

Applicant's Details

Registered Company Name:

Commencement Date of Business:

ABN:

ACN:

Full Trading Name:

Delivery Address:

City:

State:

Postcode:

Nature of Organisation (please tick):

Sole Trader

Partnership

Company

Trustee - Please include **Trust Name, ABN & Director of Trust:**

Other - Please specify:

Phone:

Mobile:

Email:

Director/Sole Trader/Partner Details

Given Name/s:

Surname:

Residential Address:

City:

State:

Postcode:

Phone:

Mobile:

Email:

2nd Director/Sole Trader/Partner Details

Given Name/s:

Surname:

Residential Address:

City:

State:

Postcode:

Phone:

Mobile:

Email:

Trade References (excludes other tobacco companies, credit cards, landlords or utilities suppliers)

1.

4.

2.

5.

3.

6.

Anticipated Weekly Spend

\$

Acceptance of the Terms and Conditions of Credit and Consents:

The terms and conditions of credit (**Terms**) of Mood State Pty Ltd (trading as Mood State) ABN 53 669 137 802 (we, us or our) are attached to this credit application form (**Form**) and are incorporated into this Form. By signing this Form, the applicant named above in "Applicant Details" (**you or your**) agrees to the Terms.

By signing this Form, you consent to us disclosing your:

- credit eligibility information to other credit providers which have an Australian link for the purposes of allowing other credit providers to determine the position of your financial arrangements with us; and
- credit eligibility information to guarantors which have an Australian link to allow that guarantor to consider whether they will act as a guarantor in relation to a credit or to offer property as security for credit in relation to your application for credit.

Our credit information policy attached to this Form (**Credit Information Policy**) provides details of how we manage credit information and credit eligibility information.

Who must sign this Form:

Companies: Where there is only one director for the company then that director must sign this Form. Where there are two or more directors for the company, then 2 directors or a director and company secretary must sign this Form.

Sole traders: The individual sole trader must sign this Form.

Partnerships: All partners of the partnership must sign this Form. Add additional execution blocks as required.

Trustee: All trustee of the trust must sign this Form. Add additional execution blocks as required.

For Companies:

EXECUTED on behalf of
Company Name Company ABN

in accordance with section 127 of the Corporations Act 2001 (Cth) by:

Signature of Director

Name:
Position:
Signature:
Date:

Signature of Director/Company Secretary

Name:
Position:
Signature:
Date:

For Sole Traders:

EXECUTED on behalf of by:
Sole Trader Name Sole Trader ABN

Signature of Sole Trader

Name:
Position:
Signature:
Date:

Witness (Independent Witness)

Name:
Position:
Signature:
Date:

For Partners of a Partnership:

EXECUTED on behalf of by:

Partnership Name

Signature of Partner

Name:

Position:

Signature:

Date:

Witness (Independent Witness)

Name:

Position:

Signature:

Date:

Signature of Partner

Name:

Position:

Signature:

Date:

Witness (Independent Witness)

Name:

Position:

Signature:

Date:

For Trust:

EXECUTED on behalf of by:

Trustee Name

Signature of Trustee

Name:

Position:

Signature:

Date:

Witness (Independent Witness)

Name:

Position:

Signature:

Date:

Signature of Trustee

Name:

Position:

Signature:

Date:

Witness (Independent Witness)

Name:

Position:

Signature:

Date:

Terms and Conditions of Credit

These terms and conditions of credit (Terms) are between Mood State Pty Ltd (trading as Mood State) ABN 53 669 137 802 (we, us, our) and the applicant named in the credit application form (Form) under "Applicant Details" (you or your), together the Parties and each a Party.

1. Credit

- 1.1 If we accept your application for credit, we agree to provide the goods marketed under Mood State (**Goods**) to you on credit for the period outlined in our invoice (**Credit Term**).
- 1.2 Our extension of credit to you will be subject to these Terms and any agreement which has been agreed by the Parties for the supply of the Goods to you (Supply Contract).
- 1.3 You agree that these Terms will be additional to, and not in substitution for, any Supply Contract. To the extent of any ambiguity or discrepancy between these Terms and any Supply Contract, these Terms will prevail.
- 1.4 We reserve the right to refuse your application for credit and/or revoke our extension of credit to you at any time in our sole discretion, including if in our reasonable view, your financial situation or ability to pay us is impaired, without incurring any liability to you. If we revoke our extension of credit, this will not affect any Goods provided to you on credit prior to the revocation.
- 1.5 We may advise you of a credit limit at which we agree to extend credit to you. You agree to not exceed the credit limit. We reserve the right to review credit limits in our sole discretion, including increasing or decreasing the credit limit.
- 1.6 We may, at our absolute discretion, charge you a surcharge for any credit card payments. The surcharge amount will be outlined in our invoice to you.

