

# TERMS & CONDITIONS

## 1. INTERPRETATIONS

- a. "LION" means LION BATTERIES HOLDINGS PTY LTD (ABN 59 623 028 535).
- b. "Applicant" or "Consignee" shall mean the person or persons or entity identified in the Application for Credit and shall include their legal representatives, administrators, successors and / or permitted assignees.
- c. "PPSA" means the Personal Property Securities Act 2009 (Cth).
- d. "Security Agreement", "Security Interest", "Purchase Money Security Interest", "PPS Register" and "Verification Statement" have the same meaning ascribed to them in the PPSA.
- e. In the event the Applicant has multiple business addresses, this application and guarantee shall extend to cover all sites owned / leased / occupied by the Applicant.

## 2. TRADING TERMS

- a. Until the Applicant's account has been approved, all products supplied must be paid on a cash on delivery (COD) basis only.
- b. Standard trading terms are strictly on thirty (30) days nett (ie 30 days from the end of the month in which the goods are delivered).
- c. Applications for extended trading terms for any account must be in writing and addressed to:

**General Manager  
Lion Batteries Holdings  
22 Stoddart Road  
PROSPECT, NSW 2148**

## 3. PAYMENT AND DEFAULT

- a. All cheques must be made payable to LION BATTERIES HOLDINGS PTY LTD and marked "not negotiable".
- b. Third party cheques are not acceptable.
- c. Trading account will be terminated if two (2) cheques are dishonoured.
- d. No further cheques will be accepted if two (2) cheques are dishonoured.
- e. All accounts outside trading terms will be suspended and supply of goods will be stopped until outstanding balance is received.
- f. A late payment fee of \$5.00 per month per account shall be incurred if payment is not received by due date.
- g. The Applicant's trading account shall remain in the name as stated on the Application for Credit until LION is notified in writing and consent is given in writing by LION.
- h. The Applicant shall notify LION as soon as practicable should there be any change in the legal entity, structure, management or control of the Applicant's business.
- i. The Applicant shall not be entitled on any grounds whatsoever either wholly or in part to withhold payment when it becomes due.
- j. Default payment shall entitle LION to stop supply of goods and take proceedings for the collection of the outstanding amounts without prejudice to any subsequent claim LION may enter for non-fulfillment of the Terms and Conditions.
- k. All overdue accounts will accrue interest at the rate of 13.5% p.a. calculated daily as from the due date for payment and all account recovery fees including administrative costs of LION, legal costs and interest will become due and payable by the Applicant.
- l. Legal action for recovery of monies due shall be commenced if account is in default for 45 days.

## 4. RETENTION OF TITLE

- a. Property and title to the products supplied to the Applicant by LION does not pass to the Applicant but is retained by LION until the purchase price of the products and any other money that Applicant owes to LION at any time on any account has been received by LION in full.
- b. In the event of Liquidation, Receivership, Administration or Bankruptcy, LION reserves the right to claim retention of title over all products supplied to the Applicant for accounts which have become due and payable but remains outstanding.
- c. The Applicant may sell or dispose of the products supplied to it by LION in the ordinary course of its business.

# TERMS & CONDITIONS

- d. Risk in all products supplied to the Applicant by LION will pass to the Applicant upon delivery to the Applicant. The Applicant will be responsible for any loss or damage to any products supplied to the Applicant by LION however caused following delivery of those products.
- e. Where the Applicant processes or commingles the products supplied to it by LION into other property, LION takes title to the other property as well.
- f. Where the Applicant disposes of the products supplied to it by LION before payment of the purchase price, the sale proceeds of such disposal are the property of LION and the Applicant agrees to hold the proceeds on trust for LION. Further, the Applicant, in disposing of the products before payment to LION, does so as the fiduciary agent of LION.
- g. The Applicant irrevocably grants LION the right without notices, and at its sole discretion, to enter upon any premises the Applicant is in possession of, to remove or repossess any products supplied to it by LION and sell or dispose of those products and apply the proceeds from such sale or disposal to any monies owed by the Applicant to LION. The Applicant agrees that LION will not be liable for any loss, damages or claims which results from the Applicant's actions in accordance with this paragraph.

## 5. CONSIGNMENTS

Subject to the approval of this Application, LION agrees to place automotive batteries on consignment at the business premises stated on this application. Please read the following information carefully as you are responsible for the consigned batteries. Upon acceptance of the consigned goods and with the authorisation of both parties, the following points are agreed upon.

- a. You must retain all LION consignment transaction documentation for the duration of your consignment.
- b. All transactions are documented. Ensure you receive a consignment note for every placement or withdrawal to your consignment.
- c. You will be liable for any discrepancies if you cannot produce your LION documentation for verification.
- d. The liability for this consignment shall be that of the consignee and shall remain valid until such time as a written retraction is received by LION.
- e. You must advise LION in writing of any change of details to this application.
- f. In event of cessation of business or change of ownership, you must notify LION in writing ten (10) working days prior to cessation of trading.
- g. All batteries remain the property of LION until paid for in full.
- h. All batteries must remain in a clean and saleable condition.
- i. All batteries that are not in "as new" condition, shall be paid for by the consignee.
- j. The consignee will pay for all missing and unsaleable batteries.
- k. An unsaleable battery is a battery that has been deemed by the LION Sales Representative to have been used, abused or mistreated in any way that makes the battery not suitable for sale as a new product.
- l. Ensure the battery details on the consignment note are correct. You must notify LION of any discrepancy within 24 hours of the transaction.
- m. Audits of consignment stock will be performed periodically. You will be required to sign the audit as verification of stock holdings and return that audit to LION.
- n. You will be required to substantiate any discrepancy by producing LION documentation to verify your claim.
- o. Any audit not returned will be invoiced to the consignee.
- p. Consigned stock that has not been sold within three months of placement shall be withdrawn.
- q. Consignments shall be based on the consignee's quarterly battery turnover and shall be adjusted accordingly.
- r. All advertising and display apparatus remain the property of LION.
- s. In the event of liquidation, receivership appointment of an administrator or bankruptcy, LION reserves the right to claim retention of title over all consigned batteries and sales from LION which remain due and payable.
- t. The value of the consignment is determined by the most recent LION price list.
- u. Where you process or commingle any consigned goods into other property, LION takes title to that other property as well.

# TERMS & CONDITIONS

- v. Where you dispose of any consigned goods before payment of the full purchase price to LION, the sale proceeds of such disposal are the property of LION and you hold the proceeds on trust for LION. Further, in disposing of any consigned goods, you do so as a fiduciary agent of LION.
6. TERMINATION
    - a. LION retains the right to revoke the account if in its discretion, believe that the terms and conditions of this agreement have been breached.
    - b. Upon termination, all amounts under the account become immediately due and payable and LION may retake possession of all products that have been supplied or consigned which are in the applicant's possession and remains outstanding.
  7. GUARANTEE
    - a. The guarantee shall remain valid until such time as LION receives a written retraction from the Guarantor.
  8. VARIATION
    - a. LION may vary these terms and conditions at any time by giving 7 days' notice to the Applicant specifying the variation.
  9. PRIVACY ACT 1988
    - a. I / We agree that LION may seek from a credit reporting agency, a credit report containing personal information about the applicants and or directors to assess whether to accept me / us as a guarantor for credit applied for or provided to the applicant named in this application.
    - b. I / We agree to LION obtaining from a credit reporting agency, a credit report containing personal credit information about me / us for the purpose of assessing my / our application for commercial / personal credit.
    - c. I / We agree to LION receiving from any other credit provider or providing to any credit provider any credit information whether by way of report, record or otherwise relating to credit worthiness for the purpose of exchange of credit information, assessing credit worthiness and notification of default at any time whether now or in the future.
    - d. I / We agree to LION obtaining from a credit reporting agency a credit report on the applicants for the purposes of assessing this credit application and the applicants further consents to LION obtaining such reports from time to time for the purpose of assessing credit worthiness during the continuance of credit provisions.
    - e. I / We agree to LION obtaining from a business which provides credit information a report of information in relation to my / our commercial credit worthiness or commercial dealings and using such information for the purposes of assessing this application for credit
    - f. I / We agree that in the event of default of payment of the debts that LION may disclose all information relating to my / our accounts to its collection agency for the purpose of receiving any or all amounts outstanding.
  10. PPSA
    - a. The Applicant:
      - i. grants a Security Interest in the products supplied to it by LION and acknowledges that this agreement constitutes a Security Agreement for the purposes of the PPSA; and
      - ii. acknowledges that the Applicant may register its Security Interest in the products supplied to it by LION and in the proceeds of the sale of the products as a Purchase Money Security Interest on the PPS Register and the Applicant agrees to execute documents and do such further acts and things and provide such further information as may be required to enable registration on the PPS Register or to perfect or correction any registration; and
      - iii. where the PPSA applies to action taken by LION in relation to the products supplied to it by LION, it:
        - A. agrees sections 116(2), 120, 125, 142 and 143 of the PPSA will not apply; and
        - B. waives its right to receive notices under sections 95, 118(1)(b), 121(4), 123(2), 130, 135, 132(3)(d) and 132(4) and any Verification Statement