



APPLICATION FOR CREDIT FACILITY

BUSINESS NAME _____
BUSINESS STREET ADDRESS _____
STATE _____ POSTCODE _____
TELEPHONE _____
E-MAIL _____
A.B.N. _____
CONTACT NAME _____

INCOMPLETE APPLICATIONS WILL NOT BE PROCESSED.

GUARANTEE

***FULL NAMES OF PROPRIETORS, PARTNERS OR DIRECTORS AS
PERSONAL GUARANTORS. (MUST MATCH ONLINE FORM DETAILS.)
WE THE UNDERSIGNED, PERSONALLY GUARANTEE ALL DEBTS
PERTAINING TO THE BUSINESS APPEARING ABOVE.***

1 NAME _____
ADDRESS _____

TELEPHONE _____
SIGNATURE 1. _____ DATE: _____

2 NAME _____
ADDRESS _____

TELEPHONE _____
SIGNATURE 2. _____ DATE: _____

WITNESS NAME _____
WITNESS SIGNATURE _____ DATE: _____

CONDITIONS OF ACCOUNT

THE INITIAL ORDER FOR NEW ACCOUNTS IS \$500.00 MINIMUM
FIRST 3 PURCHASES ARE COD OR DIRECT PAYMENT BEFORE DELIVERY
THERE AFTER IS STRICTLY AN EOM + 30 DAY ACCOUNT
**BRIGALOW COUNTRY CLOTHING PTY LTD MANAGEMENT RESERVES
THE RIGHT TO CHANGE YOUR ACCOUNT PAYMENT TERMS IF
PAYMENT TERMS ARE NOT ADHERED TO.**

TERMS AND CONDITIONS OF SALE

BRIGALOW COUNTRY CLOTHING PTY LTD

ABN 85 102 193 386

1. Interpretation

In these Terms and Conditions and any associated documents, unless a contrary intention is stated:

“ACL” means the Australian Consumer Law, located in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

“Agreement” means the Contract formed between the Customer and BRIGALOW.

“Business Day” means any day except Saturday or Sunday or a day that is a public or bank holiday in Brisbane, Queensland.

“Corporation” means a company registered under the Corporations Act 2001 (Cth)

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

“Customer” means the person/entity specified as the customer on the Contract/Tax Invoice and or Statement.

“Default” has the meaning defined in clause 6 of these Terms and Conditions of Sale.

“Date of Supply” means the date the customer has provided a direct debit authority to BRIGALOW.

“BRIGALOW” means Brigalow Country Clothing Pty Ltd (ACN 102 193 386);

“Goods” means any item of whatever nature that is sold by BRIGALOW to the Customer.

“Contract Goods” means the particular goods delivered to the Customer by BRIGALOW under the Agreement as described in the Tax Invoice.

“Guarantor” means each of the persons who complete this form as guarantor.

“Order” means where the Customer has requested goods from BRIGALOW.

“Tax Invoice” means an itemised bill of goods provided by BRIGALOW to the Customer.

“Contract” has the meaning as defined in clause 2 of these Terms and Conditions.

“GST” has the meaning given to that term by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

“Security Interest” has the meaning as defined in section 12 of the Personal Property Securities Act 2009 (Cth).

“Statement” means an overview of monies owing by the Customer to BRIGALOW that is not an Invoice.

“Payment Due” means any amount owing by the Customer to BRIGALOW in consideration for goods provided in relation to an Order.

“The Parties” means the Customer and BRIGALOW.

“Quotation” means the itemised price of goods and services provided by BRIGALOW in relation to an Order.

2. Contract

The Customer and BRIGALOW will be deemed to have entered into an agreement (the Contract) upon the communication by the Customer to BRIGALOW of the Customer’s acceptance of:

2.1. An Order placed by the Customer.

2.2. The Quotation provided by BRIGALOW in relation to the Order placed by Customer

3. Terms and Conditions Constitute Entire Agreement

The terms and conditions of the Contract are set out in:

3.1. These Terms and Conditions, and the parties agree that:

3.1.1. These Terms and Conditions prevail over any terms or conditions sought to be imposed by the Customer on BRIGALOW.

3.1.2. These Terms and Conditions constitute the entire agreement between the parties.

3.1.3. Clause 3 is not to be construed as an attempt to limit, exclude or contract out of the operation of the ACL.

4. General

4.1. The Customer agrees that BRIGALOW may:

4.1.1. Withdraw or terminate the supply of goods at any time, without notice.

4.1.2. Withdraw or terminate any contract and / or suspend any delivery to supply goods to the customer if payment is not made by due date.

4.2. The Customer holds BRIGALOW harmless in relation to any loss, damage or injury (including that caused by negligence of BRIGALOW or its servants, agents or contractors) resulting from such withdrawal or termination.

4.3. Unless otherwise agreed in writing by BRIGALOW, any terms and conditions of the Customer's Order deviating from these terms and conditions are expressly rejected by BRIGALOW as are any variations to these terms and conditions.

4.4. BRIGALOW may vary these terms and conditions by notice in writing to the Customer or by updating the terms and conditions available on BRIGALOW's website at <<http://brigalowcountry.com.au/terms-of-use>>.

4.5. The Customer agrees that the purchase of goods after amended terms are sent to the customer or available on the BRIGALOW website will constitute the Customer's acceptance of such varied terms and conditions.

5. Payment

5.1. BRIGALOW may set off against any money owing to the Customer amounts owed by BRIGALOW to the Customer on any account whatsoever. The Customer may not set off any amounts allegedly owing by BRIGALOW to it against any account whatsoever.

5.2. Unless otherwise stated in an Tax Invoice or Statement issued in writing by BRIGALOW, the Customer agrees to pay in full for all goods provided by BRIGALOW to the Customer:

5.2.1. Within 7 days of the date on the Tax Invoice.

5.2.2. Before raising any dispute, set off or counterclaim as to the amount owing.

5.2.3. Before bringing any application to Court claiming there is any genuine dispute under section 459G of the Corporations Act.

5.3. If the Customer wishes to claim a refund or reduction or raise a dispute in relation to the amount payable under any Tax Invoice, the amount of GST payable under any Tax Invoice or the quality or quantity of Goods provided, the Customer agrees to do so in separate proceedings and only after the Customer has paid the full amount of the Tax Invoice with cleared funds, in accordance with Clause 8.1.3.

5.4. Unless otherwise agreed by BRIGALOW, the Customer agrees to make payments by cash, cheque, bank cheque, electronic funds transfer, Visa or MasterCard without deduction.

5.5. The parties agree that if a Payment Due to BRIGALOW is not paid within the due date, the Customer must pay BRIGALOW interest at the rate of 2% compounding per month on the largest amount payable (including interest and other charges payable pursuant to this agreement) during the preceding month.

5.6. The Customer acknowledges and agrees:

5.6.1. To pay a dishonour fee of \$30.00 for each cheque or direct debit payment dishonoured.

6. Default

The parties agree that the following are Acts of Default for the purposes of this agreement:

6.1. If there is any default or failure by the Customer in making full payment to BRIGALOW of any Payment Due by the Customer within 7 days of the date of any Tax Invoice.

