

GRAY-NICOLLS SPORTS PTY LTD

45 Wangara Road, Cheltenham, Victoria 3192 | Tel: (03) 8541 9999 | Fax: (03) 8541 9988 | Email: accounts@gnsports.com

COMMERCIAL CREDIT APPLICATION

Registered Name: _____ **Pty. Ltd. / Partnership / Sole Trader** (please circle)

A.C.N.: _____ A.B.N.: _____

Trading Name: _____

Trading Address: _____

Postal Address: _____

Telephone: _____ Fax: _____

Main Contact: _____ Mobile: _____

Email: _____

Buying Group: _____

*** Please attach copy of current Business Name Registration Certificate or Certificate of Incorporation, as applicable**

DIRECTORS, PARTNERS & SOLE TRADERS

1. Name: _____ Phone: _____ Licence #: _____
 Address: _____

2. Name: _____ Phone: _____ Licence #: _____
 Address: _____

3. Name: _____ Phone: _____ Licence #: _____
 Address: _____

TRADE REFERENCES

1. Name: _____ Phone: _____ Fax: _____
 Address: _____

2. Name: _____ Phone: _____ Fax: _____
 Address: _____

ACKNOWLEDGMENT

I HAVE READ AND UNDERSTAND THE ATTACHED TRADING TERMS AND CONDITIONS.

I, _____ (full name), hereby certify that the foregoing particulars are correct to the best of my knowledge and I acknowledge I have had the opportunity to obtain independent advice and agree to adhere to the Trading Terms annexed hereto and forming part of this Commercial Credit Application. Further, I confirm that I have not failed to disclose anything relevant to Gray-Nicolls' assessment of this application and no court proceedings or dispute is current that may have an adverse affect on performing the obligations under this Agreement.

Signed: _____ Printed Name: _____

Position: _____ Date: _____

BUSINESS PURPOSE DECLARATION

The Applicant hereby acknowledges for the purposes of section 13 of the National Consumer Credit Code ("the Code") and as having made this declaration prior to entering into this Agreement, that the credit (if any) which shall be provided under this Agreement (if entered into) is to be applied wholly and predominately for a purpose that is not a Code purpose.

PRIVACY ACT 1988 (“THE ACT”)

Information requested in this account application is required to be supplied prior to Gray-Nicolls (Sports) Pty Ltd (“Gray-Nicolls) agreeing to assess your application for commercial credit. I acknowledge and consent as follows:

1. That Gray-Nicolls may use my personal and/or corporate information (“information”) in the Commercial Credit Application for the primary purpose of assessing my application for commercial credit.
2. That if this personal information is not provided to Gray-Nicolls then it may result in Gray-Nicolls being unable to process or accept this application, or to operate or administer the credit facility (if any) that is established.
3. That Gray-Nicolls may use or disclose the information for the following additional purposes: checking creditworthiness, administering the application and the account, performing administrative tasks, managing business operations, providing future products and advising about products or services of Gray-Nicolls or other organisations.
4. That Gray-Nicolls may use or disclose the information to its credit agencies, credit reporting agencies, other financial institutions and credit providers, other companies that Gray-Nicolls deals with and my nominated trade referees set out in this application subject to the restrictions placed on Gray-Nicolls pursuant to the *Privacy Act 1988* (Cth).
5. That, *subject to the Privacy Act 1988*, Gray-Nicolls may obtain or give information about my personal and/or corporate activities and personal and/or corporate creditworthiness form or to a credit reporting agency or other credit providers and for Gray-Nicolls to use that information in assessing this application and whether to provide ongoing credit.
6. That I may have access to my personal information collected and held by Gray-Nicolls, and also have access to Gray-Nicolls Privacy policy. Such access may be obtained by contacting Gray-Nicolls at their registered address.

