



CREDIT ACCOUNT APPLICATION

AGREEMENT FOR THE SUPPLY OF GOODS and TERMS AND CONDITIONS

DATED: ____ / ____ / ____

SCHEDULE

PARTIES:

1. **SUPPLIER**
GOLF IMPORTS PTY LTD (ABN 77 120 260 773)
of 3/381 Thompsons Road, North Geelong, VIC 3215
Facsimile: 03 5277 3966
Email: admin@golfimports.com.au
("Supplier")

2. **BUYER:**

_____ (ACN _____)
(NAME OF BUYER)

Of _____
(DELIVERY ADDRESS)

Of _____
(MAILING/BILLING ADDRESS)

Phone: _____ Accounts Phone: _____

Facsimile: _____ Accounts Contact: _____
(NAME)

Email: _____ Accounts Email: _____

3. **BUSINESS REFERENCES:**

(NAME OF 1ST REFERENCE)

Phone: _____ Email: _____

AND:

(NAME OF 2ND REFERENCE)

Phone: _____ Email: _____



CREDIT ACCOUNT APPLICATION

4. ACCOUNT TYPE REQUESTED (Please tick 1 box only)

CREDIT ACCOUNT - Account payable 30 days from end of the month following invoice
Monthly Auto Charge: YES NO

PRE-PAID ACCOUNT - Account must be paid prior to receipt of goods

Credit Card Details for Pre-Paid Accounts or Monthly Auto Charge:

Card No: _____ - _____ - _____ - _____

Exp: _____ / _____

Card Name: _____ Signature _____

5. GUARANTORS:

(NAME OF 1ST GUARANTOR)

Of _____
(RESIDENTIAL ADDRESS OF 1ST GUARANTOR)

Phone: _____ Email: _____

AND:

(NAME OF 2ND GUARANTOR)

Of _____
(RESIDENTIAL ADDRESS OF 2ND GUARANTOR)

Phone: _____ Email: _____

SIGNED SEALED AND DELIVERED

By signing this application you agree you have read and understand the terms and conditions set out below.

by the said _____ by the said _____
(Guarantor 1 Signature) (Guarantor 2 Signature)

in the presence of _____ in the presence of: _____
Witness (signature) Witness (signature)

Full name: _____ Full name: _____

Address: _____ Address: _____

BACKGROUND

- A. The Supplier sells a range of golf clubs, golf equipment and golf related products.
- B. The Supplier and the Buyer have agreed that the Supplier will supply and the Buyer will purchase the goods described in this Agreement on the terms and conditions herein.
- C. The Guarantors (where applicable) have agreed to guarantee the obligations of the Buyer, including but not limited to the provision of payment, pursuant to the terms and conditions of this Agreement.

TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 Definitions

In this Agreement unless the context otherwise requires:

“**Agreement**” means this Agreement, including any schedule or Annexure attached or referred to in this Agreement.

“**CIF**” means Cargo Insurance Freight.

“**Corporations Act**” means the Corporations Act 2001 (Cth)

“**Goods**” means the Goods supplied pursuant to this Agreement and described in Annexure 1 to this Agreement.

“**Guarantee and Indemnity**” has the meaning given to it pursuant to clause 8 of this Agreement.

“**the Buyer’s Principal Place of Business**” means the address of the Buyer set out in the Schedule to this Agreement;

“**Insolvency Event**” means the occurrence of any of the following:

- (a) a person is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) a person has had a controller (as defined in the Corporations Act) appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property; or
- (c) a person is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (a), (b) or (c) above; or
- (e) a person is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) a person is the subject of an event described in section 459C(2) or section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement reasonably deduces it is so subject); or
- (g) a person is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction,

“**Personal Property Security Register**” has the same meaning given to it in Chapter 5 of the PPSA.

“**Price**” means the total price of the Goods (excluding GST) as stipulated in Annexure 1 to this Agreement.

