

UNIVERSAL PET SUPPLIES

Pty Limited

A.B.N. 55 117 490 070

8/8-10 WAINWRIGHT, WHALAN NSW 2770, SYDNEY AUSTRALIA

P.O. BOX 3049, MT DRUITT VILLAGE NSW 2770

Telephone: (02) 8207 0111 Facsimile: (02) 8207 0103

A/C No:
Agent No:
Terms:
C/L:

TRADE APPLICATION

PART ONE - THE APPLICANT

REGISTERED NAME (BLOCK LETTERS)	BUSINESS ADDRESS (In Full)	DELIVERY ADDRESS
	P/Code:	P/Code:
TRADING NAME		
	TEL: ()	TEL: ()
	FAX: ()	FAX: ()
MOBILE:	E-MAIL:	
DATE OF INCORPORATION	POSTAL ADDRESS	ON FORWARDING
A.B.N.	P/Code:	P/Code:

IS YOUR ORGANISATION: SOLE TRADER PARTNERSHIP COMPANY TRUST
INVOICE/STATEMENT PREFERENCE: E-MAIL (Free) **OR** PAPER (Free)

PART TWO - THE DIRECTORS / PARTNERS / PROPRIETORS

FULL NAME	DATE OF BIRTH	DRIVER LICENCE NO.	RESIDENTIAL ADDRESS

PART THREE - REFERENCES

TRADE NAME	ADDRESS	TELEPHONE	FACSIMILE
1.			
2.			
3.			
Bank:	Branch		
Landlord:			

I/We understand that:

- Your terms of credit are as agreed upon from time to time with you and that you have the right to alter such terms without notice.
- If the Applicant is a company, the attached Deed of Guarantee must be signed. If there is a breach of this Guarantee then you may exercise your rights under clause 7 of the Conditions of Sale which are printed on the back of this Credit Application as if a breach of the Guarantee was an event specified in clause 7 of the Conditions of Sale.
- If the Applicant is a partnership, all partners are to sign the credit application unless a copy of Partnership Deed authorizing one partner to sign on behalf of partnership is provided.
- You may give to and seek from any credit providers or any credit reporting agency information about my/our credit arrangements. I/We understand that this information can include any information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to give or receive from each other under the Privacy Act, 1988.
I/We (as Applicant and, if applicable, as proposed Guarantors) understand the information may be used for the following purposes:
 - * to assess an application by the Applicant for credit.
 - * to notify other credit providers of a default or overdue payment by the Applicant.
 - * to exchange information with other credit providers as to the status of the debt owed by the Applicant or by the Guarantors where the Applicant or any of the Guarantors' are in default with other credit providers.
 - * to assess the Applicant's and Guarantors credit worthiness and the eligibility of the Guarantors to guarantee payment by the Applicant.
- All transactions are subject to the terms and conditions set out in the Schedule headed "Conditions of Sale" on the back hereof, which the Applicant hereby accepts in their entirety.

.....
Name (Please print) Position (Please print) Authorised Signature Date

.....
Name (Please print) Position (Please print) Authorised Signature Date

CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions of Sale;

- 1.1 "Conditions" means these Conditions of Sales;
- 1.2 "Contract" means a contract of sale arising out of an order accepted by the Seller in its absolute discretion;
- 1.3 "Customer" means the Applicant described in PART ONE of the Credit Application;
- 1.4 "credit card" means a card that can be used for purchasing goods or services on credit, or any other article commonly known as a credit card, including, but not limited to cards of the Mastercard, Visa, Bankcard, American Express and Diners Club credit card schemes;
- 1.5 "due date" means in relation to an invoice, the date on which the price of the goods (the subject of the invoice) must be paid and will be the date specified under "Term" in the invoice;
- 1.6 "goods" means any of the products of the Seller;
- 1.7 "invoice" means the invoice issued by the Seller in relation to a Contract setting out certain terms applicable to the Contract;
- 1.8 "order" means any offer, whether oral or in writing or electronic made by the Customer to the Seller to purchase goods from the Seller;
- 1.9 "Seller" means Universal Pet Supplies Pty Limited A.C.N. 117 490 070 A.B.N. 55 117 490 070;
- 1.10 GST has the same meaning as defined in the A New Tax System (Goods and Services Tax) Act 1999 as amended or replaced from time to time and any associated legislation including without limitation delegated legislation.