6.2. If a direct debit request processed by BRIGALOW fails;

6.3. If the Customer (or one of its agents) provides a cheque to BRIGALOW which is not honoured upon presentation;

6.4. If an administrator, liquidator, controller, receiver or provisional liquidator is appointed in respect of the Customer;

6.5. If the Customer becomes bankrupt or is wound up;

6.6. BRIGALOW deems the Customer insolvent;

6.7. If the Customer becomes, or it admits in writing that it is, unable to pay its debts as and when they fall due;

6.8. If the Customer refuses to receive a delivery; or

6.9. If the Customer breaches these terms and conditions.

The parties agree that upon a Default occurring that BRIGALOW may:

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- 6.10. Elect (without notice to the Customer) for all monies payable by the Customer to BRIGALOW to become immediately due and payable notwithstanding that the due date for payment may not otherwise have expired;
- 6.11. To terminate any contract and withhold/suspend any further delivery of to the Customer;
- 6.12. Take immediate possession of the goods by entering customer's premises, without liability for trespass or otherwise repossess goods; and/or
- 6.13. Retain all monies paid by the Customer on account as liquidated damages.

7. Costs on Default

- 7.1. The Customer indemnifies BRIGALOW for any costs and expenses (on a full indemnity basis) in connection with attempts to obtain payment of any Payment Due, including fees charged by a collection agency or solicitor, whether or not formal proceedings are brought to remedy the Customer's breach of this Agreement. In the event that indemnity costs are not enforceable, the Customer agrees to pay BRIGALOW costs and expenses by reference to 150% of the Supreme Court of Queensland scale to be assessed by a registered Queensland costs assessor selected by BRIGALOW at its sole discretion.
- 7.2. The Customer acknowledges and agrees:
 - 7.2.1. To pay liquidated damages in the sum of \$500.00 if the Customer is outside the payment terms required by this Agreement and Brigalow Country Clothing instructs solicitors to send a letter of demand to the Customer, with such \$500.00 to cover the costs of instructing solicitors to demand payment and the costs associated with any consequent negotiations.
 - 7.2.2. To pay liquidated damages in the sum of \$500.00 if the Customer is a Corporation and BRIGALOW instructs solicitors to prepare and serve a Creditor's Statutory Demand for Payment of Debt under section 259E of the Corporations Act on the Customer, with such \$500.00 to cover the costs of instructing solicitors to demand payment together with the costs associated with any consequent negotiations.
 - 7.2.3. To pay liquidated damages in the sum of \$1,500.00 to BRIGALOW in the event that BRIGALOW commences legal proceedings to recover monies owed by the Customer, with such \$1,500.00 to cover such fees borne by BRIGALOW in instructing lawyers and supervising the legal process.
 - 7.2.4. To pay liquidated damages in the sum of \$200.00 for each Security Interest that BRIGALOW instructs solicitors to register over the Contract Goods in accordance with clause 23, with such \$200.00 to cover the costs of instructing solicitors to register the Security Interest.
 - 7.2.5. That the liquidated sums in the preceding paragraphs are a genuine and reasonable pre-estimate of loss suffered by BRIGALOW in the event that the Customer defaults under this agreement.
- 7.3. The Customer agrees to pay all stamp duties, any bank charges, or other charges incidental to the performance or enforcement of, or litigation on these terms and conditions or any documents signed by the Customer or any Guarantor together with any other collection costs.
- 7.4. The Customer agrees that if it makes an application to Court to have any statutory demand served on it by BRIGALOW set aside on any grounds whatsoever that the Customer will bear the entirety of its own legal costs up to the sum of \$10,000.00.
- 7.5. BRIGALOW is entitled to settle for any amount owed by the Customer or any of the Customer's related entities against any amount payable to BRIGALOW in connection with any Payment Due to BRIGALOW.
- 7.6. A waiver by BRIGALOW of any breach of this Agreement does not constitute a waiver of any subsequent breach or Default.

8. Invoice or Statement Dispute Procedure

- 8.1. The Customer acknowledges and agrees:
 - 8.1.1. To notify BRIGALOW in writing within seven (7) days of BRIGALOW rendering an Invoice or Statement of any dispute that it may wish to raise to that Invoice or Statement;
 - 8.1.2. That notice of any such dispute must be sent to BRIGALOW in accordance with Clause 22 or it will not be valid and cannot be relied upon
 - 8.1.3. That if BRIGALOW does not receive notice of a dispute that is sent in accordance with Clause 22 within seven (7) days of BRIGALOW rendering an Invoice or Statement then the Customer agrees it has accepted the goods and must pay the full amount of that Invoice or Statement before it can raise a dispute to the amount sought, or claim for a set-off, or raise a counter-claim against BRIGALOW.
- 8.2. The Customer agrees that it has accepted the goods if the goods are used or otherwise placed in commercial operation.

9. Use of Personal Information

9.1. The Customer permits BRIGALOW to disclose the Customer's information to credit reporting agencies, its solicitors, debt collection agencies, and in order to contact the Customer's credit references and sources.

9.2. The Customer certifies that the Customer's information contained in this application is true and correct and that BRIGALOW may rely on the information provided by the client when considering disclosure of the Customer's information to credit reporting agencies, its solicitors, debt collection agencies, and in order to contact the Customer's credit references and sources.

9.3. All personal information collected by BRIGALOW will be treated in accordance with BRIGALOW's privacy policy available at www.brigalowcountry.com.au, as amended from time to time.

10. Limitation of Liability

10.1. The Customer agrees that the liability of BRIGALOW for any claim by the Customer or the Guarantors (including for negligence, howsoever caused) is limited to the minimum required by law.

10.2. This limitation of liability applies to:

10.2.1. Any negligent or wrongful act or deliberate act or default on the part of contractors of BRIGALOW, its agents, servants or subcontractors;

10.2.2. Any mis-delivery, delay or non-delivery (whether any specific time for delivery has been agreed or not);

10.2.3. Any breach of contract or tortious duty;

10.2.4. Any consequential loss for whatever reason and under any circumstances;

10.2.5. Any loss of or damage to or deterioration in or contamination of goods while the goods are in the possession, custody or control of the Customer;

10.2.6. Any claim for delay or damage, to the amount of BRIGALOW charges to the company for or in relation to the goods;

10.2.7. Any failure or delay in performance hereunder due in whole or in part to strikes, work stoppages, fire, acts of terrorism, accidents, wars, rebellions, civil commotion, public strife, acts of any government, whether legal or otherwise, acts of public enemies, forces majeure, or qualified labour, or any other causes beyond the reasonable control of BRIGALOW;

10.2.8. Any delays or inability to obtain product because of the actions of a supplier to BRIGALOW; and

10.2.9. Any matter or claim that is not brought to the attention of BRIGALOW in writing within seven (7) days of the Customer becoming aware of any such matter or claim.

10.3. The Customer agrees that BRIGALOW enters this Agreement not only on its behalf but also as agent and trustee for such contractors, servants, sub contractors and agents as it may appoint from time to time.

10.4. The Customer must defend, indemnify and hold harmless BRIGALOW from and against all claims, costs and demands whatsoever and by whosoever made in relation to or arising out of the goods and services provided, in excess of the liability of BRIGALOW under the terms of these conditions and without prejudice to the generality of this clause, this indemnity shall cover all claims, costs and demands arising from or in connection with the negligence or wrongful or deliberate acts of BRIGALOW, its contractors, servants, sub-contractors and agents.

10.5. The Customer expressly discharges BRIGALOW from all liability unless:

10.5.1. The Customer provides BRIGALOW notice of any alleged loss or damage immediately or (if lawful damage is not immediately apparent) within seven (7) days of the goods being collected by or delivered to the Customer at the conclusion of the services; and

10.5.2. A suit is brought in the appropriate form and written notice is received by BRIGALOW within seven (7) days of the date of delivery of the goods, in accordance with Clause

11. Delivery/Title/Risk of Loss/Insurance

11.1. Any times quoted for delivery are estimates only and the Customer agrees BRIGALOW is not liable for any delays or failure in delivery.

11.2. The risk or loss of goods passes from BRIGALOW to the Customer when the goods or component parts are dispatched from BRIGALOW's premises.

11.3. The Customer must provide insurance for no less than the total amount owing to BRIGALOW with loss first payable to BRIGALOW.

12. Warranty

12.1. BRIGALOW warrants that the goods will conform to the description contained on the invoice, and the Customer acknowledges and agrees that no further warranty is to be implied.

12.2. To the extent permitted by law, BRIGALOW disclaims any implied warranty of merchantability/fitness for a particular purpose. The Customer agrees BRIGALOW have made no representations or warranties except as confirmed in writing by a director of BRIGALOW.

12.3. The Customer holds BRIGALOW harmless and indemnifies and defends BRIGALOW (including its directors, officers, employers, agents and representatives) for any claims arising out of or relating to the design, specification or use of product(s) sold or otherwise provided by BRIGALOW to the Customer.

12.4. Clause 12 is not to be construed as an attempt to limit, exclude or contract out of the operation of the ACL.

13. Returns and Cancelling Orders

13.1. The Customer agrees that BRIGALOW may require prior written consent prior to accepting any returned goods, and that such returns may result in handling, inspection, restocking, and invoicing charges which are to be paid by the Customer.

13.2. The Customer agrees to pay for shipping of all returns to BRIGALOW and to ensure that the returns are in excellent re-sale condition.

13.3. Goods made to a Customer's specification are not returnable.

13.4. Upon receipt of written notice from the Customer, BRIGALOW may cancel any Orders as requested by the Customer subject to BRIGALOW (or its sub-contractors) rights to continue processing and or delivering material to the point at which processing or delivery can be halted with the least disruption and cost to BRIGALOW.

13.5. The Customer is responsible for all costs associated with the cancellation and/or the completion of the processing and/or delivery of the goods.

14. Amendments, Representations and Assignment

14.1. BRIGALOW may assign its rights and obligations under these terms and conditions. If the Customer changes its corporate status, then the Customer acknowledges and agrees that both the Customer and its successors continue to be bound by these terms and conditions of sale.

14.2. The Customer agrees no prior representation, affirmation, or agreement can be enforceable unless set forth herein.

14.3. The terms of this agreement cannot be amended, reduced or modified and govern any contradictory term contained in any other document, unless a Director of BRIGALOW has expressly stated in writing to the contrary.

15. Choice of Law

15.1. All of the parties agree:

15.1.1. that this agreement is governed by the laws of the State of Queensland, Australia.

15.1.2. to submit to the exclusive jurisdiction of the Courts of the State of Queensland; and

15.1.3. that proceedings are to be filed and trialled in the Court registry located at Brisbane (including the Magistrates, District and Supreme Courts at Brisbane).

16. Severability

16.1. These terms and conditions are to be interpreted and construed so far as possible to not be invalid, illegal or unenforceable in any respect.

16.2. The parties agree that if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

16.2.1. that provision is to be read down to the extent that it is necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or

16.2.2. if the provision or part of it cannot effectively be read down, that provision or part of it is to be deemed void and severable and the remaining provisions of this Agreement are not, in any way, to be affected or impaired and are to continue notwithstanding that illegality, invalidity or unenforceability.

17. Prices

17.1. All quotations are provided as estimations only and should only be relied upon as a guide. The price provided for within the quotation will not include any additional or incidental charges incurred by BRIGALOW in providing the goods will be payable by the Customer even if those incidental or additional charges are in addition to the amount stipulated in a quote.

18. Survival

The parties acknowledge and agree that clauses 5.1, 5.3, 6.3, 9, 14, 15, 18, 19 and 20 continue after termination of this agreement.

19. Guarantee

Each of the Guarantors jointly and severally guarantees to BRIGALOW to do everything that the Customer is required to do and that the Guarantor will not do anything the Customer is required not to do under this agreement. The Guarantor will separately and continually indemnify BRIGALOW against any loss and damage that BRIGALOW suffers because the Customer breaches this Agreement. The Guarantors agree that BRIGALOW is entitled to enforce this agreement against each Guarantor solely due to the Customer's breach of any terms herein after a demand is made on the Guarantor in the manner set out in clause 18 of this agreement.

