seller with any instructions for the supply of Goods and/or Services and/or if the Customer accepts any Good and/or Services supplied by the Seller.

3. Price and Payment

- 3.1. The Price shall be as indicated on invoices provided by the Seller to the Customer in respect of the Goods supplied.
- 3.2. Time for payment for the Goods shall be of the essence and will be stated on the invoice, quotation, or any other order forms, including any online order form. If no time is stated then payment will be immediately due and payable upon an order being placed.
- 3.3. In the event that the Seller provides Goods on credit to a Customer at the sole discretion of the Seller, the Customer will be required to pay a non-refundable 40% deposit for each minimum spend of AUD\$2,000.00 immediately upon placing an order/s for Goods.

4. Delivery of Goods>Returns

- 4.1. The cost of Delivery is either included in the Price or is in addition to the Price.
- 4.2. The Customer must take Delivery by receipt or collection of the Goods whenever they are within reason tendered for Delivery. In the event that the Customer is unable to take Delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery and/or storage.
- 4.3. Delivery of the Goods and/or Services to a third party nominated by the Customer is deemed to be Delivery to the Customer for the purposes of this agreement.
- 4.4. Any time or date given by the Seller to the Customer is an estimate only. The Customer must still accept Delivery of the Goods even if late and the Seller will not be liable for any loss or damage incurred by the Customer as a result of the Delivery being late.
- 4.5. The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Services (or any of them) promptly or at all where due to circumstances beyond the control of the Seller.
- 4.6. The Customer must inspect the Goods on Delivery and must within 48 hours of Delivery notify the Seller in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. Upon such notification the Customer must allow the Seller to inspect the Goods, approve and issue a RA#. Seller must receive returned goods within seven (7) days. The faulty item will be replaced if in stock, otherwise if it is not in stock, a credit will be applied to the Customer's account.
- 4.7. The Seller makes no warranties or other representations under these Terms and Conditions including but not limited to the quality or suitability of the Goods. The Seller's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 4.8. If the Customer is a consumer within the meaning of the CCA, the Seller's liability is limited to the extent permitted by s 64A of Schedule 2.
- 4.9. If the Customer is not a consumer within the meaning of the CCA, the Seller's liability for any defect or damage in the Goods is:
 - (a) limited to the value of any express warranty or warranty card provided to the Customer by the Seller at the Seller's sole discretion;
 - (b) limited to any warranty to which the Seller is entitled, if the Seller did not manufacture the Goods;
 - (c) otherwise negated absolutely.
- 4.10. Subject to this clause 7, returns will only be accepted provided that:
 - (a) the Customer has complied with the provisions of clause 7.1; and
 - (b) the Seller has agreed that the Goods are defective; and
 - (c) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Goods are returned in as close a condition to that in which they were delivered as is possible in original packaging and swing tags attached.

5. Risk

- 5.1. Risk of damage to or loss of the Goods passes to the Customer on Delivery.
- 5.2. In the event that the Customer requests the Seller to deliver the Goods to an unattended address, then such Goods shall be left at the Customer's sole risk.

6. Title to Goods (including any incidental items supplied as part of any Services)

- 6.1. The Seller and the Customer agree that ownership of the Goods shall not pass until:
 - (a) the Customer has paid the Seller all amounts owing to the Seller; and
 - (b) the Customer has met all of its other obligations to the Seller.
- 6.2. It is further agreed that:
 - (a) until ownership of the Goods passes to the Customer in accordance with clause 6.1, the Customer is only a bailee of the Goods and must return the Goods to the Seller on request.
 - (b) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Seller and must pay or deliver the proceeds to the Seller on demand.

7. Cancellation

- 7.1. The Seller may cancel any contract to which these Terms and Conditions apply or cancel Delivery of Goods at any time before the Goods are Delivered by giving written notice to the Customer. The Seller shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 7.2. If the Customer cancels any order for Goods or cancels Delivery of Goods after 48 hours from receipt of the order for Goods by the Seller, then the Customer shall be liable for and shall pay the Seller the greater of:
 - (a) a cancellation fee calculated at 40% of the order for Goods; or
 - (b) any and all loss incurred (whether direct or indirect) by the Seller as a direct result of the cancellation (including, but not limited to, any loss of profits)

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and the Customer acknowledges that its liability pursuant to sub-clauses 8.3(a) or 8.3(b), whichever shall apply, are a true estimate of the damages sustained by the Seller by reason of the cancellation.

- 7.3. Cancellation of orders for Goods made by Customer's will not be accepted once production has commenced and must be paid for in full. This clause applies across all orders and is not specific to non-stockist items.

8. Intellectual Property

- 8.1. Where the Seller has designed, drawn, or made Goods to the Customer's specifications, then the copyright in those designs and drawings and any related documents shall remain vested in the Seller, and shall only be used by the Customer at the Seller's sole discretion.

9. Personal Property Securities Act 2009 ("PPSA")

- 9.1. Upon assenting to these Terms and Conditions in writing the Customer acknowledges and agrees that these Terms and Conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods and/or collateral (account) – being a monetary obligation of the Customer to the Seller for Services – that have previously been supplied and that will be supplied in the future by the Seller to the Customer.
- 9.2. Subject to any express provisions to the contrary nothing in these Terms and Conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

10. Security and Charge

- 10.1. In consideration of the Seller agreeing to supply the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets including personal property capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these Terms and Conditions (including, but not limited to, the payment of any money).
- 10.2. The Customer indemnifies the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Seller's rights under this clause.