2. CONTRACT

- 2.1 Every Contract is governed by these Conditions and the terms of the invoice which constitute the entire agreement between the Customer and the Seller.
- 2.2 The Seller may at any time after the giving of at least 14 days notice to the Customer, vary these Conditions. The Conditions as varied will not apply to any Contracts already in existence.
- 2.3 If there is inconsistency between the terms of an invoice and these Conditions, these Conditions will prevail.

3. PRICES, DISCOUNT AND INTEREST

- 3.1 Prices set out in all invoices are (unless otherwise expressly stated) payable in Australian currency on or before the due date and do not include GST which is to be added if applicable.
- 3.2 The Seller may from time to time issue a list of the prices at which the Seller is willing to sell its goods in relation to certain orders. The list of prices is subject to change without notice.
- 3.3 The Seller may allow the Customer a discount or rebate on the price of goods, provided that if payment for any goods previously delivered to the Customer has not been received by the Seller on or before the due date the discount or rebate will be automatically cancelled without further notification.
- 3.4 The Seller is entitled to charge the Customer:
 - (a) interest at a rate of Seven percent (7%) per annum above the maximum overdraft rate for amounts over \$100,000 charged by any branch of Westpac Banking Corporation (or such other trading bank as may be notified by the Seller in writing from time to time) on any amount outstanding as at the due date calculated from the day after the due date until the amount in question is paid in full;
 - (b) bank fees, commissions or any other bank charges charged to the Seller on presentation of any cheque, promissory note or other bill of exchange of the Customer which must be paid to the Seller on demand;
 - (c) if the Seller is liable for GST in relation to the sale of the goods or any other "Supply" as that term is defined in A New Tax System (Goods and Services Tax) Act 1999, the consideration payable by the Customer will be increased by an amount calculated by multiplying the price or the amount of the other "Supply" by the rate of GST;
 - (d) a surcharge in relation to certain orders. The surcharges will be included in the list of prices referred to in clause 3.2 and are subject to change without notice. Notwithstanding anything in this Clause the Seller is not obliged to afford the Customer any indulgence to make payment after the due date;
 - (e) an administration charge of \$25.00 where any cheque, bill of exchange or promissory note given to the Seller by the Customer is not honoured on first presentation which must be paid to the Seller on demand;
 - (f) an administration fee of 2.5% of the purchase price of any goods sold to the Customer (for accepting payment by credit card) which must be paid on the due date. The credit card administration fee is subject to change upon notice being provided by the Seller to the Customer on the terms set out in clause 2.2; and,
 - (g) bank fees, merchant fees, commissions or any other bank charges, charged to the Seller as a result of payment being made by the Customer by way of credit or debit cards which must be paid to the seller on demand.

4. ORDERS

- 4.1 All orders accepted by the Seller will be executed at the Customer's sole risk.
- 4.2 A customer is not entitled to countermand any order except with the written consent of the Seller and on terms which will indemnify the Seller against any loss or damage resulting from the countermand of the order by the Customer.
- 4.3 The party signing the Customer's Credit Application and the party placing an order, severally warrant that they are authorised by the directors of the company for whom they act or purport to act, to bind their company to these Conditions.
- 4.4 Where the Seller has authorized the Customer to place orders electronically the provisions of clause 4A also apply.