Signed: _____ Signed: _____

Dated: _____ Dated: _____

DIRECTORS' GUARANTEE AND INDEMNITY

- I/We, being the Director/s of the Company named and described in the Commercial Credit Application to which this Guarantee and Indemnity is annexed, request Gray-Nicolls Sports Pty Ltd., (“Gray-Nicolls”) to enter into Sales Contracts from time to time with the Company and in consideration of Gray-Nicolls so doing, I/we hereby jointly and severally guarantee to Gray-Nicolls the due payment by the Company of all obligations under any such Sales Contract and legal or other costs and expenses incurred by Gray-Nicolls in seeking payment or enforcing this guarantee and indemnity (“the Debt”).
- As a separate and principal obligation, I/we agree to indemnify Gray-Nicolls and keep it indemnified against all losses and costs that it may incur in relation to the Debt including any amount remaining unpaid of the Debt itself.
- In the event of any default by the Company, I/We acknowledge that Gray-Nicolls is not required to pursue the Company at first instance, and that Gray-Nicolls may look directly to me/us to satisfy the Debt pursuant to this Guarantee and Indemnity.
- If the Company fails to pay all or any part of the Debt, I/We will pay the Debt to Gray-Nicolls within seven (7) days of receiving written request from Gray-Nicolls.
- This Guarantee shall be a continuing obligation in respect of the Debt, and will bind my/our successors, assigns or personal representative and shall remain in force until the obligations hereunder have been performed.
- I/We understand that my/our obligations under the Guarantee and Indemnity shall not be waived, discharged or otherwise affected by any:
 - a) variation in the Trading Terms existing between Gray-Nicolls and the Company;
 - b) extension in time or other indulgence given to the Company or another guarantor;
 - c) alteration in the amount of the Debt or level of credit extended to the Company;
 - d) change in name, shareholding, constitution or structure of the Company;
 - e) settlement, composition, variation or release (or any agreement to do so) by Gray-Nicolls of the Company’s obligations in relation to the Debt, or of another Guarantor’s obligations under the Guarantee, whether with or without the knowledge or consent; or
 - f) of the obligations of the Company, or of any other Guarantor to the Guarantee, being or becoming wholly or partially illegal, void or otherwise unenforceable, whether by statute (including statute of limitations) or any other reason, or being disclaimed by an external administrator or trustee for creditors or in bankruptcy.

I/We acknowledge that I/We fully understand and have had the opportunity to obtain independent legal advice in relation to the Trading Terms and this Guarantee and Indemnity.

Signed: _____ Printed Name: _____

Signed: _____ Printed Name: _____

Signed: _____ Printed Name: _____

In the presence of:
Signed: _____ Printed Name: _____

Date: _____

GRAY-NICOLLS SPORTS PTY LTD

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TRADING TERMS NOVEMBER 2012

The goods for sale by Gray-Nicolls Sports Pty. Ltd. are sold under the following terms and conditions, and may only be sold or offered for sale under these conditions to the Customer. The placing of an order or acceptance of the goods is deemed to constitute an agreement to observe and be bound by such conditions and any concession, latitude or waiver that may be or may have been allowed by Gray-Nicolls at any time shall not prevent Gray-Nicolls subsequently exercising its full rights under these Trading Terms.

1. DEFINITIONS

- (a) "The Customer" shall mean the individual or company named below.
- (b) "Due Date" shall have the meaning given pursuant to clause 7(a) herein.
- (c) "Goods" shall mean sporting or sporting related products sold by Gray-Nicolls under its own name or any other Trademark owned or controlled by Gray-Nicolls.
- (d) "Gray-Nicolls" shall mean Gray-Nicolls Sports Pty Ltd.
- (e) "PPS Act" means the Personal Property Securities Act 2009.
- (f) "Small Business Commissioner" means the person appointed as such under the Small Business Commissioner Act 2003.

2. ORDERS

- (a) All orders for goods shall be placed with Gray-Nicolls Head Office or a GN Sales Representative
- (b) All orders are subject to acceptance by Gray-Nicolls.
- (c) All orders are accepted on the basis that the Customer has not at any time and will not in the future source the goods other than from Gray-Nicolls.
- (d) Upon placing an order, the Customer is acknowledging that it will accept delivery of the goods.
- (e) Once orders are placed, the Customer does not have the right to cancel an order without the written approval of Gray-Nicolls, except where otherwise provided for in these Trading Terms.
- (f) Gray-Nicolls may suspend or cancel orders where:
 - i. The Customer breaches any of the Trading Terms contained herein;
 - ii. The Customer seeks relief under any insolvency or bankruptcy law;And upon such suspension or cancellation, Gray-Nicolls shall be entitled to reimbursement from the Customer of any costs incurred as a consequence.

3. ON-SELLING OF GOODS

- (a) The Customer shall only be permitted to sell the goods for purchase by the general public in Australia unless otherwise agreed in writing by Gray-Nicolls.
- (b) The Customer shall not on-sell the goods at a wholesale level to any other person or entity.
- (c) The Customer shall not sell or advertise for sale the goods by mail order or the internet unless prior written approval is provided by Gray-Nicolls.
- (d) The Customer shall not sell the goods at any location outside the physical boundaries of the store location of the customer unless otherwise approved in writing by Gray-Nicolls.
- (e) Failure to observe any provision in this clause 3 may lead to suspension or cancellation of any retail account pursuant to clause 8 herein in addition to obtaining any other legal remedies available to Gray-Nicolls.

4. PRICES

- (a) All prices quoted are "ex-factory".
- (b) Goods will be invoiced at the price ruling at the date of dispatch and are subject to change without notice.

5. DELIVERY

- (a) All goods valued in excess of \$250, excluding tax, will be delivered free into store in capital cities.
- (b) Transport arrangements will be made by Gray-Nicolls and if a customer wishes to make other arrangements any additional cost will be payable by the customer.

6. SMALL ORDER SURCHARGE

- (a) A surcharge of \$10.00 will be made on any order under \$250 (excluding tax).

7. ACCOUNTS AND COLLECTION COSTS

- (a) Accounts are due for payment in full, at the time elected by Gray-Nicolls, as follows:
 - i. by the end of the calendar month following that of the date of invoice; or
 - ii. Within seven (7) days from date of invoice; or
 - iii. Prior to delivery of goods.
- (b) Failing election by Gray-Nicolls pursuant to clause 7(a), the due date for payment is prior to delivery of goods.
- (c) In cases of payment prior to delivery of goods, referred to in clause 7(a) and 7(b), full payment must be made in the form of cleared funds and received by Gray-Nicolls prior to the delivery of goods.
- (d) No discount may be taken unless full payment is received and cleared into Gray-Nicolls bank account by the due payment date.
- (e) If an account is not paid in full by the due date, discount will be added back to invoice.
- (f) Gray-Nicolls reserves its right to offer and negotiate discounts at its sole discretion.
- (g) Interest will be charged at a rate of 1% per month on any amount not paid by the due date.
- (h) In the event payment is not made by the due date, Gray-Nicolls may claim any costs associated with collection of monies due.

8. SUSPENSION AND CANCELLATION OF A RETAIL TRADING ACCOUNT

- (a) An account will be subject to suspension of supply and/or immediate and permanent closure, if any of the following occurs:
- i. The account is not paid in full by the due date; or
 - ii. If the Customer's trading with Gray-Nicolls is below the trading levels required by Gray-Nicolls as may be notified by Gray-Nicolls in writing to the Customer from time to time; or
 - iii. the customer sells or offers to sell counterfeit Gray-Nicolls products; or
 - iv. the Customer engages in deceptive or illegal conduct that has an adverse effect on Gray-Nicolls; or
 - v. On-sells or supplies Gray-Nicolls products in any manner other than permitted under the Trading Terms
 - vi. the customer fails to observe any Gray-Nicolls Trading Term or other guideline or policies issued from time to time whatsoever.
- (b) In the event of suspension of an account, Gray-Nicolls may, at its sole discretion:
- i. Cancel the balance of the current and any future month's orderhold;
 - ii. Refuse to process any further orders.
 - iii. Take any legal action necessary to recover the monies owing.
 - iv. Elect to close the account permanently.

9. TITLE

- (a) Title and ownership to the goods shall remain with Gray-Nicolls until all monies owing by the Customer to Gray Nicolls have been paid in full (whether such monies are in respect of the monies payable under a specific contract or on any other account whatsoever).
- (b) Until title and ownership has passed in accordance with clause 9(a), the Customer shall hold the goods as bailee thereof.
- (c) The Customer shall have rights to deal with the goods in the ordinary course of business on the basis that the monies received as a result of such dealing shall be held by the Purchaser upon trust on behalf of Gray-Nicolls until monies owing by the Customer to Gray-Nicolls have been paid in full.
- (d) If the Customer has not paid Gray-Nicolls by the due date, Gray-Nicolls shall be entitled to immediately recover possession of all or any of its goods sold to the Customer (and the Customer grants its irrevocable permission for Gray-Nicolls or its authorised representatives to enter upon its premises to conduct a stocktake and recover all or any goods delivered by Gray-Nicolls forming part of the Customer's inventory and proof of supply of individual Gray-Nicolls goods shall not be required).

10. PPS ACT

- (a) The Customer agrees that the effect of clause 9(a) is to grant Gray-Nicolls a Security Interest, being a Purchase Money Security Interest, in any goods supplied, and in any proceeds of goods sold, under these Trading Terms.
- (b) These Trading Terms constitute a Security Agreement as defined in the PPS Act.
- (c) Should Gray-Nicolls elect to perfect its Security Interest, the Customer hereby consents to Gray-Nicolls perfecting its Security Interest, without further notice to the Customer, in any goods supplied, and in any proceeds of goods sold, by registration under the PPS Act
- (d) The Customer agrees to do anything, within three (3) business days of receiving written request from Gray-Nicolls, to enable it to register the Security Interest.
- (e) Gray-Nicolls may allocate any amounts received from the Customer in any matter it determines, including in any manner to preserve any Security Interest it has in any goods, but in default will apply same first to payment of any unsecured amount owing to Gray-Nicolls, next as to any reasonable enforcement expenses and then as to any secured balance owing to Gray-Nicolls.

11. ENFORCEMENT

- (a) For the purposes of the PPS Act and insofar as permitted under the PPS Act:
- i. The customer and Gray-Nicolls contract out of each provision which, under section 115(1) and 115(7) of the PPS Act, they are permitted to contract out of;
 - ii. The Customer waives its right to receive each notice of registration event under which section 157(3) of the PPS Act, it if permitted to waive; and
 - iii. The Customer waives its right to receive anything from Gray-Nicolls under section 275 of the PPS Act.

12. DEBT

- (a) The Purchaser acknowledges the debt on the invoice upon delivery of goods, irrespective of invoice date and/or payment terms.

13. RETURNS

- (a) No returned goods will be accepted unless previously agreed by Gray-Nicolls.
- (b) Customers are requested to obtain a "Goods Return Authority Number" before returning goods.
- (c) Goods returned should be advised under separate cover stating date and number of invoice.
- (d) Goods must be returned carriage paid.

14. REPLACEMENTS

- (a) Under no circumstances are any goods to be replaced without authority of Gray-Nicolls.

15. CLAIMS FOR NON-DELIVERY, SHORTAGE, DAMAGE, ETC.

- (a) No claim can be recognised by Gray-Nicolls unless:
- i. if upon delivery, any portion of the consignment is damaged or any package missing, or if the goods covered by the invoice are damaged or do not tally, the Customer must advise Gray-Nicolls and the carriers in writing within seven (7) days of delivery.
 - ii. in the event of non-delivery of an order, or any separate package missing, Gray-Nicolls must be advised within seven (7) days of invoice.

- (b) No liability whatsoever (except as provided by law) will be accepted by Gray-Nicolls for any direct or indirect loss or damage relating to delivery of products, account suspension or closure or any other act or omission on the part of Gray-Nicolls or of any servant, agent, or contractor of Gray-Nicolls in relation to these Trading Terms unless the same occurs because of the wilful act or default or negligence of Gray-Nicolls, its servants, agents or contractors in which case liability is limited at Gray-Nicolls discretion to the replacement of goods or the payment of the cost of having the goods resupplied.