11. Default and Consequences of Default

- 11.1. Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two per cent (2.0%) per calendar month after as well as before any judgment.
- 11.2. If the Customer owes the Seller any money the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, debt collection fees, and bank dishonour fees).
- 11.3. Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), or if the Customer's account is overdue by thirty or more days, the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under these Terms and Conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller has exercised its rights under this clause.
- (a) If the Seller suspends or terminates the supply of Goods to the Customer, without prejudice to any other remedies the Seller may have and without limiting any of the other provisions herein, the Seller may in its discretion resume Delivery of Goods in respect of which Delivery was suspended or terminated by the Seller.
- 11.4. Without prejudice to the Seller's other remedies at law, the Seller shall be entitled to cancel all or any part of any order for Goods placed by the Customer which remains unfulfilled and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
- (a) Any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
- (b) The Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefits of creditors; or
- (c) A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

12. Privacy Act 1988

- 12.1. The Customer agrees for Seller to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by Seller.
- 12.2. The Customer agrees that Seller may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 12.3. The Privacy Policy located on the Seller's website applies to the Terms and Conditions herein.

13. Jurisdiction

- 13.1. These Terms and Conditions are governed by and in accordance with the law for the time being enforced in the State of New South Wales, and each party irrevocably submits to the jurisdiction of the Courts in the State of New South Wales.

14. Waiver

- 14.1. The failure by the Seller to enforce any provision of these Terms and Conditions shall not be treated as a waiver of that provision, nor shall it affect the Seller's right to subsequently enforce that provision.

15. General

- 15.1. The Seller shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these Terms and Conditions (alternatively the Seller's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 15.2. The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Seller nor to withhold payment of any invoice because part of that invoice is in dispute.

PERSONAL/DIRECTORS GUARANTEE AND INDEMNITY

IN CONSIDERATION of Lani Winona Pty Ltd and its successors and assigns (“Winona”) at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to:

..... (“the Customer”)

1. Pursuant to the terms of the Credit Application, the Guarantor/s:
 - a. guarantee the punctual payment to Winona of all amounts which the Customer does now or may at any time in the future owe to Winona;
 - b. guarantee the punctual and correct compliance with all obligations (including payment obligations) which the Customer owes now or may in the future owe to Winona;
 - c. indemnify Winona against any loss that it may suffer if the Customer does not meet any of its obligations.
2. This Guarantee and Indemnity creates a principal obligation from the Guarantor/s to Winona and it is in addition to any security which Winona holds from the Customer. This Guarantee and Indemnity may be enforced without Winona having to first take any steps against the Customer or its security.
3. This Guarantee and Indemnity is not affected and is still enforceable:
 - a. If any amount owing to Winona by the Customer is not recoverable by Winona for any reason at all;
 - b. if Winona does not comply with any law or any agreement with the Customer;
 - c. if Winona grants any time, release or other concession to the Customer or the Guarantor/s;
 - d. in the event of death, incapacity, administration, bankruptcy or insolvency of the Customer or of any of the Guarantor/s;
 - e. if a payment by the Customer or by the Guarantor/s to Winona is set aside in bankruptcy, liquidation or official management of the Customer or of the Guarantor/s;
 - f. if the Guarantor/s cease to be directors of or be involved with the Customer or the status or structure of the Customer changes at all;
 - g. if any other thing occurs which could otherwise limit the effect of this Guarantee and Indemnity.
4. This Guarantee and Indemnity is a continuing guarantee and indemnity and is not wholly or partially discharged until all arrangements between Winona and the Customer are ended, all amounts owing to Winona by the Customer are paid, and all obligations of the Customer to Winona are complied with in full.
5. The Guarantor/s agree to waive all rights inconsistent with the terms of this Guarantee and Indemnity.
6. The Guarantor/s hereby charge with payment of the monies and the compliance with all obligations secured by this Guarantee and Indemnity all beneficial interests (freehold and leasehold) in real property held now or in the future by both of or any of the Guarantor/s. The Guarantor/s agree that if demand is made upon him or her or it by Winona, that Guarantor/s will immediately execute a mortgage or other instrument of security, or consent to a caveat, as required by Winona to better secure the obligations of the Guarantor/s under this equitable mortgage and against the event that he, she or it fails to do so within a reasonable time from being so requested, that Guarantor/s hereby irrevocably and by way of security appoint any credit manager or solicitor engaged by Winona to be his or her other true and lawful attorney to execute and register such instrument.
7. The Guarantor/s agree that Winona may seek from a credit reporting agency, a credit report containing personal information about him or her to assess whether to accept him or her as a Guarantor under the terms of this Guarantee and Indemnity. The Guarantor/s agree that this Guarantee and Indemnity remains in force until the terms of the Agreement have been fully complied with by the Customer.
8. If the Customer is a trustee of a trust, the Guarantor/s warrant that Winona has full authority as trustee to enter into agreements such as the Agreement.
9. If a notice or a demand is given to the Guarantor/s, it will mean that the terms of the notice or demand must be complied with.
10. "Winona" and "Customer" include their respective successors and assigns.
"Guarantor/s" includes the heirs, executors, administrators and assignees of each of the Guarantor/s.
11. An obligation on the part of more than one party shall bind them jointly and each of them severally.

GUARANTOR 1	GUARANTOR 2
Signed:	Signed:
Full Name:	Full Name:
Home address:	Home address:
Date of Birth:	Date of Birth:
Signature of Witness:	Signature of Witness:
Name of Witness:	Name of Witness:
Dated:	Dated: