



mishmashed

new account/ credit application form

Request for Account with: TPCo PTY LTD atf S A McCall Family Trust (ABN 78 770 396 386) trading as mishmashed

Only fully completed applications will be accepted

The Applicant

Full legal name of applicant (if a Trust, insert full name of Trustee/s), and address and ABN:

Business Type: (please tick one) Sole Proprietor Partnership Company Trust

Address: _____

Postcode: _____

Business Name (if any): _____ ABN: _____

Office No: () _____ Fax No: () _____ Mobile No: () _____

No. of years trading under present ownership: _____ Email: _____

Bank: _____ BSB: _____ Account No: _____

Owners/ Directors/ Guarantors

Name: _____ Name: _____

Owner Director Trustee Owner Director Trustee
(please tick as applicable) (please tick as applicable)

Private Address: _____ Private Address: _____

Postcode: _____ Postcode: _____

Home Phone: () _____ Home Phone: () _____

Drivers Lie No: _____ State _____ Drivers Lie No: _____ State _____

Applicant's current trade references

Name: _____ Name: _____ Name: _____

Address: _____ Address: _____ Address: _____

Phone/Fax: _____ Phone/Fax: _____ Phone/Fax: _____

Important Notice: Privacy/ Indemnity/
Personal Guarantee - see pages 2

Trading Terms & Conditions - see page 4 & 4

For the Applicant (signature) _____ Witness (signature) _____

**Important notice: please read carefully before you sign -
privacy act matters and personal guarantee/ indemnity**

(Note: if more than one personal guarantee/ indemnity is to be provided a separate application form must be completed and signed in each case)

I, (insert full name)

insert residential address)

hereby apply on behalf of the Applicant for a Credit Account to be opened with the Supplier and, in consideration of the Supplier agreeing to open such a Credit Account, and to the full extent permitted by law:

1. I warrant that I am a principal/director/trustee of the Applicant described on page 1 of this application and
 - a. am authorised to make this Application on the Applicant's behalf and to execute on behalf of the applicant the acknowledgements, consent and indemnity set forth in paragraph 2 and 8.
2. I hereby personally guarantee the payment of all monies payable from time to time by the Applicant to the Supplier and also the due and full compliance by the Applicant with the Supplier's Trading Terms set out
 - a. on page 4 of this Application, which I have read, understood and accepted, I further indemnify and agree to keep indemnified the Supplier in respect of any loss or expense incurred by the Supplier as a consequence
 - b. of any failure by the Applicant to comply with the Supplier's Trading Terms. This guarantee and indemnity shall continue regardless of any extension of time or other indulgence that may be granted by the Supplier to the Applicant from time to time.
3. I warrant that the information provided on page 1 of this Application is true and correct.
4. I acknowledge that the Supplier has furnished the Applicant with a complete copy of this Application and has advised the Applicant of the identities of the Supplier which can be contacted on 0403 122 294 and the Australian Gift & Homewares Association Limited ("the Association") which can be contacted on (02) 9763 3222.
5. In accordance with section 18N(1)(b) of the Privacy Act 1988 [Commonwealth] ("Privacy Act"), I authorise the Supplier and the Association to give to and obtain from other credit providers in the Association, or credit providers that may be named in a credit report issued by a credit reporting agency, information about the Applicant's credit arrangements. I understand that this information can include any information
 - a. about the Applicant's 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 (all of which information and any related information is called "the credit information"). I understand and authorise that the credit information may be used for the following purposes:
 - b. to assess an application by the Applicant for credit;
 - c. to notify other credit providers of a default by the Applicant;
 - d. to exchange information with other credit providers as to the Applicant's liabilities with the Supplier or those other credit providers including any application made by the Applicant, whether the Applicant is in default on any of its liabilities, and/or;
 - e. to assess the Applicant's credit worthiness.
 - f. I acknowledge that the supply of goods to the Applicant may be refused if any credit information requested by the Supplier in accordance with paragraph 5 and the Privacy Act, by the Supplier, is not provided by the Applicant or if these terms are not agreed to by the Applicant.
 - g. The Applicant acknowledges that the Supplier and the Association have requested the Applicant to let
 - h. the Supplier and the Association know immediately in writing if at any time the Applicant believes that the credit information is not accurate, complete and up to date. The Applicant acknowledges having been advised by the Supplier and the Association that the Applicant is entitled to access the credit information from time to time and require the Supplier and the Association to take all reasonable steps to ensure that all such information is accurate, complete and up to date.
6. The Applicant and I each indemnify and will keep indemnified each of the Supplier and the Association against all actions, demands, liabilities, proceedings, judgments or orders, claims, costs and expenses
 - a. which the Supplier and the Association may suffer, incur or sustain (including any liability which the Supplier and/or the Association may incur to the Applicant) in connection with or arising in any way whatsoever as a consequence of:
 - b. the collection use or disclosure of the credit information as referred to in paragraph 5; and
 - c. any such information not being accurate, complete and up to date; and
 - d. any misuse and loss of such information; and
 - e. any unauthorised access to, modification or disclosure of any such information; and
 - f. the failure to provide the Applicant or anyone on its behalf with access to such information and the opportunity to correct any errors; and
 - g. the identification of any natural person in such information; and
 - h. any interference with privacy within the meaning of the Privacy Act by the Supplier or the Association; and
 - i. any breach of the said Act by the Supplier or the Association; and
 - j. any breach by the Supplier or the Association of the National Privacy Principles set out in Schedule 3 of the Privacy Act.