“**PPSA**” means the *Personal Property Securities Act 2009* (Commonwealth) as amended from time to time.

“**Register**” and “**Registration**” mean registration or renewal of registration of the Security Interest on the Personal Property Security Register pursuant to Chapter 5 of the PPSA.

“**Security Interest**” has the same meaning given to it in Section 12 of the PPSA.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) a reference to a word includes the singular and plural of the word and vice versa;
 - (b) a reference to a gender includes any gender;
 - (c) a term which refers to a natural person includes a company, partnership, an association or body corporate;
 - (d) headings are included for convenience only and do not effect interpretation;
 - (e) a reference to a document includes a reference to that document as amended, novated, supplemented, varied or replaced;
 - (f) a reference to a statute or statutory provision includes such statute or statutory provision as amended, consolidated or replaced;
 - (g) a reference to a clause, schedule or annexure is a reference to an item of that type included in or attached to this Agreement;
 - (h) a reference to a party or to the parties is a reference to a party, or the parties, to this Agreement;
 - (i) a covenant representation warranty or agreement by or between more than one person binds them jointly and severally;
 - (j) the obligations and liabilities imposed and the rights and benefits conferred upon the parties to this Agreement shall be binding upon and
- enure in favour of each of the party’s successors, substitutes (including persons substituted by novation) and permitted assigns).

2. PURCHASE OF GOODS

The Supplier agrees to supply and the Buyer agrees to purchase the Goods for the Price and otherwise on the terms and conditions contained herein.

3. PAYMENT

3.1 All amounts referred to are Australian Dollars

3.2 At the Suppliers discretion and set out in Annexure 1, the Supplier may invoice the Buyer for the Goods sold hereunder:

- (a) immediately upon delivery; or
- (b) at any time after this Agreement is executed by the parties if the Buyer:
 - (i) defaults under this Agreement;
 - (ii) repudiates this Agreement, including purporting to cancel or otherwise avoid its obligations to purchase the Goods; or
 - (iii) an Insolvency Event occurs

3.3 the Buyer must remit payment of the Price to the Supplier:

- (a) if the Buyer receives an invoice pursuant to:
 - (i) clause 3.2(a), on or before the last day of the calendar month following the month in which the Buyer is invoiced for the Goods;
 - or
 - (ii) pursuant to terms set out below in Annexure 1; or
- (ii) clause 3.2(b), immediately, and
- (b) by delivery to the Supplier of an unendorsed bank cheque or cheques in favour of the Supplier or payment of cleared funds into a bank account as directed by the Supplier or by way of money order, cash or credit card (Mastercard or Visa only).

3.4 If the Buyer defaults in payment of the Price or any part thereof, the Supplier may immediately cease supply of further goods and sue for:

- (a) the unpaid Price; and
 - (b) interest on any money overdue under this Agreement at a rate of 2% higher than the rate fixed for the time being under Section 2 of the *Penalty Interest Rates Act 1983*, which will accrue from the date that the payment became overdue; and
 - (c) the Supplier’s costs and expenses, including, but not limited to, legal costs on a full indemnity basis, incurred as a result of the Buyer’s default and in enforcing this Agreement,
- without mediating, without giving notice and without affecting any other right.

3.5 The Buyer indemnifies the Supplier and its directors against all or any losses, damages, claims, actions, suits, proceedings, demands, costs and expenses for which the Supplier or its directors are or may be or become liable arising out of a default or repudiation of this Agreement by the Buyer.

4. DELIVERY OF GOODS

4.1 Transportation

- (a) The Supplier will deliver the Goods to the Buyer's Principal Place of Business by such method of transportation and using such carrier as the Supplier determines.
- (b) Each shipment is subject to a \$15.00 freight charge unless otherwise stipulated by the Supplier. (this cost is subject to change)
- (b) If shipment is made at the Buyer's request via a method other than which would normally be used by the Supplier, delivery will be made on a CIF basis to the Buyer's Principal Place of Business and the Buyer shall pay or reimburse to the Supplier the actual freight and any other charges incurred by the Supplier in forwarding the Goods.
- (c) the Buyer shall have no right of action against the Supplier in respect of any loss sustained by reason of any delivery occasioned by delays in transit or delays caused by accidents, strikes or any other event or occurrence outside of the Supplier's reasonable control.

4.2 Inspection

- (a) The Buyer must inspect the Goods upon arrival and report any errors in shipment promptly.
- (b) Visible damage and shortages must be reported to the carrier and to the Supplier within 24 hours after delivery.
- (c) Concealed damage or shortages involving cartons received intact must be reported within 7 days after receipt.
- (d) if the Buyer fails to notify the Supplier of any such defects, the shipment shall be deemed accepted.

5. RETURN OF DEFECTIVE GOODS

The Buyer may, at its own expense with regard to shipping, return to the Supplier any Goods which are defective in materials or performance at the time of delivery and which defect the Buyer has notified the Supplier of pursuant to clause 4.2 for:

- (a) repair;
 - (b) replacement; or
 - (c) allowance of a credit equal to the price paid by the Buyer in respect of the item of Goods which the Buyer is entitled to return;
- at the Supplier's option, however the Supplier reserves the right to inspect and require proof of the defect prior to accepting returns under this provision.

6. PASSING OF RISK

Risk in the Goods passes to the Buyer upon the earlier of:

- (a) delivery of the Goods to the Buyer; or
- (b) collection of the Goods from the Supplier or any bailee or agent of the Supplier by the Buyer's agent, carrier or courier.

7. RETENTION OF TITLE

- 7.1 The Goods delivered by the Supplier to the Buyer remains the sole and absolute property of the Supplier as legal and equitable owner until all money due to the Supplier under this Agreement has been paid by the Buyer, but the Goods will be at the Buyer's risk from the time of delivery to it;
- 7.2 The Buyer acknowledges that it is in possession of all the Goods as bailee for the Supplier under the terms of this Agreement until such time as title in the Goods passes to the Buyer and that this bailment continues in relation to each item of the Goods until the Price has been paid in full;
- 7.3 The Buyer's right to possession of the Goods will cease if it does anything or fails to do anything which would result in an Insolvency Event in relation to the Buyer including any act or omission which would entitle a receiver or any other person to take possession of any assets or which would entitle any person to present a petition for the winding up of the Buyer.
- 7.4 The Supplier may for the purpose of examination or recovery of the Goods enter upon any premises where the Goods are located or where it is reasonably thought to be located and the Buyer agrees to indemnify the Supplier for any, cost, loss or damage incurred by the Supplier as a result of entry onto such premises;
- 7.5 The Buyer warrants that at the time of entering into this Agreement no Insolvency Event has occurred in relation to the Buyer and it and knows of no circumstances which would entitle any creditor to appoint a receiver or to petition for winding up or to exercise any other rights over or against its assets.
- 7.6 The Buyer acknowledges and agrees that, upon the commencement of the PPSA:
 - (a) the provisions of this clause 7 constitute a Security Interest of the Supplier in the Goods;
 - (b) the Supplier's costs and expenses incurred in enforcing the Security Interest in accordance with clause 3.4 form part of the Security Interest;
 - (c) the Supplier may Register its Security Interest in the Goods on the Personal Property Securities Register;
 - (d) the Buyer will do all such things and sign all such documentation as are reasonably required by the Supplier to Register the Security Interest; however, the Supplier will be responsible for the payment of any fee payable on the Registration of the Security Interest;
 - (e) the Buyer is not entitled to the removal of the Registration of the Security Interest from the Personal Property Securities Register, nor must the Buyer take any steps to remove the Registration of the Security Interest from the Personal Property Securities Register, until payment of the Price and any interest, costs and expenses payable to the Supplier in accordance with clause 3.4 have been paid in full; and
 - (f) unless requested to do so in writing by the Buyer, the Supplier is not required to remove the Registration of the Security Interest in the Goods after title in the Goods has passed to the Buyer. If so requested, the Supplier agrees to remove the Registration within a reasonable time.
 - (h) The Buyer acknowledges that the Suppliers registration of a Security Interest on the Register need not be specific to each and every item of Goods supplied but may refer to a class of Goods that are supplied from time to time.