4A. INTERNET ORDERS

- 4A.1 In this clause 4A:
 - "Password or Passwords" means one or more confidential alphanumerics provided by the Customer to the Seller.
 - "PIN Number or PIN Numbers" means one or more confidential alphanumerics provided by the Customer to the Seller, one or more of which when used with a matching Password allows the Customer to place an order at the Seller's web site.
- 4A.2 The Customer may place an order electronically at the Seller's web site <http://www.universalspet.com.au/> (or such other URL as the Seller may advise the Customer).
- 4A.3 The Customer will be liable for any order placed electronically for which a correct PIN Number or Password have been provided. The customer acknowledges that the Seller cannot verify by way of signature or otherwise whether an order quoting a correct PIN Number or Password is the Customer and that a correct PIN Number or Password allow anybody using them to place an order in the name of the Customer.
- 4A.4 The Customer must ensure that the PIN Numbers or Passwords are kept secure and not disclosed to anyone except the Seller or authorized employees of the Customer.
- 4A.5 If the Customer suspects a breach of security of its PIN Number or Password, the Customer must notify the Seller of the breach of security and must ensure that the Password or PIN Number are changed.

5. DELIVERY

- 5.1 Unless otherwise agreed, delivery will be made at the Seller's premises and the Customer must at its cost collect the goods at the Seller's premises when called upon to do so by the Seller.
- 5.2 Time will not be of the essence of each Contract. Any delivery date quoted by the Seller will be approximate only. If no delivery date is quoted then the Seller will deliver the goods as soon as it can conveniently do so.
- 5.3 No claim of any nature will lie against the Seller for goods lost or damaged in transit through whatever cause, including negligence, and any carrier of the goods will be deemed to be the agent of the Customer even where such carrier has been engaged by the Seller.
- 5.4 All claims in respect of goods delivered, including a claim for short delivery of goods for reasons other than those set out in clause 5.3 and clause 6.4, must be made in writing and delivered to the Seller within 7 days of the delivery of the goods (whether or not at the Seller's premises), failing such claim the Customer will be deemed to have accepted the delivery of the goods and will be deemed to have waived its right to claim against the Seller.
- 5.5 Strikes, differences with workmen, accidents to or failure of machinery, failure of usual sources of supply of materials, war, civil commotion, acts of terrorism, commercial exigencies, acts of government or quasi government or legislation, or other contingencies beyond the control of the Seller, will be sufficient excuse for any delay in or suspension of delivery of an order. The Seller may with the consent of the Customer cancel the order, after which the Customer will have no further claim on the goods. If the order is not so cancelled, the Seller will complete delivery as soon as possible.
- 5.6 If the Seller delivers the goods at the direction of the Customer to a place other than to the premises of the Seller pursuant to clause 5.1 then the Customer must pay all the transportation charges for delivery of the goods (including freight charges). The transportation charges will be payable by the Customer to the Seller within 7 days from the date of the demand by the Seller.

6. RETURNS

- 6.1 Goods returned without the consent of the Seller will not be accepted for credit and the Seller will be entitled to:-
 - (a) return the goods at the Customer's expense to the Customer which expenses will be payable on demand by the Seller; or
 - (b) hold the goods as a pledge in respect of the Customer's indebtedness to it, whether liquidated or not, and sell the goods and apply the proceeds of sale to the amount owing by the Customer.
- 6.2 For the purpose of clause 6.1 the consent means
 - (a) written consent, or
 - (b) a Return Number provided by the Seller to the Customer.
- 6.3 If the Seller consents to the return of the goods, the Seller will be entitled to charge a handling fee equivalent to 15% of the price of the returned goods quoted on the relevant invoice. All transportation charges (including freight charges) must be paid by the Customer. The handling fee and transportation charges will be payable by the Customer to the Seller within 7 days from the date of the return of the goods concerned.
- 6.4 The Customer must inspect the goods prior to reselling or pricing the goods. Once the goods have been resold or priced the Customer has no right to return the goods under any circumstances whatsoever.

7. BREACH

If:-

- 7.1 the Customer fails to make payment (including payment for any charges under clause 3.4) on the due date, or
- 7.2 any cheque, promissory note or other bill of exchange given to the Seller by the Customer is not honoured on first presentation; or
- 7.3 an application or order is made for the winding-up or sequestration of the Customer or an application or order is made to place the Customer under official management; or
- 7.4 the Customer endeavours to or enters into any arrangement, compromise or composition with any of its creditors; or
- 7.5 the Customer fails to satisfy any judgement against it within 7 days after date of judgement; or
- 7.6 the Customer breaches any of the terms of any Contract, all of which are deemed to be material; or
- 7.7 any of the assets of the Customer or any of the goods in the possession of the Customer which have not been paid in full, are seized under legal process issued against the Customer; or

- 7.8 a receiver, receiver and manager, controller, administrator, official manager, trustee or similar official is appointed over any of the assets or undertakings of the Customer;
- 7.9 the Customer ceases to carry on business, the Seller will have the right and option without prejudice and in addition to all rights under these Conditions or a law or in equity to-
- (a) continue to enforce its rights and recover from the Customer such payments and any other amounts owing as and when they fall due; or
 - (b) claim immediate payment of all moneys due by the Customer in respect of all Contracts which will immediately become due and payable, notwithstanding the due date for payment of any invoice or any extended terms agreed by the Seller; or
 - (c) cancel all or some of the Contracts with the Customer, upon which event the Customer will immediately return the goods to the Seller and the Customer will in addition be liable to the Seller for any loss or damage of whatever nature that the Seller may have suffered or may suffer in consequence of the cancellations.

8. CHANGE OF CONTROL

- 8.1 The Customer must give written notice to the Seller if:
- (a) its business is sold, change of name or address or restructure of business,
 - (b) the Customer being a company, there is an issue of, or transfer of, 50% or more of its issued share capital to any third party (the "Buyer").
- 8.2 The Customer undertakes to procure that the purchaser of the business executes an additional Credit Application and/or the buyer executes a Guarantee in accordance with clause 2 of the Credit Application. The customer will remain responsible for all goods ordered (and accepted by the Seller) in the name of the Customer or its business prior to the sale of the business or the shares until such time as the Seller at its discretion and in writing, releases the Customer from its liability.

9. WARRANTIES

- 9.1 The Seller makes no representation whether express or implied as to the merchantability, condition, durability or fitness for the purpose for which the goods are to be used and any implied warranty as to latent defects is expressly excluded.
- 9.2 In no event whatsoever will the Seller be responsible for any loss, damage, cost, charge or expense suffered, incurred or sustained by the Customer whether consequential or otherwise of whatsoever nature and kind and howsoever arising including through the negligence of the Seller, its agents or servants.
- 9.3 These warranties will not be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods or services pursuant to the Conditions of all or any of the provisions of Part V of the Trade Practices Act, 1974 (as amended) or Part VIII of the Sale of Goods Act 1923 NSW or by any other statute Act of any state or territory of the Commonwealth of Australia which by law cannot be excluded, restricted or modified.
- 9.4 To the extent permitted by Section 68A of the Trade Practices Act 1974 the liability of the Seller to the Customer for a breach of a condition or warranty implied by a provision of Division 2 of Part V of the Trade Practices Act 1974 will be limited to:
- (1) the replacement of the relevant goods or the resupply of equivalent goods;
 - (2) the repair of the relevant goods;
 - (3) the payment of the cost of replacing the relevant goods; or
 - (4) the payment of the cost of having the relevant goods repaired;
- and the Seller may in its absolute discretion determine which of the foregoing limits will apply in any case.
- 9.5 Each of the terms contained in these Conditions which exclude liability on the part of the Seller will be a separate and divisible term, and if any such term becomes unenforceable for any reason whatever, that term is severable from and will not affect the validity of the other terms.

10. OWNERSHIP

- 10.1 Ownership of goods delivered by the Seller to the Customer will not pass from the Seller to the Customer until such time as the goods the subject of any Contract and all other goods supplied by the Seller to the Customer have been paid in full.
- 10.2 Notwithstanding clause 10.1 all risk of loss, damage or other injury to the goods will pass from the Seller to the Customer on delivery in accordance with clause 5.1 of these Conditions.
- 10.3 The Customer will indemnify and keep indemnified the Seller against loss, damage or other injury to the goods from the date of delivery of the goods to the Customer until full payment as provided in clause 10.1 has been received by the Seller.
- 10.4 Until full payment for the goods is received by the Seller, the Customer must keep the goods as bailee for the Seller. The Customer is at liberty to sell the goods in the ordinary course of business in the name of the Customer and as a principal and not as agent for the Seller but the benefit of any such sale and the proceeds of any such sale belongs to the Seller absolutely.
- 10.5 The Customer must not represent to any third party that it is in any way acting for the Seller and the Seller will not be bound by any contract in relation to the goods which the Customer may enter into with any third party.
- 10.6 The Customer must keep separate accurate and current records of all goods delivered to it by the Seller and the sale of any of those goods by it to third parties. The Customer must keep the Seller's goods separate from all other goods in an area designated for that purpose in the Customer's premises and must at all times prominently display a notice in such area stating that ownership of the goods is reserved to the Seller. If at any time required by the Seller, the Customer must give notice to the landlord of the premises in which any of the goods are stored that the goods are reserved to the Seller. If at any time required by the Seller, the Customer must give notice to the landlord of the premises in which any of the goods are stored that the goods are the property of the Seller.
- 10.7 The proceeds of sale of the goods by the Customer at any time prior to full payment for the goods being received by the Seller must be paid into a separate account on trust for the Seller and the Customer must forthwith make payment to the Seller from the account of the amount owing for the goods.
- 10.8 If full payment is not received by the Seller for any Contract by the due date specified in the relevant invoice, the Customer irrevocably authorises the Seller to enter any premises where the goods are kept and retake possession of all goods in the Customer's possession which have not been fully paid for notwithstanding the due dates for payment of any of the goods concerned.
- 10.9 In the event of a repossession under clause 10.8, the Seller will be entitled to sell the goods and apply the proceeds of sale to the amount owing by the Customer.
- 10.10 The Customer indemnifies and continues to indemnify the Seller against any costs incurred by the Seller and claims arising from the entry into the premises where the goods are kept retaking possession and selling the goods.
- 10.11 If the goods:
- (a) become constituents of other products so as not to be separable from those products; or
 - (b) are converted into other products of a distinctly different character,
- then
- (1) the Seller has a charge over the other products and each of them to the extent of the unpaid purchase price of any goods sold to the Customer;
- and
- (2) if the Customer sells those other products or any of them:
 - (A) the Seller has a charge over the rights of the Customer to receive the purchase price in respect of those other products or any of them to the extent of the unpaid purchase price of any goods; and
 - (B) the Customer holds the proceeds of sale on trust for the Seller to the extent of the unpaid purchase price of any goods.

11. CERTIFICATE

The Customer agrees that a certificate signed by any employee of the Seller or any partner of the Seller's auditors setting out the balance owing by the Customer to the Seller for goods sold will be final, binding the conclusive upon the Customer and the guarantors referred to in clause 2 of the Credit Application.

12. GENERAL

- 12.1 The Seller's delivery notes will be deemed to be prima facie proof of delivery to the Customer of the goods described in the delivery note. In the event of a dispute as to the quantity of goods sold and delivered and their value, the onus of proving that the goods were not delivered and/or the quantity and price thereof is not in accordance with the Seller's invoices will be upon the Customer.
- 12.2 No concession, latitude or indulgence allowed by the Seller to the Customer may be construed as a waiver or abandonment of any of its rights under the Conditions or act as any estoppel against the Seller.
- 12.3 All payments to be made by the Customer must be free and clear, without any set-off, counterclaim or condition.
- 12.4 If any terms and conditions of these Conditions are invalid, such terms and conditions to the extent of their invalidity may be severed from these Conditions and will not invalidate the remainder of the Conditions.
- 12.5 The Seller in its sole and absolute discretion may appropriate any payment made by the Customer to any cause of indebtedness as may be owned by the Customer to the Seller.
- 12.6 In the event of a breach by the Customer of any Contract, the Customer will be liable to and hereby indemnifies the Seller against all costs, charges and expenses incurred by the Seller as a consequence of that breach including but not limited to all legal costs, charges and expenses incurred calculated on a solicitor and client basis.
- 12.7 The Customer irrevocably appoints the Seller its attorney and agent to do all acts and sign all documents in the name of the Customer and as the act and deed of the Customer to enable the Seller to exercise its rights under these Conditions or any Contract.
- 12.8 Any notice given under these Conditions must be served on the Customer at the last known place of businesses or residence of the Customer or on the Seller at 8/8-10 Wainwright Rd, Whalan, New South Wales (or such other address as may be notified in writing by the Seller) in the manner provided in Section 170 of the Conveyancing Act, 1919.
- 12.9 All Contracts, invoices and these Conditions are governed by the laws of New South Wales and the Customer submits to the jurisdiction of the Courts of that State.
- 12.10 Headings are for reference purposes only and do not affect interpretation of these Conditions.