Signature of Witness: _____

Signed: _____

Personally and as principal for and behalf of the Applicant

Name of Witness: _____

(USE BLOCK LETTERS)

Dated: _____

Supplier's terms and conditions of trading ("The supplier's trading terms")

IMPORTANT: Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

1. Payment of orders/accounts

All orders which are endorsed or described as "Pro Forma Orders" are firm, irrevocable and non-cancellable by the Applicant and must be paid for in full within 14 days from date of invoice. Where payment for a Pro Forma Order is not received within 14 days of the date of invoice, the order may be cancelled by and at the sole discretion of the Supplier and in such event the Applicant will be liable from the date of notice of cancellation for a cancellation fee equivalent to 20% of the invoiced cost or \$50.00, whichever is greater.

All other orders made to the Supplier must be paid for within 30 days of the date of the Supplier's Invoice ("the Payment Bill Period") and where payment in full is not received by the Supplier prior to the expiry of the Payment Period then the Applicant shall be liable to pay interest on the amount outstanding as at the expiry of the Payment Period at the rate of 1% per month until payment in full is received by the Supplier. The Supplier is hereby irrevocably authorised to allocate the payment of any monies received from time to time from the Applicant towards any outstanding account incurred with the Supplier by the Applicant. All prices quoted shall be exclusive of Goods and Services Tax ("GST") and GST will be payable on the sale price on payment of the invoice.

2. Property in and delivery of goods

(a) The Goods supplied by the Supplier to the Applicant shall be at the Applicant's risk immediately on delivery to the Applicant or immediately on delivery as directed by the Applicant or immediately on collection by the Applicant's transport contractor as the case may be.

(b) Notwithstanding that the risk of loss or damage to the Goods passes to the Applicant in accordance with the previous sub-paragraph 2(a), property in and ownership of the Goods shall not pass to the Applicant until payment in full for the Goods shall have been received by the Supplier.

(c) Until payment in full of the invoiced cost of the Goods shall have been received by the Supplier, the Applicant shall hold the Goods on a fiduciary basis as a bailee only for the Supplier and the Applicant shall (at its own expense) keep the Goods properly and safely stored separately from any other goods and stock of the Applicant and any other third party and in such a way as the Goods shall be readily identified as the Goods of the Supplier and the Applicant shall not, subject to sub-clause 2d(i), grant any other person a Security Interest in respect of the Goods, allow an Excluded Interest to exist over the Goods or part with the Goods or attempt to do so without the prior written consent of the Supplier.

(d) (i) Notwithstanding that the property in the Goods has not passed to the Applicant, the Applicant may resell the Goods or any part thereof in the name of the Applicant but only as agent for the Supplier and may deliver any such Goods to the buyer of them but only on terms which will not prejudice the Supplier's ability to obtain the sale proceeds thereof.

(ii) Any amount paid by the buyer of such Goods from time to time to the Applicant (hereinafter referred to as "the sale proceeds") shall be held by the Applicant in trust for the Supplier, banked in a separate bank account relating only to the sale proceeds of the Goods of the Supplier under this and/ or other contracts between the Supplier and Applicant and shall be forwarded as soon as possible after receipt to the Supplier.

(iii) If and when the full amount of the price of the Goods has been received by the Supplier, any further part of the price received by the Applicant upon any resale by it of the Goods may be retained by the Applicant as its commission for effecting such sale as agent for the Supplier.

(e) If the Applicant has not received the proceeds, it assigns to the Supplier all rights against the person owing the proceeds.

(f) The Applicant irrevocably authorises the Supplier (at any time if there has been a default, or otherwise during business hours) to enter any premises upon which:

(i) the Supplier's Goods ordered by the Applicant are stored:

(1) to inspect the Goods; and

(2) if the Applicant has breached this Agreement, to reclaim possession of the Goods;

(ii) the Applicant's records relating to the Goods are held, to inspect and copy the records.

(g) Until the Supplier has received payment for the Goods in full, the Applicant acknowledges that the Supplier shall have a Purchase Money Security Interest which attaches over such Goods and their proceeds and a Security Interest in relation to other amounts owed by the Applicant to the Supplier.

(h) For the avoidance of doubt, after the Registration Commencement Time, the Supplier may register its Purchase Money Security Interest and Security Interest on the PPS Register established by the PPSA and, where necessary, amend the registration.

(i) The Applicant acknowledges that it must sign a document incorporating this Agreement and if it does not sign such a document it must adopt or accept this Agreement by conduct.

UI The Applicant agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the Supplier asks and considers necessary for the purposes of:

(i) ensuring that a Security Interest created under this Agreement is enforceable, perfected and otherwise effective; or

(ii) enabling the Supplier to apply for any registration, or give any notification, in connection with a Security Interest created under this Agreement so that the Security Interest has the priority required by the Supplier, including anything the Supplier reasonably asks the Applicant to do in connection with the PPSA.

(k) To the extent permitted by law, if the PPSA applies, the Applicant irrevocably waives any rights the Applicant may have to:

(i) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)

(d), 132(4) and 135 of the PPSA;

(ii) redeem the Goods under section 142 of the PPSA;

(iii) reinstate this Agreement under section 143 of the PPSA; and

(iv) receive a verification statement (as defined in the PPSA).

(l) An act of default of this contract shall be deemed to occur in the event of any of the following (and any of the acts described in sub-paragraphs 2(c) (i) to (iv) below are herein collectively referred to as an "Act of Default"):

(i) the Applicant failing to make payment in full of the invoiced cost of the Goods within 30 days from the date of invoice;

(ii) the Applicant, if required herein, failing to insure the Goods from the date of delivery thereof by the Supplier and to provide evidence of such insurance to the Supplier;

(iii) any distress or execution being levied upon the Applicant's Goods or property; and

(iv) the Applicant, being a company, becoming unable to pay its debts as they fall due, offering to enter into any scheme of arrangement with its creditors, the passing by the Board of Directors of the Applicant of any resolution to wind up the Applicant, the Applicant becoming Insolvent, the filing of any petition to wind up the Applicant or the appointment of an administrator or receiver/ manager in respect of the Applicant's affairs, the Applicant, in the case of a natural person, being declared bankrupt.

(m) Immediately upon the Applicant committing any Act of Default any right to sell the Goods in which the title to property remains vested in the Supplier shall cease forthwith and the Applicant shall upon the happening of any Act of Default immediately place all of the Goods then remaining in its possession or under its control at the disposal of the Supplier and the Supplier is hereby irrevocably authorised by the Applicant to nominate a person to enter the Applicant's premises during normal business hours for the purpose of repossessing such of the Goods still in the possession or under the control of the Applicant and where necessary to use no more than reasonable force to liberate and take possession of the Goods. Where the Goods are stored in a warehouse conducted by a person other than the Applicant immediately upon committing any Act of Default the Applicant shall be deemed to have irrevocably appointed the Supplier the attorney of the Applicant with the

authority in the name of the Applicant to direct the warehouseman to release any of the Supplier's Goods in the possession or under the control of the warehouseman whether or not the Payment Period has expired and the Supplier shall be at liberty to resell the Goods after repossession of the same pursuant to this clause.

(n) Until the full amount of the price of the Goods due to the Supplier is received by the Supplier the Applicant

(i) shall maintain and keep full and up to date records of the Goods supplied by the Supplier including those Goods on-sold by the Applicant, and

(ii) hereby irrevocably authorises the Supplier to enter its premises during normal business hours from time to time to inspect the residue of the Goods remaining unsold by the Applicant, the Applicant's records relating to the Goods and also to inspect the accounts including bank accounts into which the proceeds of sale of that part of the Goods already sold are by this clause required to be deposited pending payment to the Supplier.

3. Returns & Credit

(a) This Agreement does not exclude or limit the application of any laws, including the Australian Consumer Law of the Competition and Consumer Act 2010 (Cth), where to do so would contravene those laws or cause any part of this Agreement to be void.

(b) This Agreement excludes all conditions, warranties, terms and consumer guarantees implied by laws, general law or custom except any the exclusion of which would contravene any laws or cause this condition to be void ("Non-Excludable Condition").