2. Your Obligations

We will issue invoices to you when we supply you with our Goods and, unless otherwise agreed in the Supply Contract or in writing with us, you agree to pay us the price for the Goods prior to the expiry of the Credit Term, using the payment method set out in our invoice.

3. Overdue Accounts

- 3.1 If:
 - (1) you fail to pay any monies due and owing prior to the expiry of the Credit Term;
 - (2) you fail to comply with these Terms;
 - (3) you suffer an Insolvency Event; or
 - (4) these Terms are terminated in accordance with clause 7.1,the full balance of your account will become due and payable immediately.
- 3.2 If any payment has not been made in accordance with these Terms, we may (at our absolute discretion):
 - (1) enter any premises where the Goods the subject of any unpaid amount are stored or held, for the purpose of retrieving and taking possession of those Goods, and you agree to provide any access, items and consents required to enable us to do so;
 - (2) cease providing the Goods, and recover, as a debt due and immediately payable from you, our reasonable additional costs of doing so (including all recovery costs);

- (3) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 4% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the relevant due date for payment; and
- (4) suspend or revoke our extension of credit.

4. Title, Risk and Security Interest

- 4.1 Title in the Goods will only pass to you on the date that you pay for the Goods in full in accordance with the Supply Contract. Unless otherwise agreed in the Supply Contract or in writing with us, risk in the Goods will pass to you when we have delivered the Goods to you, or you have collected the Goods from us (as applicable).
- 4.2 You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under these Terms and Supply Contract.
- 4.3 You agree that these Terms and your obligations under these Terms create a registrable security interest (including a purchase money security interest) in favour of us, and you consent to the security interest (and any other registrable interest created in connection with these Terms) being registered on any relevant securities register (and you must do all things to enable us to do so).

5. Warranties and Representations

- 5.1 You represent, warrant and agree that:
 - (1) you have full legal capacity, right, authority and power to agree to these Terms, to perform your obligations under these Terms, and to carry on your business;
 - (2) these Terms constitute a legal, valid and binding agreement, enforceable in accordance with its terms;
 - (3) the details on the Form are true, correct and complete;
 - (4) you have all the rights necessary to disclose the information (including personal information) set out in the Form; and
 - (5) no Insolvency Event has occurred in respect of you and that you will immediately notify us if you are (or you are likely to be) the subject of an Insolvency Event.
- 5.2 In these Terms, **Insolvency Event** means any of the following events or any analogous event: (a) a party disposes of the whole or any part of the party's assets, operations or business other than in the ordinary course of business; (b) a party ceases, or threatens to cease, carrying on business; (c) a party is unable to pay the party's debts as the debts fall due; (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the party's assets, operations or business; (e) any step is taken for a party to enter into any arrangement or compromise with, or assignment for the benefit of, a party's creditors or any class of a party's creditors; or (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of a party's assets, operations or business.

Terms and Conditions of Credit

6. Collection Notice

- 6.1 We may collect personal information about you in order to supply our Goods, to contact and communicate with you, to respond to your enquiries and for other purposes set out in our privacy policy.
- 6.2 We may disclose that information to third party service providers (including information technology service providers, data storage, web-hosting and server providers, professional advisors and our business partners) to supply our Goods or as required by law.
- 6.3 You authorise us to use all personal information set out in the Form to contact and communicate with third party service providers, for internal record keeping, to allow us to manage our relationship with you and for the purposes of assessing your application. If you do not provide this information, we may not be able to assess your application or provide you with our Goods.
- 6.4 Our privacy policy contains further information about: (1) how we store and use your personal information; (2) how you can access and seek correction of your personal information; (3) how you can make a privacy-related complaint; and (4) our complaint handling process.
- 6.5 By providing personal information to us, you consent to us collecting, holding, using and disclosing your personal information in accordance with our privacy policy.

7. Termination

- 7.1 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:
 - (1) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party;
 - (2) the Supply Contract is terminated; or
 - (3) to the extent permitted under the Corporations Act 2001 (Cth) any step is taken to enter into any arrangement between the Defaulting Party and its creditors, any step is taken to appoint a receiver, a receiver and manager, a liquidator, a provisional liquidator or like person of the whole or any part of the Defaulting Party's assets or business, the Defaulting Party is bankrupt, or the Defaulting Party is unable to pay its debts as they fall due.
- 7.2 We may terminate this Agreement immediately if we carry out a credit check on you and find evidence that you have defaulted on your payments to any other credit providers. In this instance, any amount owing from you to us will become immediately due and payable.
- 7.3 This clause 7 will survive the termination or expiry of this Agreement.