DEED OF GUARANTEE

TO: **UNIVERSAL PET SUPPLIES PTY LTD** A.B.N. 55 117 490 070 of 8/8-10 WAINWRIGHT RD, WHALAN, N.S.W.
("Universal Pet Supplies")

IN CONSIDERATION of Universal Pet Supplies, at my/our request, agreeing to accept in the attached Credit Application executed by or on behalf of

.....("Applicant")

(Please print name of Applicant)

and to supply goods or services from time to time to the Applicant in accordance with the Conditions of Sale set out in the Credit Application ("Principal Agreement").

I/WE, the undersigned, unconditionally and irrevocably guarantee to Universal Pet Supplies the payment of all debts and monetary liabilities of the Applicant to Universal Pet Supplies and in any capacity which are now or may from time to time be owing or remain unpaid pursuant to or arising out of the Principal Deed ("Guaranteed Moneys") and I/we undertake and agree with Universal Pet Supplies as follows:

- (a) If the guaranteed Moneys are not paid when due, I/we will immediately on demand from Universal Pet Supplies pay to Universal Pet Supplies the Guaranteed Moneys.
- (b) This deed applies to the present and future amount from time to time of the guaranteed Moneys.
- (c) As a separate and independent covenant, I/we will indemnify Universal Pet Supplies against any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Universal Pet Supplies pays, suffers or incurs, or is liable for, in respect of any of the following:
 - (1) any failure by the Applicant to pay any of the Guaranteed Moneys when due;
 - (2) if any of the Guaranteed Moneys are irrecoverable from the Applicant or from me/any of us for any reason whatsoever.
- (d) The guarantee and each indemnity contained in this deed is a continuing obligation of mine/each of us and remains in full force and effect until the Guaranteed Moneys have been finally paid in full.
- (e) This deed is a principal obligation between me/each of us and Universal Pet Supplies.
- (f) This deed will not be released, discharged or otherwise affected by anything which but for this provision might have that effect, including:
 - (1) the grant to the Applicant or me/any of us of any time, waiver, covenant not to sue or other indulgence;
 - (2) the release or discharge of the Applicant of its obligations under the Principal Deed or of me/any of us of my/our obligations under this deed;
 - (3) the Principal Deed or this deed being in whole or in part illegal, void, voidable, avoided, unenforceable or otherwise of limited force or effect;
 - (4) any security being given to Universal Pet Supplies by any other person;
 - (5) the alteration, amendment, variation, supplement, renewal or replacement of the Principal Deed; or
 - (6) any legal limitation, disability or incapacity of the Applicant or me/any of us.
- (g) This deed binds me/each of us and my/each of our personal representatives.
- (h) This deed binds each person who signs this deed even if one or more other persons expressed to be guarantor do not execute this deed.
- (i) Where this deed is signed by 2 or more persons, this deed binds each of them jointly and severally.
- (j) Any notice or other communication, including any request, demand, consent or approval must be in writing and addressed to me/us at the address of the Applicant specified above or addressed to you at your address specified above, or such other address as may be notified.
- (k) This deed is governed by the laws of the State of New South Wales. I/each of us irrevocably submit to the jurisdiction of the Courts of New South Wales.

DATED _____ 20 _____

SIGNED by _____
Name of Guarantor (**Please Print**)

Guarantor's Signature

in the presence of: _____
Witness's Signature

Witness Name: _____
(**Please Print**)

Address: _____

_____ Post Code _____

SIGNED by _____
Name of Guarantor (**Please Print**)

Guarantor's Signature

in the presence of: _____
Witness's Signature

Witness Name: _____
(**Please Print**)

Address: _____

_____ Post Code _____