16. RIGHT TO WITHHOLD DELIVERY

- (a) If any of the customers' accounts shall become overdue, then until the overdue monies have been paid, Gray-Nicolls is entitled to withhold delivery of the goods or any part thereof.

17. TRADEMARKS

- (a) The Customer hereby acknowledges that Gray-Nicolls trademarks and the goodwill attached to them are the exclusive property of Gray-Nicolls and its affiliated organisations or bodies and no right, title or interest therein is transferred by these Trading Terms or any of Gray-Nicolls guidelines or policies or any other transaction with the Customer and any use of such trademarks on store signage or otherwise by the Customer is prohibited unless otherwise approved in writing by Gray-Nicolls.

18. WAIVER

- (a) The failure of Gray-Nicolls at any time to require performance by the Customer of any provision of these Trading Terms or the acceptance of payment of any sum after its due date does not waive Gray-Nicolls rights.

19. SEVERANCE

- (a) If any provision of these Trading Terms is found by a court of competent jurisdiction to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Trading Terms shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law or equity.

20. NO VARIATION OF THESE CONDITIONS OF SALE PERMITTED

- (a) No variations or additions to these conditions of sale will be recognised by Gray-Nicolls unless accepted and confirmed in writing.
(b) Gray-Nicolls shall have the right, upon thirty (30) days notice to the Customer, to vary all or any of these Trading Terms and variations shall then apply to all subsequent orders placed by the Customer.
(c) Clerical errors are subject to correction without notification.

21. ENTIRE AGREEMENT

- (a) These Trading Terms shall constitute the entire Agreement between Gray-Nicolls and the Customer in relation to the sale and delivery of product and any previous agreements, understandings, negotiations and all express or implied warranties to the extent permitted by law shall cease to have any legal status or effect.

22. ASSIGNMENT

- (a) The Customer shall not assign or transfer any of its rights or obligations under these Trading Terms.

23. CHANGE OF OWNERSHIP

- (a) Gray-Nicolls shall be notified in writing by the Customer of any material change in the Customer's legal organisation, ownership or group affiliations, prior to such change.
(b) Notwithstanding subclause 23 (a), the Customer shall remain liable for payment for any Gray-Nicolls goods supplied by Gray-Nicolls.

24. DISPUTE RESOLUTION

- (a) In the event of a dispute between Gray-Nicolls and the Customer, the complainant is first required to serve the other party to the dispute a written notice specifying the nature of the dispute and the outcome sought.
(b) Secondly, each party must make a good faith attempt to resolve the dispute by negotiation.
(c) Failing resolution of the dispute, the parties shall apply to have the dispute heard by the Small Business Commissioner.

25. FORCE MAJEURE

- (a) Any delay in the performance of Gray-Nicolls obligations caused by an event or circumstance outside its reasonable control shall not be attributable to Gray-Nicolls nor constitute a breach of these Trading Terms and Gray-Nicolls shall have the right to extend the estimated delivery time by a period sufficient to take account of the relevant event or circumstance, subject to Gray-Nicolls and/or the Customer cancelling orders where the extension continues for an uninterrupted period of three (3) months.

26. TIME IS OF THE ESSENCE

- (a) Stipulations as to time in these Trading Terms for performance by the Customer are of the essence.

27. CONFIDENTIALITY

- (a) Gray-Nicolls and the Customer hereby agree that, notwithstanding any other clause of these Trading Terms, they will not disclose any information of the type referred to in section 275 (1) of the PPS Act unless they are required to do so under section 275(7) of the PPS Act.

28. GOVERNING LAW & JURISDICTION

- (a) These Trading Terms shall be deemed to have been made in the state of Victoria and shall be governed by the laws of that State and the laws of the Commonwealth of Australia as they apply. The parties further submit to the non-exclusive jurisdiction of the courts with jurisdiction.