(c) To the extent that the Supplier is providing services, the Supplier's liability for breach of a Non-Excludable Condition is limited, at the Supplier's option, to supplying the services again, or the cost of supplying the services again.

(d) To the extent that the Supplier is supplying Goods, the Supplier's liability for breach of a Non-Excludable Condition is limited, at the Supplier's option, to the replacement of the Goods or the supply of equivalent Goods, the repair of the Goods, the payment of the cost of replacing the Goods or of acquiring equivalent goods or the payment of the cost of having the Goods repaired.

(e) The Supplier will not pay any indirect, economic, special or consequential loss or damage including but not limited to loss of revenue, profit, production, business, anticipated savings or claims by you, even if the Supplier knows they are possible or otherwise foreseeable.

(f) The Supplier accepts no responsibility for any defect unless the Applicant lodges a written complaint to the Supplier within 7 days of the date of delivery of the Goods to the Applicant, and unless the Supplier has been given the first opportunity to remedy the defect. In every case the Supplier's liability is limited to replacing free of charge all or such parts of the Goods as have proved defective.

(g) The Supplier will bear its own costs and expenses of responding to your warranty claim. However, the Applicant must bear its own costs in making a warranty claim.

4. Miscellaneous Provisions

(a) It is expressly agreed that any action, suit, dispute or proceedings arising from or in connection with the sale of Goods pursuant to this Agreement or any matter between the parties hereto may be instituted, heard and determined in a court of competent Jurisdiction in the State of New South Wales or of such other State of Australia nominated in writing by the Supplier and each party irrevocably submits to the jurisdiction of such court for the purpose of any such dispute, action, suit or proceedings.

(b) In accordance with section 1SN (1) (b) of the Privacy Act, the Applicant hereby irrevocably authorises the Supplier from time to time to give to and obtain from other credit providers in the Association, or credit providers that may be named in a credit report issued by a credit reporting agency, information about the Applicant's credit arrangements including any information about the Applicant's 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. The Applicant understands and authorises that the credit information may be used to assess an application by the Applicant for credit, to notify other credit providers of a default by the Applicant, to exchange information with other credit providers as to the Applicant's liabilities with the Supplier or those other credit providers including

any application made by the Applicant, whether the Applicant is in default on any of its liabilities, and/or to assess the Applicant's credit worthiness.

(c) In accordance with section 18 of the Privacy Act, the Applicant hereby irrevocably authorises the Supplier and the AGHA from time to time, to obtain a credit report in respect of the Applicant from any credit reporting agency and to provide any information contained on this credit application form and also details of the performance of the Applicant in compliance with the trading terms and conditions herein to other credit reporting agencies.

(d) Freight and transport costs from the Supplier's nominated warehouse and in-transit insurance incurred in respect of the Goods are at the cost and liability of the Applicant and are not included in the invoiced price of the Goods.

(e) The word "Goods" shall be deemed to refer to any Goods obtained by the Applicant from the Supplier from time to time pursuant to this Agreement.

(f) The Applicant shall be liable for and shall promptly pay to the Supplier;

(i) any legal costs incurred by the Supplier on a solicitor/client basis,

(ii) any court fees, bailiff costs and services fees incurred by the Supplier, and

(iii) any fees paid to a debt collector in respect of any action of court proceedings taken by or on behalf of the Supplier for the recovery of any monies due by the Applicant to the Supplier pursuant to this Agreement.

(g) Service of any notice or document pursuant to this Agreement may be effected in any manner prescribed by Section 170 of the Conveyancing Act 1919 as amended (New South Wales) or any section or provision in substitution therefore.

(h) The Supplier reserves the right to terminate the Applicant's Credit Account at any time immediately upon service upon the Applicant of written notice of termination without providing any reason therefore.

(i) The United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980, known as the Vienna Sales Convention 1980) is expressly excluded from this Agreement.

5. Definitions

In this Agreement, the following definitions apply:

(a) "AGHA" means the Australian Gift and Homewares Association Limited ABN 49 061 196 290;

(b) "Excluded Interest" means any mortgage, charge or other encumbrance over real property or personal property (tangible or intangible) that is not a Security Interest, including non-consensual liens and mortgages over real property;

(c) "Insolvent" has the same meaning as in section 95A(2) of the Corporations Act 2011;

(d) "PPSA" means the Personal Property Securities Act 2009 (Cth);

(e) "PPS Register" means the Personal Property Securities Register;

(f) "Privacy Act" means the Privacy Act 1988 (C'th);

(g) "Security Interest" has the same meaning as under the PPSA