8. GUARANTEE AND INDEMNITY

- 8.1 The Guarantors guarantee to the Supplier that the Buyer will pay all amounts owing to the Supplier under this Agreement when due.
- 8.2 On demand, the Guarantors must pay to the Supplier any such amount which the Buyer does not pay to the Supplier under this Agreement when due.
- 8.3 The Guarantors acknowledge and agree to be bound by the Terms and Conditions found herein.
- 8.4 Each Guarantor indemnifies the Supplier against any loss, cost or expense, including but not limited to principal, interest, costs, expenses and taxes of any kind, which the Supplier suffers or incurs due to the Buyer's default under this Agreement, including the Supplier Standard Terms and Conditions, and on demand must pay to the Supplier any such loss cost or expense.
- 8.5 The indemnity is a continuing principal obligation enforceable against each Guarantor, even if the amounts guaranteed or indemnified are not recoverable from the Buyer for any reason.
- 8.6 The Guarantors must pay the Supplier the reasonable expenses reasonably incurred to enforce this Guarantee and Indemnity.
- 8.7 The Guarantors acknowledge that this Guarantee and Indemnity is:
 - (a) given to the Supplier jointly and severally by each Guarantor in consideration for the Supplier agreeing to enter into this Agreement with the Buyer at the Guarantors request;
 - (b) unconditional, irrevocable and continues until the Supplier has received all amounts owing by the Buyer to the Supplier in full;
 - (c) not affected by anything under the law relating to guarantees, by the Supplier's delay in acting, by the Supplier allowing the Buyer or a Guarantor extra time to pay, by any act or omission of any person, or by the amount of credit extended to the Buyer varying from time to time;
 - (d) enforceable against a Guarantor even if it is not signed by another person intended to be a Guarantor, or if it is not enforceable against another Guarantor.
- 8.8 The Supplier need not incur an expense nor have exercised or exhausted its legal rights against the Buyer before making a demand of the Guarantors.
- 8.9 The Supplier may assign its rights under the guarantee provided by the Guarantors to a purchaser of the Buyer's debts owed to the Supplier without the Guarantors' consent.
- 8.10 If any payment to the Supplier is void or voidable as a result of an Insolvency Event or bankruptcy law, each Guarantor's liability extends to that payment as if the payment had not been made. Unless the Supplier agrees otherwise, each Guarantor must not claim any amount in the insolvency of the Buyer until the Supplier is paid all money guaranteed or indemnified under this Guarantee and Indemnity.

9. REPRESENTATIONS AND WARRANTIES

- 9.1 The Supplier represents and warrants to the Buyer as follows:
- (a) the Supplier has legal capacity to enter into and perform its obligations under this Agreement;
 - (b) subject to clause 7 of this Agreement, the Supplier will pass good title of the Goods to the Buyer free of all encumbrances or interests of other persons;
 - (c) the Goods will be fit for the purpose for which they are purchased by the Buyer and will be of merchantable quality.
 - (d) All Goods remain subject to the terms of the individual manufacturers warranty.
 - (e) Any claim under warranty specifically relating to golf clubs will be void, should it be found or determined that clubs have been used on driving range mats, synthetic surfaces or any other surface not ordinarily used in conjunction with the use of golf clubs.
- 9.2 The Buyer represents and warrants to the Supplier:
- (a) the Buyer has legal capacity to enter into and perform its obligations under this Agreement;
 - (b) No Insolvency Event has occurred in relation to the Buyer and it is not aware of any circumstance which might result in an Insolvency Event occurring;