20. Power of Attorney and Charging Clause

20.1. The Customer irrevocably appoints BRIGALOW and each and every one of BRIGALOW's directors to be the true and lawful attorney of the Customer to act at any time after the Customer breaches any terms herein. The attorney is empowered (but not limited):

20.1.1. to do all things which the Customer is required to do under this agreement; and

20.1.2. to execute and register (if necessary) any document to effect a bill of sale or mortgage, over the Customer's assets or properties for the amount of debt owing;

21. Notices to the Customer

The parties agree that notices (including the service of legal proceedings and originating process) to the Customer or any of the Guarantors or may be sent by:

21.1.1. regular pre-paid post to the address provided by the Customer or Guarantors;

21.1.2. facsimile to any facsimile number provided by the Customer or Guarantors; and/or

21.1.3. email to any email address provided by the Customer or Guarantors.

The Customer and Guarantor agrees to provide BRIGALOW with updated customer information should their contact details change.

22. Notices to BRIGALOW

The parties agree that notices of any dispute raised by the Customer under Clause 8.1 must, unless otherwise specified by BRIGALOW, be sent in writing to 39 Leopard Street Kangaroo Point, QLD 4169.

23. Retention of Title and Security Interest

23.1. The Customer agrees that BRIGALOW will retain title in the Contract Goods unless and until there is no longer any Payment Due to BRIGALOW under any Tax Invoice.

23.2. In consideration for BRIGALOW providing goods to the Customer on credit, the customer agrees to give BRIGALOW a Security Interest over all Goods on credit.

23.3. The Customer agrees that the Security Interest attaches to the Contract Goods and is enforceable against the Customer immediately upon any default by the Customer under Clause 6.

23.4. The Customer agrees that immediately upon attachment of the Security Interest to the Contract Goods, BRIGALOW is entitled to register the Security Interest.

23.5. The Customer appoints BRIGALOW as its attorney with the power and authority to register the Security Interest described above.

24. Security of Debt

24.1. Further and in addition to the security provided by the Security Interested the Customer agrees to grant to BRIGALOW in accordance with Clause 23, to better secure the payment of all monies which the Customer or Guarantors may become liable to pay BRIGALOW under this agreement, and as an essential condition of this agreement, the Guarantors and the Customer agree:

24.1.1. to charge all of his, her, its or their interest in real property, both present and future and wheresoever situated with the amount of the Customer and/or Guarantor's indebtedness to BRIGALOW on account whatsoever from time to time;

24.1.2. to provide, upon demand by BRIGALOW, signed documents and do all things that BRIGALOW reasonably requires to further secure to BRIGALOW the amount of indebtedness owed by the Customer to BRIGALOW from time to time.

24.1.3. that this includes but without being limited to, such mortgage or mortgage(s) over any real property (whether acquired before or after the date of this agreement) containing such covenants as required by BRIGALOW.

24.2. If the Customer is a Corporation and the Customer is in Default, then the Guarantor undertakes to provide an accurate statement of his or her financial position in accordance with a Uniform Civil Procedure Rules 1999 (Qld) form 71 Statement of Financial Position without there being any need for BRIGALOW to apply to Court.

24.3. The Guarantor agrees to allow BRIGALOW to lawfully access its premises without any liability for trespass in order to attain particulars of any property to be charged in accordance with this clause.

24.4. Each Guarantor and Customer authorises, and undertakes not to challenge caveats lodged by BRIGALOW over any real property held by the Customer or Guarantor, until such time as all BRIGALOW invoices have been paid in full (noting the payment of invoices can be made under protest even if the Customer failed to notify BRIGALOW of the existence of dispute as required by clause 8.1.1).