8. General

- 8.1 **Amendment:** We may amend these terms by providing you with 30 days' notice. Where the amendment is to a material term in these Terms, you may terminate this agreement by providing us with 30 days' notice.
- 8.2 **Assignment:** Subject to clause 8.3, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).

- 8.3 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- 8.4 **Disputes:** A Party may not commence court proceedings relating to any dispute, arising from these Terms (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. The Parties agree to attend any such mediation in good faith. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction, or will operate to prevent a Party from taking steps to recover any debt.
- 8.5 **Entire Agreement:** These Terms contain the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersede all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 8.6 **Further Assurance:** Each Party must promptly do all things and execute all further instruments necessary to give full force and effect to these Terms and your obligations under it.
- 8.7 **Governing Law:** These Terms are governed by the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 8.8 **Joint and Several Liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under these Terms.
- 8.9 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 8.10 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.
- 8.11 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

Deed of Guarantee and Indemnity (Deed)

1. In consideration for Mood State Pty Ltd (trading as Mood State) ABN 53 669 137 802 (**Supplier**) providing goods marketed under Mood State to the applicant named in the credit application form under "Applicant Details" (**Applicant**), the guarantor/s named below (**Guarantor/s or I/We**):
 - 1.1 hereby unconditionally and irrevocably guarantee/s to the Supplier, the due and punctual performance of all the Applicant's obligations under the terms and conditions of credit (**Terms**), including due payment of all amounts that the Applicant owes or may owe to the Supplier now or in the future (**Guarantee**); and
 - 1.2 agree/s to indemnify the Supplier and hold the Supplier harmless in respect of, any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise) that the Supplier may suffer, incur or otherwise become liable for, arising from or in connection with the Applicant's failure to comply with its obligations under the Terms, including obligations to pay any amounts under the Terms (**Indemnity**).
2. I/We agree/s that the Guarantee and Indemnity under this Deed:
 - 2.1 are primary obligations, and the Supplier will not be obliged to enforce any rights against any other person or property, or demand payment from any other person before making a demand for payment from the Guarantor/s under this Deed; and
 - 2.2 are continuing obligations and will not be affected in any way by any matter, including any amendment to, or any waiver or release of, any of the Applicant's obligations; any release of any of the Guarantor/s; or any payment by the Applicant and/or Guarantor/s being void or voidable.
3. I/We acknowledge and agree that a credit application made by the Applicant is deemed to have been accepted by the Supplier from the date of the first invoice sent by the Supplier to the Applicant and this Deed will extend to all the Applicant's liabilities to the Supplier thereafter.
4. Until the Applicant's obligations under the Terms have been satisfied in full, I/We will not exercise any right or enforce any claim against the Applicant which may reduce the Applicant's ability to perform the Applicant's obligations under the Terms.
5. I/We will notify the Supplier if I/We become insolvent, bankrupt or changes its legal name, as soon as practicable and not later than 3 business days after occurrence of such event.
6. I/We represent and warrant that I/We have full legal capacity and power to enter into and perform the obligations under this Deed and, before executing this Deed, I/We have read it in full and had the opportunity to seek independent legal and financial advice in respect of it.
7. Where the Guarantor/s constitute two or more individuals or entities, each will be jointly and severally liable under this Deed.
8. Each Indemnity contained in this Deed shall survive release or discharge of this Deed.
9. This Deed may be executed in any number of counterparts that together will form one document.
10. This Deed is governed by the laws of New South Wales. I/ We irrevocably and unconditionally submit to the exclusive jurisdiction of the courts operating in New South Wales and any courts entitled to hear appeals from those courts and I/ We waive any right to object to proceedings being brought in those courts.

Consents

By completing and signing this Deed, I/We consent to the Supplier disclosing credit eligibility information about me/us to other credit providers which have an Australian link for the purposes of allowing other credit providers to determine the position of my/ our financial arrangements with the Supplier.

The Supplier credit information policy attached to this Deed (**Credit Information Policy**) provides details of how the Supplier manages credit information and credit eligibility information.

Executed as a Deed Poll

Signed sealed and delivered by the Guarantor/s in the presence of the witness named below.

Guarantor

Name:

Signature:

Date:

Witness (Independent Witness)

Name:

Signature:

Date:

Guarantor

Name:

Signature:

Date:

Witness (Independent Witness)

Name:

Signature:

Date:

Guarantor

Name:

Signature:

Date:

Witness (Independent Witness)

Name:

Signature:

Date:

Guarantor

Name:

Signature:

Date:

Witness (Independent Witness)

Name:

Signature:

Date:

Please email your completed Credit Application Form to: accounts@moodstate.com.au