10. GST

- (a) Terms used under this heading have the same meaning as those terms in *A New Tax System (Goods and Services Tax) Act 1999*.
- (b) If a party makes a taxable supply under this Agreement, except where this Agreement states otherwise, the amount payable by a party for the taxable supply is expressed as a GST exclusive amount.
- (c) the party liable to pay for a taxable supply to which this clause 10 applies must also pay the amount of any GST payable in respect of the taxable supply on the date on which payment for the taxable supply is due.
- (d) A party is not obliged under clause 10(c) to pay the GST on a taxable supply to it, until given a valid tax invoice for the supply.
- (e) Each party warrants that it is registered or will be registered for an Australian Business Number and for GST purposes at each time a taxable supply is made. Each party must continually indemnify the other for any loss it suffers as a result of the indemnifying party not being registered for an Australian Business Number and for GST purposes.
Each party must do everything reasonable to assist each other to comply with its GST obligations in relation to this Agreement.

11. CANCELLATION OF ORDER

Any order cancellation will incur a 10% re-stocking fee.

12. GENERAL

- 12.1 This Agreement is governed by the laws of Victoria and the parties submit to the non exclusive jurisdiction of the courts of Victoria any courts competent to hear appeals from those courts.
- 12.2 This Agreement may only be amended by a further agreement in writing executed by the parties.
- 12.3 A provision of or right created under this Agreement may not be waived:
- (i) except in writing signed by the party creating the waiver; or
 - (ii) varied except in writing executed by the parties.
- 12.4 If any provision of this Agreement shall be invalid and not enforceable in accordance with its terms such provision shall be deemed to be deleted and all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions shall be, and continue to be, valid and enforceable in accordance with their terms.
- 12.5 Subject to clause 8.9, neither party may assign its rights under this Agreement unless with the prior written approval of the other.
- 12.6 Each party must at its own expense do everything reasonably necessary to give effect to this Agreement and the transaction contemplated by this Agreement.
- 12.7 This Agreement constitutes the entire agreement of the parties and supersedes all prior discussion and undertakings and agreements.
- 12.8 The parties agree that those clauses of this Agreement which are capable of having effect after termination will continue to have full force and effect and be capable of enforcement notwithstanding termination.
- 12.9 In any circumstance where the credit application of the Buyer is refused but Goods are still supplied the terms and conditions contained herein, are said to form the general terms and conditions of sale and will be enforceable in the event a transaction has taken place between the Supplier and the Buyer, notwithstanding whether this agreement remains unsigned by one or both parties.
- 12.10 This is agreement is intended to form the terms and conditions under which all future orders, subsequent to the initial order and or application for Credit, are be dealt with, unless otherwise agreed to between the parties or modified by the Supplier.

13. NOTICES

- 13.1 Any notice required to be served by one party on the other party pursuant to this Agreement must be in writing and must be served by being:
- (a) left at the address for service of the party to be served;
 - (b) sent by prepaid ordinary mail to the address for service of the party to be served;
 - (c) sent by facsimile to the facsimile number for service of the party to be served;
 - (d) sent by email to the email address of the party to be served.
- 13.2 Service will be deemed to have been effected:
- (a) if delivered, at the time of delivery;
 - (b) in the case of service by post 5 days after posting;
 - (c) in the case of service by facsimile, when the party serving the notice has a completed transmission report indicating successful transmission of all pages to the correct facsimile number, and the party to be served has not advised incomplete or illegible transmission within 2 hours of transmission;
 - (d) in the case of service by email, when the computer of the party serving the notice indicates that the message has been received and that it has not bounced.
- 13.3 The parties' addresses for service are as set out in this Agreement, or are such other addresses as may be notified in writing to the other after the date of this Agreement